

(14)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 1526/2003

This the 16th day of December, 2003

HON'BLE SH. KULDIP SINGH, MEMBER (J)
HON'BLE SH. S.K. NAIK, MEMBER (A)

On Prakash
S/o Shri Lok Ram
R/o Type III/37 NCERT Staff Quarter
Plot No.9, Pocket-6, Nasirpur,
Dwarka, Phase-I,
New Delhi.

-Applicant

(By Advocate: Sh. Sachin Chauhan proxy for
Sh. Rajeev Kumar)

Versus

1. Secretary
National Council of Educational
Research & Training
Sri Aurobindo Marg
New Delhi-110016

2. Joint Director
National Council of Educational
Research & Training
Sri Aurobindo Marg
New Delhi-110016.

-Respondents

By Advocate: Ms. Deepa Rai proxy for
Sh. V.K.Sharma)

O R D E R (ORAL)

By Sh. Kuldip Singh, Member (J)

Applicant has filed this OA whereby he is challenging the order No. 2-16/84-E III Inquiry 2001 dated 3.6.2003 issued by the respondents for initiating the departmental enquiry.

2. Applicant has also prayed for that the respondents be restrained from initiating the department enquiry till the charge is framed against the applicant by the criminal trial court. Perusal of article of charge shows that applicant while working as Editorial Assistant in Publication Department had deposited a cheque amounting to Rs.5.92 lakh drawn on SBI, NCERT in his Saving Bank account and got the same encashed on 28.11.98. The Branch Manager, SBI, NCERT Branch noticed that

/a

the payment advice including the cheque dated 22.11.98 from Labheri Branch Dutta Ganj, U.P. was forged. Thereupon matter was investigated by the Bank authorities and it emerged that advice had been forged and funds were not available in the account from which the cheque was issued in the name of Sh. Om Prakash. Thus, it is alleged that the conduct of Sh. Om Prakash in manipulating fictitious payment of Rs.5.92 lakh for his own benefit through forgery of various documents is punishable under Rule 3(1) of Conduct Rules.

3. Besides that in Article charge-II applicant who was arrested on the FIR made by the authorities remained in judicial custody for more than 48 hours for his misconduct of encashing forged cheque. He has also failed to intimate the same to his office which is further misdeamonour on his part and unbecoming of an employee of NCERT and by suppressing the fact. He was also stated to be liable under Rule 3 of CCS (CCA) Rules. Applicant through this OA says that since the criminal trial and the departmental enquiry are based on identical set of facts, so the proceedings in the departmental enquiry should be stayed till the decision by the Criminal Court. Learned counsel appearing for the applicants submits that since the charges before the Criminal Court as well as the departmental enquiry are identical and are based on the same facts so his defence shall be prejudiced if a DE is initiated.

4. Counsel for applicant has relied upon a judgment reported in AIR 1999 SC 1416 Capt. M.Paul Anthony vs. Bharat Gold Mines Ltd. In the said case Hon'ble Supreme Court had drawn a conclusion after quoting various judgment rendered by the Hon'ble Supreme Court earlier and has laid down following five principles for stay of the departmental enquiry.

la

- "(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."


5. Counsel for applicant has also relied upon the same and submitted that the case of the applicant fits in all these principles and departmental enquiry is liable to be stayed.

6. We have gone through the same. As for the principle No.2 as laid down by the Hon'ble Supreme Court is concerned, it says that if the departmental proceedings and criminal proceedings are based on 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.

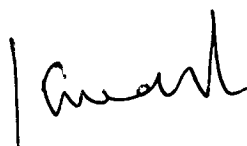
Jan

7. However, the perusal of the charges particularly Article 1 & 2 memo has been issued to the applicant would go to show that the charges are very simple, as applicant is stated to have encashed the payment of Rs.5.92 lakhs through his own Saving bank account by encashing a forged cheque and the second article of charge only says that he has failed to intimate about his remaining in judicial custody for more than 48 hours. So these two questions are not complicated in law or on facts. Rather the same has based only on documentary evidence which by no means can prejudice the defence of the applicant. So we find that it is not desirable to stay the departmental proceedings.

8. Thus, we find that OA has no merits and the same is dismissed.


(S.K. NAIK)
Member (A)

sd


(KULDIP SINGH)
Member (J)