

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD**

O.A. No. 415/2019

This the 20th day of November, 2019

Manoj Kumar
Male, aged about 44 years
Son of Late Shri Basudeo Upadhyay
Occupation : Service
Residing at : Postal House, Type V Quarters
Behind Darpan Post Office,
Darpan Six Roads, Ahmedabad. Applicant

(By Advocate : Shri Rahul Sharma)

VERSUS

Union of India
Notice to be served through
The Secretary,
Department of Posts,
Dak Bhawan,
New Delhi 110 001. Respondent

ORDER (ORAL)

Per : Hon'ble Shri M.C.Verma, Judicial Member

1. The OA is at motion hearing stage. Applicant assailing Charge Memo No.12-03/MK/2017-Vig dated 18.04.2019, whereby departmental inquiry has been directed against him by Disciplinary Authority, has preferred this OA with prayer to quash the Charge Memo and to grant any other or further relief deemed proper in interest of justice.

2. Needless to say, pleading in OA reveals that Government of India, on 08.11.2016 did demonetization of currency note of Rs.500/- and Rs.1000/-, the applicant at relevant time was posted and working as Director Postal Services (HQ), Gujarat Circle, Ahmedabad and as per impugned Charge Memo he abused his official position and got fraudulent

exchange of demonetized currency worth Rs.1.04 crores in eight go, details of which are in the Charge Memo. The matter was brought to the knowledge of CBI by Departmental Authority, FIR was registered by CBI, that name of applicant was not in the FIR, CBI conducted investigation and submitted the charge sheet for various offences, including the offences under Prevention of Corruption Act, 1988 and applicant has been arrayed as accused in the charge sheet preferred by the CBI. That applicant filed discharge petition, under Section 227 of Cr.P.C, on the file of Trial Court, has filed also a writ petition on the file of Hon'ble High Court and Trial Court has deferred hearing/order on framing of the charge, awaiting order in said writ petition. That preliminary enquiry, after investigation of case by CBI was conducted by departmental authority and then impugned Charge Memo was issued to the applicant, enquiry officer was appointed and enquiry officer is aheading with the enquiry.

3. Heard. Learned counsel Shri Rahul Sharma, appearing for applicant and assailing Charge Memo, impugned in the OA has urged that the Order is bad on four accounts. He contended that on same facts and allegations the CBI, on the basis of complaint of the Departmental Authority, has registered a case and has submitted the charge-sheeted against the applicant. That applicant has raised several issues before the Trial Court warranting discharge and has urged for discharge. That *qua* issue of charge, applicant also has filed writ petition on the file of Hon'ble High Court and trial court has deferred hearing/order qua framing of the charge, awaiting judgment/orders in said writ petition. Learned counsel vehemently argued that departmental proceedings, if is allowed and is

continued then defense of the applicant would be disclosed in the departmental proceedings and same would prejudice the applicant in Criminal Trial. He to fortify his said submission placed reliance on decision titled *Stanzen Toyotetsu India Private Ltd. v/s. Girish V. & Anr.*, (2014) 3 SCC 636.

4. Ld counsel also urged that during investigation statement of some witnesses were got recorded by CBI, under Section 164 of Cr.P.C but said statements are in violation of norms and are not permissible under law. He explained the witness whose statement has been recorded under Section 164 of Cr.P.C categorically stated that he does not remember anything at the time when he was produced before the Magistrate for the first time; Learned counsel submitting that there was no occasion to call that witness again, for second time to make statement illustrated translated version, in English of Statement dated 08.05.2017 of witness, namely Shri Nithurilal P.Pal, recorded under Section 164 of Cr.P.C. in R.C. No.0292017A0003 C.B.I, Gandhinagar, which is at page 134 of the OA and referred the endorsement of the Magistrate, which is at top of aforesaid statement and its gist reflects that said witness presented himself in Court on 05.05.2017 and on that date, while was questioned during preliminary inquiry stated that he does not remember anything and that he was instructed to appear on 08.05.2017 and Magistrate being satisfied that he is making statement voluntarily recorded his statement on 05.05.2017.

5. Mr. Rahul Sharma urged then that Disciplinary Authority was bias against the applicant. That infect conducting of preliminary inquiry was not permissible in law. He, to fortify his contention, referred Office Order

No.52/08/05 dated 30.09.2005 of the Central Vigilance Commission and urged that paralleled investigation by Department Vigilance Agency and the CBI had to be avoided. He also contended that procedural norms, technicalities and processual law has evolved after years of empirical experience and to ignore them or to give them short shrift inevitably defeats justice and referred decision titled *Sri Gangai Vinaykar Temple Vs. Meenakshi Ammal & Ors (2015) 3 SCC 624*.

