

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.3106/2003

This the 4th day of June, 2004

HON'BLE SHRI JUSTICE V.S.AGGARWAL, CHAIRMAN

HON'BLE SHRI R.K.UPADHYAYA, MEMBER (A)

U.K.Awasthi S/O S.R.Awasthi,
R/O B-657, Delhi Govt. Flats,
Timarpur, Delhi-110054.

... Applicant

(By Shri A. K. Behera, Advocate)

-versus-

1. Lt. Governor,
Govt. of NCT of Delhi,
Raj Niwas Marg, Rajpur Road,
Delhi-110054.
2. Chief Secretary & Chief Vigilance Officer,
Govt. of NCT of Delhi,
Delhi Sachivalaya, I.P.Estate,
New Delhi-110002.
3. Controller (W&M),
Weights & Measures Department,
Govt. of NCT of Delhi,
2 Underhill Road,
Delhi-110054.
4. Director, Central Bureau of Investigation,
Block No.3, CGO Complex,
Lodhi Road, New Delhi-110003.
5. Commissioner for Departmental Inquiries,
Central Vigilance Commission,
Satarkata Bhawan, INA Colony,
New Delhi-110023.

... Respondents

(By Shri Om Prakash, Advocate)

O R D E R (ORAL)

Hon'ble Shri Justice V.S.Aggarwal :

Applicant, U.K.Awasthi, was appointed as Senior Meteorological Assistant in the Weights and Measures Department of the Government of N.C.T. of Delhi on deputation from the Weights and Measures Department of Uttar Pradesh. He was absorbed on permanent basis on

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23.10.1985. Later on he was promoted as Assistant Controller (Weights and Measures) in 1993 and was promoted as Deputy Director (Weights and Measures) on ad hoc basis.

2. The applicant asserts that on basis of an anonymous complaint, FIR was lodged by the Central Bureau of Investigation against the applicant and his wife on 22.11.2000. The CBI conducted a raid in the residence and the office of the applicant at Delhi and Kanpur and some other relations. The report under Section 173 Code of Criminal Procedure has since been filed and the applicant informs that the same is before the Special Judge at Delhi.

3. On basis of the same assertions, applicant's plea is that departmental proceedings have been initiated against him. The request of the applicant to stay the departmental proceedings has been rejected. By virtue of the present application, the applicant prays that till the conclusion of the criminal proceedings, the departmental proceedings should be stayed.

4. Needless to state that in the reply filed, the application has been contested. It has been pleaded that object of both the proceedings is different. According to the respondents, there is no ground to stay the departmental proceedings.

5. As would be seen from the resume of the facts given above, the short controversy which seeks an answer

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is as to whether the departmental proceedings should be stayed or not, particularly when on the same cause criminal proceedings are pending before the Special Judge at Delhi.

6. 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 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 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.

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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."

7. 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 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

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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 a 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."

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



8. 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 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."

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9. 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."

10. 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.

11. Reverting back to the facts of the present case, at the outset, it must be stated that as yet it is not even asserted nor can be determined as to if any complicated questions of law are involved or not. The matter pending before the Special Judge has not matured. The defence of the applicant is not known and in this regard opinion indeed cannot be expressed.

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12. During the course of arguments we had been informed that in the matter that is before the Special Judge, the evidence has yet to be recorded though the raid had taken place more than three years back.

13. The purpose of criminal case is to get a person punished in accordance with law if he has violated the law of the land. In case of departmental proceedings it is to maintain discipline in the department.

14. When the assertions in departmental and criminal proceedings are by and large identical, in that event necessarily one can only accept the contention of the applicant to the extent that for some time proceedings can be stayed, but if they are inordinately delayed, then following the decision of the Supreme Court in the case of Capt. M. Paul Anthony (supra) departmental proceedings cannot be stayed for an indefinite period.

15. Resultantly, for these reasons we dispose of the present application with the following directions :

- (a) Since the proceedings against the applicant pertain to same facts regarding which a report under Section 173 of the Criminal Procedure Code has been filed with respect to offences

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punishable under Section 5 read with Section 13(2) of the Prevention of Corruption Act, therefore, departmental proceedings would remain in abeyance.

- (b) However, if the criminal trial or proceedings does not end within 9 months from today, respondents would be at liberty to revive the departmental proceedings.

Announced.



(R. K. Upadhyaya)
Member (A)



(V. S. Aggarwal)
Chairman

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