

Central Administrative Tribunal,
Principal Bench

O.A. No.1534/2003

New Delhi this the 17th day of October, 2003

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

1. Constable Achyutanand Parsad No.877/DAP
S/o Shri Ramesh Parsad
R/o C-25, Guru Ram Dass Nagar, Gali No.3
Laxmi Nagar, Delhi
2. Constable Nagender Kurmi
S/o Shri Ram Backhan
Village & PO Chutka, Rajpur
Distt. Buxar, Bihar

..... Applicant

(By Advocate : Shri Sachin Chauhan)

Versus

1. Secretary
Govt. of NCTD, Sachivalaya
IP Estate, New Delhi
2. Dy. Commissioner of Police
Ist Bn, DAP
Kingsway Camp
Delhi.
3. Jai Pal Singh
Inspector (EO), 1st Bn. DAP
Kingsway Camp, Delhi

.. Respondents

(By Advocate : Shri Ajesh Luthra)

ORDER (ORAL)

Justice V.S. Aggarwal:-

MA No.1295/2003

MA No.1295/2003 for joining together in OA
No.1534/2003 is granted.

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OA No. 1534/2003

Applicants are Constables in Delhi Police. In the summary of allegations pertaining to the departmental proceedings initiated, it has been alleged that on 24.10.2002, Sub Inspector Yogesh Kumar Tyagi with other members of the police party were on patrolling. At 5.30 PM while they were near Ajmeri Gate, a secret information was received that 4/5 persons were sitting in Shivaji Park who on the pretext of exchange offer of Rs.3/- in place of Rs.1 were showing new packets of currency notes. In this process, they were inducing the innocent persons and cheating them. Sub Inspector Yogesh Kumar Tyagi organised a raiding party and disclosing the facts asked some passer-by to join the raiding party but they did not agree. Without wasting any further time, he deployed Constable Ravinder Kumar as a decoy customer. Rs.3000/- were given to him signing on the rear side through handing over note with a direction to deal with the said persons and to indicate by moving the hand over his head. Head Constable Yogesh Kumar was deployed as a shadow of Constable Ravinder Kumar. As per directions, both the above, decoy customer and his shadow reached Shivaji Park Minto Road and the remaining raiding party had taken position behind a wall. The signal was received. Sub Inspector along with staff reached the spot and apprehended the said four persons. The decoy customer

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told that they had induced him to give Rs.10,000/-. The currency notes were recovered with the notings therein. They were taken into possession through the seizure memo. The two applicants were amongst those 4 persons. A case under Section 420 read with Section 120-B of the Indian Penal Code had also been registered against the applicants on the said allegations.

2. Since simultaneous departmental action is being initiated, by virtue of the present application, the applicants seek setting aside of the order whereby the request of the applicant to keep the departmental enquiry in abeyance till the decision of the case registered vide the First Information Report No.367/2002 is concluded.

3. In the reply filed, the application has been contested. It has been pointed that on the facts asserted which have been indicted in the summary of allegations, a departmental enquiry under the provisions of the Delhi Police (Punishment and Appeal) Rules, 1980 was initiated. An inquiry officer has since been appointed. The departmental action can always be initiated along with the criminal proceedings pending before the court of law. Therefore, the order passed is being justified.

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4. The short question that comes up for consideration in the present case is as to whether in the peculiar facts, the proceedings that had been initiated departmentally are liable to be stayed when the criminal case is pending against the applicants.

5. The question as to whether when disciplinary proceedings and criminal trial involving identical controversy are pending, disciplinary proceedings could be stayed or not has been alive and agitating the minds of the courts on more than one occasions. The Supreme Court in the case of **Delhi Cloth and General Mills Ltd. v. Kushal Bhan**, AIR 1960 SC 806 held that if the case is of a grave nature or involves questions of fact or law, which are not simple, it would be advisable to stay the departmental proceedings. It was observed:-

"(3) It is true that very often employers stay enquiries pending the decision of the criminal trial courts and that is fair; but we cannot say that principles of natural justice require that an employer must wait for the decision at least of the criminal trial court before taking action against an employee. In **Shri Bimal Kanta Mukherjee v. Messers. Newsman's Printing Works**, 1956 Lab AC 188, this was the view taken by the Labour Appellate Tribunal. We may, however, add that if the case is of a grave nature or involves questions of fact or law, which are not simple, it would be advisable for the employer to await the decision of the trial court, so that the defence of the employee in the criminal case may not be prejudiced."

