

LIBRARY

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA 350/00017/2016

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

SRIMANTA KR. DE

VS

UNION OF INDIA & ORS.

For the applicant : Mr.K.Sarkar, counsel

For the respondents : Mr.R.Roychoudhury, counsel

Order on: 3.3.16

O R D E R

Ms. Bidisha Banerjee, J.M.

This application has been filed seeking quashing of an order dated 28.12.15 whereby and whereunder the prayer of the applicant made vide representation dt. 22.12.15 to keep the departmental enquiry in abeyance, due to pendency of criminal charges, has been turned down.

2. Ld. Counsel for the respondents submitted that since the charges in the departmental proceedings and the criminal proceedings were not identical in nature and the entire list of documents and witnesses differed in both the proceedings there was no bar in continuing with the departmental proceedings during pendency of the criminal proceedings.

3. To this Ld. Counsel for the applicant would vociferously submit that the witness listed in the charge sheet and the FIR were one and same and simultaneous proceedings may prejudice defence in the criminal trial.

4. Ld. Counsel for the applicant referred to a decision rendered by Hon'ble Apex Court in *M/s Stanzen Toyotetsu India P. Ltd. -vs- Girish V.* rendered on 21.1.14, wherein it was held as under :

"Suffice it to say that while there is no legal bar to the holding of the disciplinary proceedings and the criminal trial simultaneously, stay of disciplinary proceedings may be an advisable course in cases where the criminal charge against the employee is grave and continuance of the disciplinary proceedings is likely to prejudice their defense before the criminal Court. Gravity of the charge is, however, not by itself enough to determine the question unless the charge involves complicated question of law and fact.

The Court examining the question must also keep in mind that criminal trials get prolonged indefinitely especially where the number of accused arraigned for trial is large as is the case at hand and so are the number of witnesses cited by the prosecution. The Court, therefore, has to draw a balance between the need for a fair trial to the accused on the one hand and the competing demand for an expeditious conclusion of the on-going disciplinary proceedings on the other. An early conclusion of the disciplinary proceedings has itself been seen by this Court to be in the interest of the employees."

5. Ld. Counsel further referred to a decision of the Hon'ble High Court affirming a decision of this Tribunal in the matter of one **Furkan Ahmed (OA 85/AN/2014)** wherein this Tribunal had directed stay of proceedings in view of the decisions rendered by the Hon'ble Apex Court in **M/s Stanzen Toyotetsu India P. Ltd. -vs- Girish V. (supra), State of Rajasthan -vs- B.K.Meena [1996 (6) SCC 417], Capt.M.Paul Anthony -vs- Bharat Gold Mines Ltd. [1993 (3) SCC 679], etc.** and a decision of the Hon'ble High Court at Calcutta in WPCT 15194 (W)/13.

This Tribunal in OA 85/A&N/14 had noted the following :

(i) In **M/s Stanzen Toyotetsu India P. Ltd. -vs- Girish V. & Ors.**, Hon'ble Apex Court delved in depth into the desirability of staying departmental proceeding where criminal proceedings were continuing and were based on the same set of facts and evidence as in the departmental proceedings. It observed as follows :

In **Depot Manager, Andhra Pradesh State Road Transport Corporation -vs Mohd. Yousuf Miyan (1997) 2 SCC 699**, this Court declared that the purpose underlying departmental proceedings is distinctly different from the purpose behind prosecution of offenders for commission of offences by them. While criminal prosecution for an offence is launched for violation of a duty that the offender owes to the society, departmental enquiry is aimed at maintaining discipline and efficiency in service. The difference in the standard of proof and the

application of the rules of evidence to one and inapplicability to the other was also explained and highlighted only to explain that conceptually the two operate in different spheres and are intended to serve distinctly different purposes. The relatively recent decision of this Court in ***Divisional Controller, Karnataka State Road Transport Corporation -vs- M.G.Vittal Rao (2012) 1 SCC 442***, is a timely reminder of the principles that the applicable in such situations succinctly summed up in the following words :

- (i) There is no legal bar for both proceedings to go on simultaneously.
- (ii) The only valid ground for claiming that the disciplinary proceedings may be stayed would be to ensure that the defence of the employee in the criminal case may not be prejudiced. But even such grounds would be available only in cases involving complex questions of facts and law.
- (iii) Such defence ought not to be permitted to unnecessarily delay the departmental proceedings. The interest of the delinquent officer as well as the employer clearly lies in a prompt conclusion of the disciplinary proceedings.
- (iv) Departmental Proceedings can go on simultaneously to the criminal trial, except where both the proceedings are based on the same set of facts and the evidence in both the proceedings is common.

We may also refer to the decision of this Court in ***Capt.M.Paul Anthony -vs- Bharat Gold Mines Ltd. [1993 (3) SCC 679]*** where this Court reviewed the case law on the subject to identify the following ^broad principles for application in the facts and circumstances of a given case:

- (i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously though separately.
- (ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

- (iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.
- (iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the Departmental Proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.
- (v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honor may be vindicated and in case he is found guilty, administration may get rid of him at the earliest."

