

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.1064 OF 2003

New Delhi, this the 30th day of January, 2004

HON^{BLE} SHRI SHANKER RAJU, JUDICIAL MEMBER
HON^{BLE} SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER

M.K. Jain, IAS --
R/o M.No.14, --
Sector-7-A, --
Chandigarh. --

.....Applicant
(By Advocate : Shri G.D. Gupta with Shri S.K. Sinha)

Versus

1. Union of India,
Through its Secretary, Ministry of Personnel,
Public Grievances and Pensions,
New Delhi.
2. Director (Vigilance)
Govt. of India,
Ministry of Personnel, Public Grievances and
Pensions,
Department of Personnel and Training,
New Delhi.
3. State of Haryana,
Through its Chief Secretary,
Government of Haryana,
Civil Secretariat,
Chandigarh.

.....Respondents
(By Advocates : Shri M.M. Sudan for R-1 to R-2
Shri Sunder Khatri for R-3)

ORDER (ORAL)

SHRI SHANKER RAJU, JUDICIAL MEMBER :

MA-2675/2003

MA -2675/2003 bringing on record relevant documents relating to judicial orders in the criminal trial as well as application for supply of documents is allowed and the documents annexed in this misc. application are taken on record.

OA-1064/2003

Applicant through this OA impugnes respondents' order dated 20.12.2002 whereby his request of keeping the disciplinary proceedings

initiated --against him in abeyance during the pendency of similar proceedings in the criminal case has been rejected.

2. -- Applicant, who is an IAS Officer of 1978 Batch allotted to Haryana Cadre, had worked in various capacities with the State of Haryana. A criminal case filed by the CBI FIR No. RC 03/2000 was registered against applicant on the basis of statement of one Shri K.B. Goel. After investigation, a chargesheet has been filed in the criminal court of competent jurisdiction in July 2000.

3. Simultaneously alongwith the criminal case on the same set of allegations and rested on same evidence, which is not disputed, a Memorandum under Rule 8 of the All India Service (Discipline and Appeal) Rules, 1969 (hereinafter referred to as 'Rules') had been issued for conducting disciplinary proceedings against the applicant.

4. In the criminal trial, applicant remained in judicial custody till November, 2003. He was released on bail.

5. During the course of pendency of the criminal trial, applicant has sought for furnishing of certain documents, which were required for his defence in the criminal case, in possession of CBI.

6. --Vide order dated 15.11.2000, High Court of Punjab has directed the respondents to supply copies of the documents as required by the applicant within a period of one week.

7. -- Applicant had requested for supply of documents which was turned down. However, vide order dated 16.9.2003 with a direction to honour the understanding given before the High Court, CBI has been directed to produce these documents and vide order dated 12.11.2003, as the documents which are required to be supplied by CBI have not been supplied, the case was adjourned to 23.12.2003.

8. In the aforesaid conspectus, applicant preferred a representation for keeping the disciplinary proceedings in abeyance as the defence sought to be taken in the criminal trial would be disclosed--causing grave prejudice to the applicant. The aforesaid request was turned down giving rise to the present OA.

9. -- Learned senior counsel Shri G.D. Gupta with Shri S.K. Sinha, learned counsel for applicant by placing reliance upon the decision of the Apex Court in Capt. M. Paul Anthony V. Bharat Gold Mines Ltd. & Anr., JT 1999 (2) SC 456 contended that as the trial has already commenced and there is no evidence that the delay is on the part of the applicant and the same is attributable to him, the delay in pursuing his

case is due to non-cooperative attitude of CBI, which despite directions of the High Court and Special Judge, had failed to supply the required documents to the applicant.

10.--- In the aforesaid backdrop, it is stated that if the disciplinary proceedings and criminal case are rested on same set of facts with common evidence to be adduced and the charges in the criminal case involve complicated questions of law and facts and keeping in view the nature of offence and nature of having connected, during the investigation compelling the applicant to participate in the disciplinary proceedings would result in disclosure of defence, which cannot be countenanced in view of the law laid down in Capt. M. Paul Anthony's case (supra).

11. Shri G.D. Gupta, learned senior counsel further distinguishing the case law laid down in State of Rajasthan V. B.K. Meena & Ors., JT 1996 (8) SC 684 by contending that there is no evidence that the defence had already been disclosed by way of written statement--as such the decision is distinguishable. Shri Gupta also stated that the applicant was in judicial custody till November 2003 and has not at all attributed towards any delay in the trial and as without any kind of difference in the disciplinary and criminal proceedings which are rested on common evidence, the distinction drawn would not be applicable. Referring to the chronological statement

filed by the CBI, it is stated that the same is far from truth and delay is attributable on part of CBI which is reflected from the order passed by the Special Judge on 16.9.2003 as well as on 12.11.2003.

12. On the other hand, respondents learned counsel Shri M.M. Sudan vehemently opposed the contentions raised by the applicant and stated that in the light of decision in B.K. Meena's case (supra) and Capt. M. Paul Anthony's case (supra), as the criminal trial has been unduly delayed irrespective of whether it is attributable to the accused or the prosecution, in such event, it would be in the interest of department, the disciplinary proceedings initiated against applicant are to be expeditiously disposed of.

13. Shri Sudan further states that the applicant had been adopting delaying tactics to prolong the trial in order to make adequate defence in the disciplinary proceedings. According to him, expeditious disposal of the disciplinary proceedings in the present case is with a view to keep administrative machinery clean and as such the rejection of the request of the applicant to keep the disciplinary proceedings in abeyance is reasonable and justified.