Similarly, in the case of **Kusheshwar Dubey v. Bharat**

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Coking Coal Ltd., (1988) 4 SCC 319, the Supreme Court held that there is no legal bar for simultaneous proceedings being taken, yet there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case. The principle in this regard, referred to above, has been put in the following words:-

"7. The view expressed in the three cases of this Court seem to support the position that while there could be no legal bar for simultaneous proceedings being taken, yet, there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case. In the latter class of cases it would be open to the delinquent employee to seek such an order of stay or injunction from the court. Whether in the facts and circumstances of a particular case there should or should not be such simultaneity of the proceedings would then receive judicial consideration and the court will decide in the given circumstances of a particular case as to whether the disciplinary proceedings should be interdicted, pending criminal trial. As we have already stated that it is neither possible nor advisable to evolve a hard and fast, strait-jacket formula valid for all cases and of general application without regard to the particularities of the individual situation. For the disposal of the present case, we do not think it necessary to say anything more, particularly when we do not intend to lay down any general guide-line."

Identical was the view point expressed few years later in the case of **Food Corporation of India v. George Varghese and Anr.**, 1991 Supp.(2) SCC 143 in the following words by the Supreme Court:-

"After the conviction the order of dismissal was passed but immediately on the respondents being acquitted the appellant fairly set aside that order and reinstated the

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respondent and initiated departmental proceedings by suspending him and serving him with the charge-sheet and the statement of allegations, etc. It cannot, therefore, be said that the appellant was guilty of delay. It is true that between setting aside the order of dismissal and the service of the charge-sheet, there was a time gap of about eight months but we do not think that that can prove fatal.

3. In the result, we allow this appeal, set aside the order of the High Court and direct that the appellant will proceed with the inquiry expeditiously and complete the same as far as possible within a period of six months or thereabout provided the respondent co-operates in the inquiry and does not delay the proceedings. If the respondent has not filed his written statement to the charges levelled against him, he may do so within two weeks from today. The appeal is allowed accordingly with no order as to costs."

6. Entire case law had been considered by the Supreme Court in the case of **State of Rajasthan v. B.K.Meena and Others**, (1996) 6 SCC 417. In the cited case, the Central Administrative Tribunal had stayed the departmental proceedings till the conclusion of the criminal trial. The same question had come up for consideration and the Supreme Court noted that proceedings in criminal trial were going to take a long time and conclusion of the same was nowhere in sight. The Supreme Court noted in this regard:-

"16. Now, let us examine the facts of the present case. The memo of charges against the respondent was served on him, along with the articles of charges, on 13.10.1992. On 9.2.1993, he submitted a detailed reply/defence statement, running into 90 pages, controverting the allegations levelled against him. The challan against him was filed on 15.5.1993 in the criminal court. The respondent promptly applied to the Tribunal and got the disciplinary proceedings stayed. They remain stayed till today. The irregularities alleged against the respondent are of the year 1989. The conclusion of the criminal proceedings is

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nowhere in sight. (Each party blames the other for the said delay and we cannot pronounce upon it in the absence of proper material before us.) More than six years have passed by. The charges were served upon the respondent about 4 years back. The respondent has already disclosed his defence in his elaborate and detailed statement filed on 9.2.1993. There is no question of his being compelled to disclose his defence in the disciplinary proceedings which would prejudice him in a criminal case. The charges against the respondent are very serious. They pertain to misappropriation of public funds to the tune of more than rupees one crore. The observation of the Tribunal that in the course of examination of evidence, new material may emerge against the respondent and he may be compelled to disclose his defence is, at best, a surmise- a speculative reason."

