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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO. 1562/2003

New Delhi, this the 28th day of August, 2003

HON'BLE MR. JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE MR. S.K. NAIK, MEMBER (A)

1. Head Constable Narender Kumar (No.3138/T)
S/o Late Tal Singh,
R/o Village Gopulpur Khadana,
PO Kishan Pur Varat,
Distt: Meerut (UP)
2. Constable Prahlad Saran Tyagi (No.366-T)
S/o Shri Jagjeet Singh,
R/o V&PO Mandala, P.S. Loni,
District Ghaziabad (UP)

(By Advocate : Shri S.N. Anand) Applicants

Versus

1. The Commissioner of Police,
Delhi Police,
Police Headquarters,
ITO Complex, New Delhi
2. The Deputy Commissioner of Police,
Traffic (NDR),
Delhi

(By Advocate : Shri Ajesh Luthra) Respondents

O R D E R (Oral)

BY HON'BLE MR. JUSTICE V.S. AGGARWAL, CHAIRMAN :

Applicant No.1 is a Head Constable, while applicant No.2 is a Constable in the Delhi Police. By virtue of the present application they seek a direction to keep in abeyance the departmental proceedings pursuant to the charge-sheet dated 10.5.2003.

2. Some of the facts which are not in dispute can be delineated in few words. An FIR was registered with respect to offence punishable under Sections 7/13 of Prevention of Corruption Act, 1980. It is on the allegation that there was

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a demand of illegal gratification from one Mahesh Kumar. The applicants had been placed under suspension. On 9.4.2003 the Special Judge, Delhi, framed charges against them with respect to the above said offence, but evidence is stated to have not been recorded yet.

3. The applicants contend that keeping in view the fact which is common in the trial that is to take place before the Special Judge, Delhi and the departmental proceedings, the departmental proceedings should be stayed.

4. The application has been opposed.

5. Learned counsel for the applicants submits that on the basis of the resume of facts given above, there are two parallel proceedings, namely, one before the Special Judge, Delhi, and the departmental proceedings that has been initiated and, therefore, the departmental proceedings should be stayed. In support of his claim, he relies on the Circular issued by the Deputy Commissioner of Police, Vigilance, dated 31.8.1999 which reads as under:

"In continuation of this office memo No.4756-89/P.Coll/Viogg./P-VTI, dated 28.5.98 regarding conducting of parallel Departmental Enquiries in criminal cases, it is further clarified that the matter has been re-examined in this HQ in consultation with L.A. to C.P., Delhi who has opined that in a recent case decided on 303.99 by the Apex Court in Civil Appeal No. 1906 of 1999 Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. & Anr. it has been held that "If the D.E. and criminal case based on identical and similar set of facts and the charge in the criminal case against the delinquent employeeit would be desirable to stay the D.E. proceedings till the conclusion of the criminal proceedings". Secondly, in POC Act cases, investigating Agency does not favour to hold the departmental proceedings till the finalisation of the

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criminal case pending against the delinquent police officer and if the DEs in such cases are ordered, the required documents are not made available to the disciplinary authority for taking up the departmental proceedings.

Therefore, keeping in view of the position mentioned above, it has been decided that in case where parallel D.E. has been ordered in the Crl. case on the same facts as given in the Crl. case, D.E. can be held in abeyance in the interest of natural justice till the conclusion of the Crl. case. As regards POC Act cases, the D.E. may not be initiated till the finalisation of the Crl. case and after the decision of the Crl. case, it may be decided whether a D.E. is to be held or not keeping in view the provisions of Rule 12 of Delhi Police (Punishment & Appeal) Rules-1980. The decision in this regard should be taken by the disciplinary authority itself instead of making any reference to this as the provision of rule 12 of Delhi Police (Punishment & Appeal) Rules-1980 is very clear in this regard.

These instructions may be complied with meticulously"

6. We have carefully considered the submissions. We have to consider under what circumstances the departmental proceedings should be stayed when case 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 Apex Court. 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."

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 inspite 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

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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 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. From the aforesaid, the conclusions are obvious that in complicated questions of law and fact, the departmental proceedings should be stayed but when there is undue delay in the criminal trial, the departmental proceedings, even if stayed, can be revived. This is for the reason that departmental proceedings are initiated to keep the Administration free from indiscipline and to take action in case of dereliction of duty.

9. The position herein is that the FIR has been registered in the year 2000. The charge has only been framed in May 2003. It appears that it will take long time before the trial is proceeded and completed. Therefore, if the Department felt it appropriate and initiated the departmental proceedings w.e.f. 22.4.2003, we find that the decision rendered in the case of Capt. Paul Anthony (supra) does not

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come to the rescue of the applicant. It cannot be termed that there are complicated questions of law and fact even in the present case. In addition to that, it is obvious that the criminal trial is quite unduly delayed and that the evidence is yet to be recorded. In the facts of the case, it would not be proper to stay the proceedings.

10. Resultantly, the OA fails and is dismissed.

SKNAIK
(S.K. NAIK)

MEMBER (A)

VSAg
(V.S. AGGARWAL)

CHAIRMAN

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