14. Moreover, it is stated that the criminal proceedings in the trial had not even commenced after two years.

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15. We have carefully considered the rival contentions of the parties and perused the material available on record.

16. Law summarised and the conclusion deduced from various decision of the Courts as referred to in Capt. M. Paul Anthony's case (supra) are as followed:-

"(i) Departmental proceeding 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."

17. However, the aspect of delay has been discussed by the Apex Court in B.K. Meena's case (supra) as under:-

--- "It--- would be evident from the above decisions that each of them starts with the indisputable proposition that there is no legal bar for both proceedings to go on simultaneously and then say that in certain situation, it may not be "desirable", "advisable" or "appropriate" to proceed with the disciplinary enquiry when a criminal case is pending on identical charge. The staying of disciplinary proceeding, it is emphasised, is a matter to be determined having regard to the facts and circumstances of a given case and that no hard and fast rule can be enunciated in that behalf. The only ground suggested in the above decisions 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. The ground indicated in D. C.M. (AIR 1960 SC 806) and Tata Oil Mills (AIR 1965 SC 155) is also not an invariable rule. It is only a factor which will go into the scales while judging the advisability or desirability of staying the disciplinary proceedings. One of the contending considerations 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 or endlessly where high official or persons 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 forgoing ahead with the disciplinary enquiry even where the disciplinary proceedings are held over at an earlier stage. The interest 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 inquired 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 element. 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 waiting 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 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 of the various principles laid down in the decisions referred to above."

18. Insofar as other contentions are concerned, respondents in the reply have admitted that the criminal proceedings and the disciplinary proceedings are based on similar charges. It is further admitted that the documentary evidence and witnesses are same in both proceedings.

19. Insofar as gravity of charge and complicated questions of facts and law are concerned, we find that none of the persons, who have been alleged to have provided bribe to Shri K.B. Goel, have been made to cross-examine and as such their statements cannot be read in as evidence. One of the

allegations was replacement of answer-sheets, which is based--on-incriminatory statement of witnesses. Most of the witnesses have not directly implicated the applicant. Moreover, keeping in view the offence alleged -against the applicant which is under Prevention-- of Corruption Act as well as forgery, cheating and interpolation in the documents, the proceedings involve complicated questions of law and facts.---

-----20. As regards, the deducible conclusion with regard - to undue delay in disciplinary proceedings as well--as-undue delay in criminal case is concerned, in common parlance unduly delay is defined as excessive and unreasonable. As per the definition of undue in Concise--Oxford Dictionary, it is defined as excessive and disproportionate with an adjective unduly. In the Concise Oxford Thesaurus 20th Edition 2003 unduly has been--defined as excessively, out of proportion indefinitely, unreasonably and unjustifiably. If one has--regard to undue delay though the Apex Court has not further clarified as to whether this undue delay would be--undue if it is not attributable to the delinquent/ accused official. However, keeping in view-the-paculiar facts and circumstances of the case, - whereas -since Nov., 2000, despite direction of High Court - of Punjab, the relevant documents had not been furnished- to the applicant by the CBI as well as the Special Judge by an order dated 16.9.2003 reiterated this fact as well in its order dated 12.11.2003

(10)

observed that the documents required had not been supplied by the CBI, the delay in framing of the charges and proceedings in criminal case cannot be said to be attributable to the applicant. The contention put forth by the respondents that the applicant had been adopting the delaying tactics cannot be countenanced in the light of Section 207 of Cr.P.C. whereby documents relied upon by the prosecution are to be served upon the accused which is inconsonance with the principle of natural justice and fairness in procedure with a view to afford a reasonable opportunity to the concerned to defend his case. The aforesaid delay is not an objective consideration. It is subjective in each case depending on its facts and circumstances. The fact that the applicant had from the very beginning requested the concerned Court as well as the High Court to furnish him the relevant documents which are in possession of CBI but due to lackadaisical attitude of CBI as reiterated has resulted in delayed proceedings with the result the criminal trial has not commenced. Moreover, the applicant remained in judicial custody till November, 2003. The aforesaid delay from 2000 to 2003 cannot be observed as inordinate and it cannot be held that the trial has been unduly prolonged by the applicant.

21. May that be so, taking cognizance of the fact that the trial as well as disciplinary proceedings are founded on identical question of facts

and rested on common evidence, now even if the disciplinary proceedings are allowed to continue shall have an effect of compelling the applicant to disclose his defence in the disciplinary proceedings which are sought to be taken in the criminal trial and shall prejudice him.

22.— However, we are conscious that the interest of administration, particularly clean administration, the disciplinary proceedings on a prolonged trial cannot be kept in abeyance indefinitely. Balancing all the factors, we dispose of this OA with a direction to the respondents to keep the disciplinary proceedings in abeyance till 31.12.2004. For the interregnum, we observe that respondents shall take up the matter with the CBI to facilitate immediate furnishing of the concerned documents to the applicant who may without any delaying tactics would ensure that the trial is proceeded expeditiously comes to its logical end. However, after 31.12.2004, as observed in B.K. Meena's case (supra), it would be open for the respondents to take appropriate proceedings before us for resumption of the proceedings. There shall be no order as to costs.



(R.K. UPADHYAYA)
ADMINISTRATIVE-MEMBER



(SHANKER RAJU)
JUDICIAL MEMBER

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