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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.808/2003

New Delhi, this the 29th day of October, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri S. A. Singh, Member (A)

Mrs. Vidhu Sharma
w/o Sh. Pradeep Sharma
r/o House No. 281-A,
Varinder Nagar
Janakpuri
New Delhi

..... Applicant

(By Advocate: Shri Harvir Singh proxy for
Sh. K C Mittal, Advocate)

VERSUS

1. Secretary
Ministry of Home Affairs
Government of India
New Delhi
2. Commissioner of Police,
Delhi,
Police Headquarters,
I.P. Estate,
New Delhi
3. Dy. Commissioner of Police/FRRO
E Block, R K Puram,
New Delhi.
4. Dy. Commissioner of Police,
IGI Airport,
New Delhi.

..... Respondents

(By Advocate :Shri Saurabh Ahuja proxy for
Sh. Ajesh Luthra)

O R D E R

JUSTICE V S AGGARWAL:

Applicant (Mrs. Vidhu Sharma) by virtue of the



present application seeks to keep in abeyance, the disciplinary proceedings initiated against her till the conclusion of the criminal case with respect to First Information Report Nos. 31/2001 and 822/2001 pending before the trial court.

2. The relevant facts are that the applicant had been served with summary of allegations to initiate departmental proceedings. It has been urged that while posted at Indira Gandhi International Airport unit, she facilitated the clearance of one Gurdev Singh through Intelligence Bureau officials of F.R.R.O. for United States of America on 13.4.2000 while the said Gurdev Singh had forged visa due to which he was deported back on 19.11.2000 by the Immigration officials of United States of America. The applicant was arrested in First Information Report No.31/2001 with respect to offences punishable under Section 420/34 of the Indian Penal Code. It was asserted that the applicant along with her husband and others had taken Rs.7 lakhs from the said Gurdev Singh for arranging visa for United States of America. She was actively involved in the business of her husband and First Information Report No.822/2001 with respect to offences under Section 448/380/34 of the Indian Penal Code had been registered at Police Station Rajouri Garden, while she had no stake on paper in the firm. In this process, she had abused her official status of being a Police officer.



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3. The applicant's contention is that since pertaining to the same facts, the First Information Reports had been lodged, parallel proceedings could not continue and consequently, the disciplinary proceedings should be stayed.

4. In the reply filed, the application has been contested. The basic facts referred to above in the summary of allegations have been re-mentioned. It has been pointed that the disciplinary proceedings had been initiated against the applicant which are at the initial stage. The request made by the applicant for stay of the disciplinary proceedings had been considered and rejected. It is insisted that in the facts of the present case, there is no ground to stay the disciplinary proceedings.

5. During the course of submissions, the short argument advanced was that keeping in view the identical facts alleged in the First Information Reports and the disciplinary proceedings, the disciplinary proceedings should be stayed.

6. We have carefully considered the submissions. We have to see as to under what circumstances, the departmental proceedings should be stayed when cases pertaining to the same facts are pending before a Court of competent jurisdiction in a criminal trial. Such a situation has been dealt with more often than once by the

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Apex Court. We are not delving in great detail on that aspect. But in the case of Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and Anr. (1999 (3) AISLJ 152), the Supreme Court provided the following guide-lines:-

"21. The conclusions which are deducible from various decisions of this Court referred to above are:

- (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 honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest."

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7. Earlier in the case of State of Rajasthan vs. Shri B.K. Meena & Others (JT 1996 (8) S.C. 684), the Supreme Court took note of the fact that ordinarily criminal trial takes long time and there is delay and further that the disciplinary proceedings in that case need not be stayed. The Supreme Court held -

"14. XXXXXXXX. One of the contending consideration is that the disciplinary enquiry cannot be - and should not be - delayed unduly. So far as criminal cases are concerned, it is well-known that they drag on endlessly where high officials or persons holding high public offices are involved. They get bogged down on one or the other ground. They hardly ever reach a prompt conclusion. That is the reality in spite of repeated advice and admonitions from this Court and the High Courts. If a criminal case is unduly delayed that may itself be a good ground for going ahead with the disciplinary enquiry even where the disciplinary proceedings are held over at an earlier stage. The interests of administration and good government demand that these proceedings are concluded expeditiously. It must be remembered that interests of administration demand that undesirable elements are thrown out and any charge of misdemeanour is enquired into promptly. The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. The interest of the delinquent officer also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges his honour should be vindicated at the earliest possible moment and if he is guilty, he should be dealt with promptly according to law. It is not also in the interest of administration that persons accused of serious misdemeanour should be continued in office indefinitely, i.e., for long periods awaiting the result of criminal proceedings. It is not in the interest of administration. It only serves the interest of the guilty and dishonest. While it is not possible to enumerate the various factors, for and against the stay of disciplinary proceedings, we found it necessary to emphasise some of the important considerations in view of the fact that very often the disciplinary proceedings are being

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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."

8. The position is well-settled that the purpose of the disciplinary proceedings is to maintain discipline in the department while the criminal proceedings are initiated to punish the persons who have violated the law.

9. During the course of submissions, we were informed on behalf of the respondents that in the two First Information Reports registered in the year 2001, the investigation is still in progress and report under Section 173 of the Code of Criminal Procedure has not been filed. In such a situation when more than two years have elapsed and as yet even the investigation has not been completed and the trial is yet to begin, it is obvious that there is likely to be undue delay. More so there is at present no criminal trial pending. In face of the aforesaid, sub para (v) to para 21 of the decision in the case of Capt. M.Paul Anthony (supra) would come into play. After the challan, if any, that may be filed it would take long time for the trial to conclude. It has not seen the light of the day. Therefore, in the facts of the present case indeed, there is no ground to stay the departmental proceedings.

10. No other argument was advanced.

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11. Resultantly, the application being without merit must fail and is dismissed. No costs.

S. A. Singh

(S. A. Singh)
Member (A)

V. S. Aggarwal

(V. S. Aggarwal)
Chairman

/sns/