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Central Administrative Tribunal, Principal Bench

Original Application No.1557 of 2003
M.A.No.1367/2003

New Delhi, this the 21st day of November, 2003

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

1. Ashok Kumar (Ex.HC/AWO)
A-20-F, Delhi Police Group Housing Society,
Mayur Vihar, Delhi.
2. Gulab Singh (Ex.HC/AWO)
Vill. Dhar, PO Koat,
PS Sadar, Distt. Mandi,
Himachal Pradesh

.... Applicants

(By Advocate: Shri Shyam Babu)

Versus

1. Govt. of NCT of Delhi,
through its Chief Secretary,
Delhi Secretariat, Delhi.
2. Commissioner of Police, Delhi
Police Headquarters,
IP Estate, New Delhi.
3. Dy. Commissioner of Police, Delhi
(Communication)
New Police Lines,
Rajpur Road, Delhi
4. Shri Raj Kumar,
Asst. Commissioner of Police,
(Communication)
Old Police Lines, Delhi

.... Respondents

(By Advocate: Shri Ajesh Luthra)

O R D E R (ORAL)

By Justice V.S. Aggarwal, Chairman

Learned counsel for the applicant states that liberty may be granted to challenge the order of 2.1.2003, if so advised and applicant would only press the first relief contained in paragraph 8(a) of the petition.

2. Allowed as Prayed.

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3. The short question that comes up for consideration is as to whether in the facts and circumstances of the present case, the departmental proceedings initiated against the applicant should be stayed or allowed to be continued.

4. The sequence of events can conveniently be delineated. A First Information Report pertaining to offences punishable under Section 328/420/120-B IPC had been registered on 13.5.2000. Applicant was one of the accused persons therein. On 16.5.2000, the applicants were dismissed invoking Article 311 (2) (b) of the Constitution. Meanwhile in July, 2000, in the abovesaid criminal matter, a report under Section 173 of the Criminal Procedure Code had been filed against the applicants. They preferred O.A.1091/2001 in this Tribunal. The matter was remitted to the appellate authority to pass a speaking order and that if the grievance of the applicants still survives, they would be at liberty to seek revival of said O.A. On 13.6.2001, the appeal was dismissed. The result was that the applicants prayed for revival of O.A.1091/2001 which was permitted.

5. O.A.1091/2001 was disposed of on 12.7.2001. The order so passed dismissing the applicants invoking Article 311(2)(b) was quashed. The matter was remitted to the disciplinary authority to conduct a proper enquiry in accordance with law, rules and instructions. By a subsequent order of 11.11.2002, there was a modification of the abovesaid order. We need not dwell in detail into the

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same.

6. Vide order passed on 4.6.2003, the disciplinary proceedings have been initiated against the applicants.

7. To our query, the learned counsel for the applicants, on instructions, stated that before the learned court of the Metropolitan Magistrate, the charge as yet has not been framed formally nor the applicants have been discharged. However, it was pointed that in the year 2002, one of the co-accused had died and the learned court is seeking verification of the death of the said co-accused.

8. It is in this backdrop of the case that the argument is being pressed that allegations in the departmental proceedings as well as in the criminal case pertaining to which the challan has been put in court are the same. It would prejudice the applicants in the criminal trial if they have to disclose their defence in the departmental proceedings and, therefore, it is prayed that the said proceedings may be stayed.

9. The principle of law is well settled. Criminal proceedings are initiated to punish a person who has violated the law or in other words has committed an offence as per provisions of any penal law. Disciplinary proceedings, on the contrary, are initiated to maintain discipline in the department. However, when the facts are identical, the findings in the criminal proceedings can, at times, have some affect in the departmental proceedings.

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10. This controversy has been the subject-matter of consideration more often than once in the Supreme Court. In the case of **Delhi Cloth and General Mills Ltd. v. Kushal Bhan**, AIR 1960 SC 806, the Supreme Court 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 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

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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 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."

11. 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

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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 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 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

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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."

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

12. 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

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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 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."

13. 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.

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- (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."


14. From the aforesaid, it is clear that there is no bar if disciplinary proceedings continue despite pendency of the criminal case. However, if there are complicated questions of law, then it is advisable to stay the departmental proceedings.

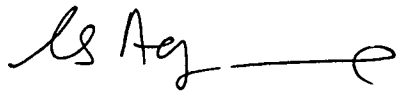
15. As we have referred to above, in the case of Capt. M. Paul Anthony (supra), the Supreme Court held that even if the departmental proceedings have been stayed and there is inordinate delay in the trial of the criminal case to be completed, the said departmental proceedings can be revived.

16. Reverting back to the facts of the present case, it is obvious that the sum and substance of the departmental action/proceedings and the assertions in the F.I.R. are by and large the same. Keeping in view the said fact which we have referred to above and particularly when trial has been delayed because of the death of one of the accused, it is in the fitness of things and interest of

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justice that the departmental proceedings are stayed but we make it clear that after the death of the co-accused is verified, in case the trial is not completed within nine months thereto, the respondents would be at liberty to ~~stay~~ ^e revival ~~of~~ the disciplinary proceedings. We order accordingly. O.A. is disposed of.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

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