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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.2663 of 2003

New Delhi, this the 13th day of February, 2004

HON'BLE MR. KULDIP SINGH, MEMBER(JUDL)
HON'BLE MR. SARWESHWAR JHA, MEMBER (A)

K.K. Dutta
C/o Shri S.L. Mehta
R/o 69 Bharat Nagar,
Delhi-110 052. ...Applicant

By Advocate: Shri K.B.S. Rajan.

Versus

The Union of India through
Secretary,
Department of Company Affairs,
Vth Floor, Shastri Bhawan,
New Delhi. ...Respondents

By Advocate: Shri S.M. Arif.

ORDER

Hon'ble Mr. Kuldip Singh, Member (J)

The applicant has filed this OA whereby he has assailed an order dated 21.10.2003 Annexure A-1 whereby the Inquiry Officer has refused to keep the enquiry proceedings in abeyance.

2. Facts in brief are that the applicant was functioning as Senior Technical Assistant, a Group 'B' post and is stated to have applied for retirement after giving notice. As the respondents rejected his application, he moved the Tribunal to hold the said order on the basis of which the applicant stood retired on 2.8.2000 but the applicant was proceeded by way of disciplinary proceedings, by order dated 28.3.2002 read with order dated 1.4.2002 on the basis of the complaint dated 11.9.1998 on the following Articles of Charge:-

That the said Shri K.K. Datta, while working as Senior Technical Assistant in the office of

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Official Liquidator, Punjab, Haryana & H.P., Chandigarh, during the period 1998 was directed by the Official Liquidator, Chandigarh, vide Office Order No.AIL/Liqn./238 dated 17.8.98, to visit only to the factory premises of M/s Altos India Limited (In Liquidation), situated in the Okhla Industrial Area, Phase II New Delhi on 18.8.1998 and to prepare the inventory of the assets and records of the company lying therein. But it is alleged that Shri K.K. Datta, STA, along with Shri Krishan Singh, Peon, and employees of the company namely Shri P.K. Verma and Shri O.K. Kapil went to Gurgaon on 4.9.1998 at 10.30 AM and premises of Altos Indian Limited (In Liquidation) in Gurgaon by misbehaving security guards on duty, opened the lock, broke the seal affixed officially by the Official Liquidatory and manager to take out stores viz. 130 to 150 packed and sealed cartons containing computers and computer parts worth Rs.1.50 crore and handed over to Shri P.K. Verma and Shri O.K. Kapil the said cartons.

Shri K.K. Datta, while working as Sr. Technical Assistant in the office of Official Liquidator, Chandigarh, disobeyed the orders of the Official Liquidatory, Chandigarh, went to Gurgaon on 4.9.1998 and made an unauthorised and forced entry into the factory's premises of M/s Altos India Limited and directly participated in the criminal act of theft and disobeyed the written orders of the Official Liquidator. Shri Datta, thus, did not maintain absolute integrity and devotion to duty and indulged in activities which are unbecoming of a Government servant and has, thus, violated the provisions contained in Rule 3(1), (ii) and (iii) of the Central Civil Services (Conduct) Rules, 1964".

3. The applicant alleges that though he was keen to cooperate and accordingly he had asked for documents to be supplied but in 2002 itself thee High Court of Chandigarh had issued summons to the applicant and the matter in the court pertained to the very same set of facts as of the disciplinary proceedings and the applicant had presented through an advocate before the High Court. By an order dated 12.2.2003, the Hon'ble High Court had permitted the State to register an FIR in respect of the subject matter, but no such FIR was filed by the State immediately. In the meantime the departmental enquiry was continued and applicant did co-operate in the enquiry.

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4. But now on the strength of the order of the High Court, an FIR was registered as No.84 dated 20.5.2003, a copy of which is Annexure A-7, so with this development there came to be two parallel and simultaneous proceedings: one the disciplinary proceedings and the other the criminal proceedings and the basis of the FIR is only the reproduction of the complaint dated 11.9.1998 which also form the basis of the charge-sheet issued by respondents. Thus it is submitted that the proceedings before the Inquiry Officer should be stayed till the criminal case is decided.

5. The respondents are contesting the OA. Respondents in their reply pleaded that the present OA is misconceived and devoid of merits and has ben filed only to abuse the process of law.

6. It is stated that the said departmental proceedings were initiated in the year 2000 and the charge-sheet was issued to him on 5.12.2000 on the alleged misconduct committed by the applicant whereas the FIR has been registered in pursuance of the recommendations made by the Committee constituted by the Hon'ble High Court of Punjab & Haryana to look into the alleged misappropriation of properties belonging to company in liquidation under sections 147, 149, 454, 380, 409 and 120B of the IPC and the respondents denied having any personal knowledge about the status of the investigation. Both the actions, namely, pending investigation against the FIR proposed Departmental Proceedings are independent in nature and their

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consequences have no bearing on each other, so it is submitted that there is no case for stay of the proceedings.

7. We have heard the learned counsel for the parties and gone through the records of the case.

8. The learned counsel for the applicant has referred to a judgment in Capt. M Paul Anthony Vs. Bharat Gold Mines Ltd. & Another, 1999 (3) SCC 679 which is an authority on this subject itself and the Hon'ble Supreme Court in its judgment in paragraph 22 had detailed the principles which are to be followed to hold whether the enquiry proceedings are to be stayed or not:-

(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 Departmental proceedings and the criminal case are based on identical and similar set of facts and the charges in the criminal case against the delinquent employee is of a <u>grave nature which involves complicated questions of law and fact</u>. 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 <u>criminal case does not proceed or its disposal is being</u> 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, the administration may get rid of him at the earliest. (emphasis supplied)

9. On going through these principles, as laid down by the Apex Court, we find that in paragraph 22 mentioned above, the Hon'ble Apex Court has held that the 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. First of all we have to examine this case in the light of the above paragraph. Though the applicant alleges that the allegations as contained in the Articles of Charge along the Memorandum of charge-sheet on the basis of which the FIR has been registered are based on the same letter, so the facts are identical. However, the learned counsel for the applicant has failed to convince us that the facts are complicated and involve serious question of law.

10. We may further mention that in sub-paragraph (v) of the above referred paragraph of the principles laid down by the Hon'ble Apex Court it is also stated the criminal case does not proceed or its disposal is unduly delayed, the departmental proceedings, can be resumed also if stayed. But in this case we find that except for registration of the FIR nothing has been placed on record to substantiate that the criminal trial is going on so much so that the applicant does not allege that if any charge-sheet has been filed under Section 153 IPC of the Criminal Court so we can presume even from the facts

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that the investigation in this case is definitely going to be delayed unduly which also calls upon us not to interfere and stay the said proceedings.

11. In view of the above, OA has no merits and the same is dismissed. No costs.

(SARWESHWAR JHA)
MEMBER (A)

(KULDIP SINGH)
MEMBER (J)

13.02.04.

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