

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI**

ORIGINAL APPLICATION No.564/2019

with

ORIGINAL APPLICATION NO.565/2019

Date of decision: 16.09.2019

**CORAM:- R. VIJAYKUMAR, MEMBER (A).
R.N. SINGH, MEMBER (J).**

(Applicant in OA No.564/2019)

Shri Himatlal Mandan Solanki
Age-58 years, Occ. Service,
Permanent R/at:
Main Road, Near SBI,
House No.645,
Ghoghla-Diu, Pin-362540
Off/At
Working as Incharge Executive
Engineer (Civil) Office of
Executive Engineer, Fort Area,
PWD, Moti Daman-396 220.

AND

(Applicant in OA No.565/2019)

Shri Nileshkumar Arvindlal Patel
Age-42 years, Occ. Service,
Permanent R/at
Flat No.202, Royal Gems,
Assucena Road, Moti Daman,
Pin-396 220.
Off/At

Working as Jr Engineer PWD
in the office of Assistant Engineer
Sub Div. I, Nani Daman-396 210
And Additional Charge as junior engineer from
2010 in the office of the Executive Engineer and
Superintendent Engineer, PWD, Work Div-I, Fort
Area, Moti Daman-396 220.

(By Advocate Shri A. D. Joshi)

... Applicant.

VERSUS.

(Respondents in OA Nos.564/2019 & 565/2019)

1. The Union of India,
Through the Secretary,
Ministry of Home Affairs,
Office Add: Ministry of Home
Affairs, North Block, Central
Secretariat, New Delhi-110001.
2. The Administrator,
Through the Secretary,
Union Territory of Daman & Diu
and Dadra and Nagar Haveli,
Secretariat, Moti Daman,
Pin Code-396 220.
3. The Inquiry Officer
Office of the Chief Officer,
Daman Municipal Council,
Daman-396 220.

... Respondents.

(By Advocate Shri V. S. Masurkar)

ORDER (ORAL)Per: R. N. SINGH, MEMBER (JUDICIAL)

1. When the case is called out, Shri A. D. Joshi, learned counsel appeared for the applicant.
2. Shri V. S. Masurkar, learned counsel appeared for the respondents.
3. The applicants have filed the aforesaid two OAs under Section 19 of the Administrative Tribunal's Act, 1985 seeking the following reliefs:-

(Reliefs in OA No.564/2019)

(a) this Hon'ble Tribunal be pleased to direct the respondents to call for the entire records related to case of the applicant.

(b) this Hon'ble Tribunal be pleased to quash and set aside the impugned order dated 11.03.2019.

(c) This Hon'ble Tribunal be pleased to pass an appropriate order/directions thereby restraint the respondents no.2 and 3 from proceeding further with ongoing departmental inquiry proceeding against the Applicant till final disposal of criminal case/. Trial already started against him.

(d) The Hon'ble Tribunal be pleased to impose cost of this original application on the respondents.

(e) Any other relief in the nature and the circumstances of the case as this Hon'ble Tribunal deems fit and proper may be granted."

(Reliefs in OA No.565/2019)

(a) this Hon'ble Tribunal be pleased to direct the respondents to call for the entire records related to case of the applicant.

(b) this Hon'ble Tribunal be pleased to quash and set aside the impugned order dated 12.03.2019.

(c) This Hon'ble Tribunal be pleased to pass an appropriate order/directions thereby restraint the respondents no.2 and 3 from proceeding further with ongoing departmental inquiry proceeding against the Applicant till final disposal of criminal case/.Trial already started against him.

(d) The Hon'ble Tribunal be pleased to impose cost of this original application on the respondents.

(e) Any other relief in the nature and the circumstances of the case as this Hon'ble Tribunal deems fit and proper may be granted."

4. With consent of the learned counsels for

the parties, the aforesaid OAs have been heard for final disposal and are being disposed of by a common order as the facts and issues involved therein are common/similar.

5. The applicants have challenged the order dated 11.03.2019 (Annexure A-1) vide which the representation of the applicants for stay of the Disciplinary Proceedings till conclusion of the criminal cases arising out of RC23(A)/20014 dated 03.09.2014 redressed by the CBI under Section U/s.120-B, IP, Section 7 and 13(2) r/w 13 (1) (d) of provisions of prevention of Corruption Act, 1988.

6. In the impugned order dated 11.03.2019 and 12.03.2019 respectively the respondents have considered the representation of the applicants and have held that there is no legal bar to the conduct of Disciplinary Proceedings and criminal trial simultaneously. Further, an early conclusion of the disciplinary proceedings has itself been held by the Supreme Court to be in

the interest of the employees.

7. In response to the notice received from this Tribunal, the respondents have filed their detailed reply and in para 18 thereof have stated as under:

"18. I state that the departmental enquiry was delayed due to the fact that earlier enquiry officers were transferred and hence present enquiry officer has stated that the enquiry proceedings are almost at final stage. The enquiry officer has conducted evidence recording on five dates 26.07.2018, 22.10.2018, 30.10.2018, 11.12.2018, 06.08.2019 and the applicant has attended the above evidence recording proceeds along with his defense assistant. The last hearing is scheduled on 26/08/2019 and the Enquiry Officer has stated that he will be submitting the enquiry officer's report by end of September, 2019. IT is therefore respectfully submitted that the applicant having fully participated in the departmental proceedings, when it is at final stage has alternative motive and intention and with a view to bring pressure on the competent authority and therefore it is prayed that the OA be dismissed in limine."

8. From the aforesaid, it is evident that the Disciplinary Proceedings against the

applicant has been going on since long and the Inquiry Officer has recorded the evidence on 26.07.2018, 22.10.2018, 30.10.2018, 11.12.2018 and 06.08.2019 and the applicant has attended the same with the assistance of his defence assistant whereas the applicant has filed the present OA only on 08.08.019. The said facts clearly indicate that during the recording of the evidence either the applicant has chosen not to participate in the proceedings or he has voluntarily participated in the proceedings. The respondents have clearly stated on oath as above the same has been reiterated through their learned counsel that the Inquiry Proceedings before the Inquiry Officer is over and the Inquiry Officer is likely to submit his report by the end of this month, though such assertion of the respondents has vehemently opposed by the learned counsel for the applicant, however, in absence of any material or pleading on record to support the applicants' such opposition, we do

not find any reason to disbelieve the statement of the respondents. The learned counsel for the applicant submits that the respondents have not called all the witnesses listed in the list of witnesses of the charge-memorandum but he has not been able to show how that would prejudice their defence when they have the option of calling their own defence witness(es).

9. We are, therefore, of the considered view that there is no occasion or any reason for this Tribunal to pass any order directing the respondents to stop ongoing disciplinary proceedings.

10. In the aforesaid facts and circumstances, the OAs are disposed of with directions to the respondents to conclude the proceedings as expeditiously as possible and in any case within three months of receipt of a certified copy of this order. However, it is made clear that we have not expressed any opinion on the merit of the disciplinary proceedings against the

applicants and all the legal grounds available to them against the inquiry or final order to be passed by the respondents will remain open.

11. The OAs are disposed of in the aforesaid terms.

12. No order as to costs.

(R. N. Singh)
Member (J)

(R. Vijaykumar)
Member (A)

V.

JD
19/9/19