6. Ld. Counsel also contended that the preliminary inquiry conducted by respondent department is not in accordance with the procedure establishment in Postal Manual Volume-III. That statement of witnesses, during preliminary enquiry was not recorded in presence of applicant. He explained that at the stage of preliminary enquiry, all evidences and relevant documents should be collected and evidences of witnesses be reduced into writing and got signed by them in the presence of the applicant but statement of witnesses were not recorded in presence of applicant.

7. Considered the submissions made at Bar and perused the record. According to Ld. Counsel for applicant that conducting of preliminary inquiry in instant case was not permissible in view of Order No.52/08/05 dated 30.09.2005 of the Central Vigilance Commission and when preliminary inquiry was illegal the memorandum of charge and departmental inquiry, being based upon preliminary inquiry, cannot proceed. Said submissions, in totality of facts and circumstances of the matter in hand, does not seem to hold water.

8. As noted above departmental inquiry relates to alleged abuse of official position by the applicant for fraudulent exchange of demonetized currency worth of Rs.1.04 corers. The Articles of charges reflect that after nod of Central Vigilance Commission for departmental proceedings, under Rule 14 of CCS (CCA) Rules, 1965 is initiated against the applicant. When Central Vigilance Commission itself has given nod for conduct of departmental proceedings in that situation whether it is the general direction, issued by Central vigilance Commission in Office Order No.52/05/08 dated 30.09.2005, annexed as Annexure A/7 or the direction/permission specifically given for conduct of departmental proceedings would have to prevail. Learned counsel has argued that authority cannot act contrary to its own policy/manner and the nod of Central Vigilance Commission for departmental proceedings even if was given, the same is contrary to spirit of Order No.52/05/08.

9. The issue that has emerged is also whether Office Order No.52/05/08 dated 30.09.2005 is imposing absolute bar for preliminary inquiry by the department, after the matter had been handed over to CBI and to trace the answer it is just and necessary to have close look of said Office Order. The operative part of Office Order No.52/05/08 dated 30.09.2005 is reproduced herein below:-

“The Commission vide para 4.3 of the Vigilance Manual 2004, regarding parallel investigation by Departmental Vigilance Agency and the CBI, had directed that once the case has been referred to and taken up by the CBI for investigation, further internal investigation should be avoided.

Accordingly, the Commission has been generally advising that organizations need not proceed with the RDA independently if the CBI is undertaking investigation of the issues involved. The intention is that the CBI investigation being statutory and more professional and thorough will bring out all the aspects of the

matter and identify all the officials involved in the matter. The CBI report contains recommendation on both criminal action for prosecution as also departmental action for major and minor penalty as the case may be. The commission feels that the DAs should await such final recommendations before proceedings with RDA so that no officer can escape punitive action and no situation should arise wherein an officer on prima facie material undergoes action for minor penalty etc. and later on CBI bring out facts which would justify for major penalty. In other words, in cases where the matter is yet to be investigated, CVOs should not undertake parallel investigation when the local police or the CBI are seized of the matter.

There are cases especially in banks where thorough investigation of the case has already taken place and action against the officials through RDA clearly identified. The matter is referred to CBI because it is felt that the officials involved should also undergo action under the P.C.Act etc. In such cases, since the officials involved and the role have already been established, there is no difficulty in going ahead with parallel RDA especially considering that action under the P.C.Act is usually protracted and it will be desirable to deal with Cos under the Conduct Rules for quick punitive action without for the outcome of the criminal prosecution. Consultations with CBI in such cases, however, is desirable as regards the timing of action under the RDA.

All the CVOs should appreciate this spirit of the Commission's instructions and analyse each cases on this basis. ”

10. It is manifest from bare reading of aforesaid Order that the intent behind its issuance is that the CBI investigation, being statutory and more professional and thorough will bring out all the aspects of the matter and would identify all the officials involved in the matter so generally the organizations need not proceed with the RDA independently, if the CBI is undertaking investigation of the issues involved. The Commission also felt that the DAs should await such final recommendations before proceedings with the RDA so that no officer can escape punitive action and no situation should arise wherein an officer on prima facie material undergoes action for minor penalty etc. and later on CBI bring out facts which would justify for major penalty. Here in instant case CBI had concluded the investigation, on conclusion of investigation the CBI report ought to have contain recommendation on both criminal action for prosecution as also

departmental action for major and minor penalty as the case may be and it is not the contention of Learned Counsel that the CBI has not recommended departmental action against the applicant.

11. Further content of aforesaid order also indicates that there may be cases where matter is referred to CBI because it is felt that the officials involved should also undergo action under the P.C.Act etc., and the action against the officials clearly identified in such cases, since the officials involved and the role have already been established, there is no difficulty in going ahead with parallel RDA especially considering that action under the P.C.Act is usually protracted and therefore, it will be desirable to deal with charged officer under the Conduct Rules for quick punitive action without waiting for the outcome of the criminal prosecution. In instant trial in criminal case is still hinging at the stage of framing of charge.