(emphasis supplied)

- (ii) The Hon'ble Apex Court in ***State of Rajasthan -vs- B.K.Meena*** [1996 (6) SCC 417], held that :

"there is no legal bar for both proceedings to go on simultaneously and then say that in certain situations, it may not be 'desirable', 'advisable' or 'appropriate' to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. The staying of disciplinary proceedings, is a matter to be determined having regard to the facts and circumstances of a given case and that no hard and fast rules can be enunciated in that behalf. The only ground suggested in the above questions as constituting a valid ground for staying the disciplinary proceedings is that the defence of the employee in the criminal case may not be prejudiced. This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law. In our respectful opinion, it means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, 'advisability', 'desirability' or 'propriety', as the case may be, has to be determined in each case taking into consideration all the facts and circumstances of the case. While it is not possible to enumerate the various factors, for and against the stay of disciplinary proceedings, we found it necessary to emphasize some of the important considerations in view of the fact that very often the disciplinary proceedings are being stayed for long periods pending criminal proceedings. Stay of disciplinary proceedings cannot be, and should not be, a matter of course. All the relevant factors, for and against, should be weighed and a decision taken keeping in view the various principles laid down in the decisions referred to above. Indeed, in such cases, it is all the more in the interest of the charged officer that the proceedings are expeditiously concluded. Delay in such cases really works against him.

(emphasis supplied)

Having considered its earlier decisions, the Hon'ble Court held as under :

"Keeping in view the fact that all the three Courts below have exercised their discretion in favour of staying the on-going disciplinary proceedings, we do not consider it fit to vacate the said order straightaway."

This Tribunal further noted a decision of the Hon'ble High Court in WPCT 15194 (W)/13 wherein Hon'ble Court examined the aspect of prejudice, and held as under :

"18. Let me now examine the other aspect of prejudice. To drive home the charge in the disciplinary proceedings, the prosecution seeks to examine 4 (four) witnesses who are also listed as witnesses before the criminal court. Question that necessarily arises on facts and in the circumstances is, what is the test to be applied for ascertaining whether the petitioner would be prejudiced if the disciplinary proceedings against him are not stayed. I am of the humble view that the test is this. In the event the petitioner is compelled to participate and produce evidence in his defence in the departmental enquiry to contest the departmental proceedings, his defence in the criminal proceedings which would normally constitute the basis for the line and object of cross-examination of the prosecution witnesses would already be known to such witnesses and it is not unlikely that they would be in a position to fashion or design their statements accordingly to suit the prosecution case. Cross-examination of the witnesses by the accused, which is a very valuable right, would in such situation be reduced to a mere formality and justice rendered a casualty.....

19. The writ petition, accordingly, succeeds in part. There shall be unconditional stay of the departmental enquiry that is pending against the petitioner till the conclusion of the criminal case before the court of the Special Judge, CBI cases, Ranchi. After such conclusion, the respondents shall be free to act in accordance with law. It is made abundantly clear that in the event it is found that the trial is being protracted due to reasons directly attributable to the petitioner, it shall be open to the respondents to set the ball in motion by resuming the departmental enquiry without obtaining permission from this Court. However, such resumption may be challenged by the petitioner, if so advised in appropriate proceedings in accordance with law."

In the aforesaid legal backdrop it could be noted that the representation of the applicant seeking stay of departmental proceedings as preferred on 1.8.14 has not been disposed of by the Disciplinary Authority.

7. His further request made on 22.12.15 to the Inquiry Officer has been rejected by the authority on 28.12.15 in the following manner :

"that there is no bar in holding the inquiry initiated under Rule 10 of GDS (Conduct & Engagement) Rules 2011 and unless there is a stay order from the competent Court of Law. In this instant case there is no order from the Competent Court of law staying completion of the inquiry proceedings.

In view of the above the hearing in to the case will be held as per schedule. You are requested to attend before the Board of Inquiry on the next date of hearing which has been re-scheduled on 4.1.16 instead of 29.12.15 at 11:00 hrs at the same place fixed vide my office letter of even No. dated 17.12.15. All other information contained in my previous letter dated 16.12.15 shall remain unchanged."

8. In view of the well recognised legal position, as noticed supra, an employee facing simultaneous proceedings would have a right to seek stay of departmental proceedings pending conclusion of criminal trial.

9. Since no reasoned order has been issued on his prayer seeking such stay, and the facts have also not emerged clear in regard to similarity in the nature of charges or set of witnesses and documents by which or by whom the articles of charges framed against the applicant were proposed to be sustained, we direct the disciplinary authority to consider the representations dated 1.8.14 and pass a reasoned and speaking order on the same within one month. In the meanwhile the Disciplinary Process will proceed as per law.

10. This OA is accordingly disposed of. No order is passed as to costs.

(JAYA DAS GUPTA)
MEMBER (A)

in

(BIDISHA BANERJEE)
MEMBER (J)