Thereupon the conclusions drawn were that the disciplinary proceedings and criminal trial would proceed simultaneously. The stay of the disciplinary proceedings should not a be matter of course but a considered decision. Even if the disciplinary proceedings are stayed, the same could be reconsidered, if criminal trial gets unduly delayed.

The finding in this regard reads:-

"17. There is yet another reason. The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him under the Prevention of Corruption Act (and the Indian Penal Code, if any) are established and, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. Staying of disciplinary proceedings pending criminal proceedings, to repeat, should not be a matter of course but a considered decision. Even if stayed at one stage the decision may require reconsideration if the criminal case gets unduly delayed."

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Thereafter the Supreme Court had allowed the appeal and set aside the order of the Central Administrative Tribunal.

7. Similarly, in the case of **Depot Manager, A.P.State Road Transport Corporation v. Mohd. Yousuf Miya and Others**, (1997) 2 SCC 699, the Supreme Court held that it would be expedient that disciplinary proceedings are conducted and completed expeditiously and the pendency of criminal trial is no ground to stay the disciplinary proceedings. The finding of the Supreme Court read:-

"8. We are in respectful agreement with the above view. The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guide-lines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public (sic duty), as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Evidence Act. Converse is the case of departmental enquiry. The enquiry

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in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law."

8. Lastly our attention was drawn towards a decision rendered by the Supreme Court in the case of **Capt.M.Paul Anthony v. Bharat Gold Mines Ltd. & Anr.**, in Civil Appeal No.1906 of 1999 on 30.3.1999. Same question had come up for consideration. The Supreme Court after scanning through the various precedents some of which have been referred to above, had drawn the conclusion:-

"22. 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."

9. It is in this back-drop that one has to consider as to whether the above request can even be acceded to or not. A perusal of the precedents referred to above shows that the facts of each case have to be taken note of. Strictly speaking, there is no legal bar in conducting the departmental proceedings while the criminal case is pending, but the departmental proceedings cannot be allowed to be unduly delayed if the trial does not proceed and there is delay therein. The other facts which have already been reproduced above particularly when analysed in the light of the decision of the Supreme Court in the case of Capt. M. Paul Anthony (supra), it would be clear that if complicated questions of law are not involved, the departmental proceedings and the criminal case can even be continued simultaneously.



10. The learned counsel for the respondents asserted that in the present case, no complicated questions of law are involved. On this particular count, at this stage, the plea cannot be accepted because whether a complicated question of law is involved or not as yet has not matured because the defence of the respondents is not known.

11. During the course of arguments, we have been informed that in the criminal trial, the First Information Report was registered on 24.10.2002. The charge had been framed on 25.11.2002 in pursuance of the report under Section 173 of the Code of Criminal Procedure that had been filed. Two witnesses had been examined on 1.4.2003. The next date of hearing is just within one month from that date and the matter is listed for 11.11.2003 before the competent criminal court.

12. The abovesaid facts clearly show that the criminal trial is making a headway. The assertions in the departmental proceedings are by and large the same as are before the court of law where the criminal trial is pending. When the trial itself is proceeding and seemingly is not being delayed, we find no reason keeping in view the precedents quoted above as to why the departmental proceedings should continue. Of course, by way of abundant caution, we make it clear that if there is inordinate delay in completion of the

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criminal case, the respondents will be within their rights to restart the departmental proceedings.

13. For these reasons, we dispose of the present application by making the following order:-

(a) In the facts of the present case, the departmental proceedings would remain in abeyance till the criminal proceedings are pending before the learned Metropolitan Magistrate at Delhi; and

(b) In case there is inordinate delay in completion of the criminal proceedings referred to above, the respondents would be within their rights to restart the departmental proceedings.

No costs.

Announced.



(S.A. Singh)
Member (A)



(V.S. Aggarwal)
Chairman

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