

ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.2364/2003
M.A. No.2028/2003

(6)

New Delhi, this the 7th day of November, 2003

HON'BLE SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER
HON'BLE SHRI BHARAT BHUSHAN, JUDICIAL MEMBER

1. Shri JAG MOHAN KHANNA,
S/o Shri SITA RAM KHANNA,
Depot Material Superintendent,
Under Deputy Chief Material Manager,
Stores Depot, Shakurbasti, Northern Railway,
Delhi.

2. Shri SURAJ SINGH,
Material Lorry Driver, G.r.III,
Under Dy. Chief Material Manager,
Stores Depot, Shakurbasti,
Northern Railway,
DELHI.

Presently Working under
Assistant Material Manager,
Stores Depot, Northern Railway,
TUGHLAKABAD,
NEW DELHI.

...Applicants

(By Advocate : Shri B.S. Mainee)

Versus

Union of India
Through :

1. The General Manager,
Northern Railway, Baroda House,
New Delhi.
2. The Chief Material Manager, (C),
Northern Railway, Baroda House,
New Delhi.
3. The Dy. Chief Material Manager,
Northern Railway, Stores Depot, Shakurbasti,
Delhi.
4. The Dy. Chief Material Manager (M),
Northern Railway, Baroda House,
New Delhi.

..Respondents

(By Advocate : Shri V.S.R.Krishna)

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ORDER (Oral)

Shri R. K. Upadhyaya, Administrative Member: -

This Original Application under Section 19 of the Administrative Tribunals Act, 1985 has been filed jointly by Shri Jag Mohan Khanna and Shri Suraj Singh claiming the following reliefs :-

"6.1 That this Hon'ble Tribunal may be pleased to allow this application and quash the impugned orders directing the Respondents to stay the disciplinary proceedings against the Applicants till the conclusion of the criminal trial pending the in the Court of Shri A.K.Kuhar, Tis Hazari Courts, Delhi.

6.2 That any other or further relief which this Hon'ble Tribunal may deem fit and proper on the facts and in the circumstances of the case may kindly be awarded in favour of the Applicants.

6.3 That the cost of the proceedings may also kindly be granted in favour of the Applicants."

The learned counsel of the applicants states that the applicants are involved in a criminal case and the FIR was filed on 11.6.2002 against the applicants, but for the same incident, they have also issued a charge-sheet on 6.8.2002. The learned counsel for the applicants states that the Hon'ble Supreme Court in the case of Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. & Anr., JT 1999(2) SC 456 had laid down the law on the subject wherein it has been held that both criminal proceedings and departmental proceedings cannot be started against the employee. Based on the same, the learned counsel of the applicants states that this Tribunal by order dated 4.9.2003 in OA No.3137/2002 in the case of Yogesh vs. The Lt. Governor through Chief Secretary, Govt. of NCT of Delhi had stayed the departmental proceedings with a direction that if the proceedings before the Spl. Judge, Delhi are not completed within

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six months the respondents would be competent to revive the departmental proceedings without any further direction from this Tribunal. The learned counsel for the present applicants has prayed for similar relief in this case also.

The learned counsel of the respondents stated that the applicants themselves had offered for departmental proceedings inasmuch as they were initially dismissed under Rule No.14 (ii) of the Railway Servants (D&A) Rules, 1968 and on their preferring the appeals, the appellate authority reinstated them and the present charge-sheet has been issued to the applicants. Therefore, the applicants be debarred from making any objection regarding stay of the disciplinary proceedings initiated against them. The learned counsel of the respondents also raised a preliminary objection that the application is bad since in a disciplinary proceedings, the question of filing a joint application does not arise. There can not be any joining together by several employees even if the charge-sheet for some incident gives a similar quantum of punishment and the similar cause of action can be there.

It was further argued by the learned counsel of the respondents that the FIR has been filed on 11.5.2002, but the charges have not been framed and it is not certain as to how much time framing of the charges will take. According to him, after the Hon'ble Supreme Court decision in the case of Capt. M. Paul Anthony (Supra) pending departmental proceedings should not be proceeded simultaneously

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with the criminal proceedings. He also stated that the applicants themselves filed this CA only on 23.9.2003 whereas the chargesheet was issued on 5.8.2002. If the applicants objected to the initiation of departmental proceedings and its postponement till finalisation of criminal proceedings, they must have immediately come to this Tribunal for that relief. Referring to the decision of the Hon'ble Supreme Court in the case of Union of India Vs. Upendra Singh, JT 1994 (1) S.C. 656, learned counsel of the respondents states that the Hon'ble Supreme Court had held that the Tribunal should not normally entertain the request for stay of proceedings in departmental enquiries. The learned counsel of the respondents, therefore, urged that the reliefs claimed should not be granted.

We have heard the learned counsel of both the parties and perused the materials placed on record.

There is no disputed that both the applicants were involved in the incidence which is subject matter of the FIR filed on 11.6.2002 as well as the chargesheet issued on 5.8.2002. This Tribunal in similar circumstances in Shri Yogesh's case (supra) after referring to the decision of the Hon'ble Supreme Court in the case of Capt. M. Paul Anthony (supra) came to the following conclusion in that case:-

"We are aware of the fact that the departmental proceedings against the applicant and the criminal case are based on identical and same set of facts. In this situation, we are informed, on our query, that as yet even charges has not been framed against the applicant by the Special Judge, Delhi. When such are the facts, necessarily keeping in view the same departmental proceedings cannot be stayed indefinitely. It would be appropriate in the fitness of things that the proceedings

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are stayed only for a temporary period. If the proceedings before the Sub Judge, Delhi do not culminate in conviction or acquittal, as the case may be, the respondents-department would be competent to revive the proceedings."

We respectfully agree with the decision in the case of Shri Yogesh, as quoted above. We refrain ourselves from expressing any opinion on the merits of the claim as raised by the learned counsel of the respondents for the present. The basic relief claimed in this OA is regarding stay of departmental proceedings till framing of the charges in the criminal case pursuant to filing of FIR. Considering the facts of this case and the law as has been referred to earlier, we issue similar directions as in the case of Shri Yogesh (supra) to the following effects:-

(i) If the proceedings before the learned Metropolitan Magistrate pursuant to the filing of the FIR dated 11.6.2002 in the criminal case filed against the applicants do not culminate in any conviction or acquittal, as the case may be, the respondents - department would be competent to revive the same and the present departmental proceedings would be stayed; and

(ii) If the proceedings before the learned Metropolitan Magistrate are not completed within six months from today, the respondents would be competent to revive the departmental proceedings without any further directions from this Tribunal.

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Subject to aforesaid directions, this Original Application is disposed of without any order as to costs.

(Bharat Bhushan)
Judicial Member

(R.K. Upadhyaya)
Administrative Member

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