12. Applicant is an employee of postal department. Chapter one of Postal Manual Volume III, Annexed as Annexure A/6 by the applicant, speaks about various stages in a disciplinary case and it provides that first stage would be that of decision to proceed against an employee after making preliminary enquiry at the appropriate level in regard to offences alleged to have been committed by him. As per this chapter one when Departmental Authority received a report about the commission of an offence by an employee, the Departmental Authority needs to decide whether or not there is justification for having the matter investigated into and that at the stage of preliminary enquiry all evidences and relevant documents has to be collected. When parallel regular departmental action is permitted by Para 3 of aforesaid Order No.52/05/08 dated 30.09.2005,

how preliminary enquiry mandated by Postal Manual can be said to be illegal and how holding of such preliminary enquiry can vitiate Charge Memo and departmental proceedings.

13. The Manual provides that at the stage of preliminary enquiries, all available evidences and relevant documents should be collected and in important cases, evidences of witnesses be reduced to writing and got signed by them, if possible, in the presence of the accused employee. Using of word “*accused*” also connotes something significant; a person is called accused only when he is facing investigation or trial for commission of a criminal offence.

14. Learned counsel imputing illegality in conduct of preliminary enquiry has contended that Statement of witnesses, during preliminary were not been recorded in presence of applicant. The Manual do not provides that in every circumstances Statement of witnesses, during preliminary enquiries must be recorded in presence of the delinquent employee. It merely provides that in important cases, evidences of witnesses be reduced to writing and got signed by them, **if possible**, in the presence of the accused. Whether it was possible or not to reduce evidences of witnesses to writing in the presence of the applicant, being a factual aspect may be taken note by appropriate authority, meant to say enquiry officer at appropriate time.

15. The learned counsel has also contended that the allegations against the applicant in the Criminal Court and the Departmental Inquiry are same and therefore also Departmental Inquiry cannot continue. He further has submitted that the evidence which is the basis of the charge-sheet of CBI

and the departmental proceeding are also same. The said submissions are without substance. Even if the essence of the charge in the criminal trial and the departmental inquiry is the same in spite of that it would not debar an employer from exercising the power to conduct departmental proceedings in accordance with the rules and regulations.

16. Decision titled *Stanzen Toyotetsu India Private Ltd. v/s. Girish V. & Anr*, cited supra, relied upon by applicant also provides that there is no legal bar to conduct departmental proceedings and criminal trial simultaneously. Para 16 of the decision, relevant for the purpose, is reproduced herein below:-

“16. Suffice it to say that while there is no legal bar to the holding of the disciplinary proceedings and the criminal trial simultaneously, stay of disciplinary proceedings may be an advisable course in cases where the criminal charge against the employee is grave and continuance of the disciplinary proceedings is likely to prejudice their defence before the criminal Court. Gravity of the charge is, however, not by itself enough to determine the question unless the charge involves complicated question of law and fact. The Court examining the question must also keep in mind that criminal trials get prolonged indefinitely especially where the number of accused arraigned for trial is large as is the case at hand and so are the number of witnesses cited by the prosecution. The Court, therefore, has to draw a balance between the need for a fair trial to the accused on the one hand and the competing demand for an expeditious conclusion of the on-going disciplinary proceedings on the other. An early conclusion of the disciplinary proceedings has itself been seen by this Court to be in the interest of the employees.”

17. Said decision primarily deals with stay of departmental proceedings and is of no help to applicant's case. Action under the P.C.Act is usually protracted and in case in hand applicant qua charge has filed discharge petition on the file of Trial Court and has also filed a writ petition on the file of Hon'ble High Court and Trial Court has deferred hearing/order on framing of the charge, awaiting order in said writ petition, the trial in criminal case thus still is hinging at the stage of framing of charge.

18. The two proceedings, criminal and departmental are entirely different. They operate in different fields and have different objectives. The object of a Departmental Inquiry is to find out whether the delinquent is guilty of misconduct under the conduct rules for the purpose of determining whether he should be continued in service or a lesser punishment be inflicted, as the case may be, whereas in the criminal proceedings, the question is whether the offences registered against him under are established, and if established, what sentence should be imposed upon him. The standard of proof, the mode of inquiry and the rules governing inquiry and trial in both the cases are significantly distinct and different. In departmental proceeding. Strict rules of evidence are not followed but preponderance of probabilities is what is taken into consideration in a departmental inquiry. Even the acquittal by a Criminal Court does not preclude a Departmental Inquiry against the delinquent officer. The Disciplinary Authority is not bound by the judgment of the Criminal Court if the evidence that is produced in the Departmental Inquiry is different from that produced during the criminal trial.

19. Having taken note of entirety, I did find no ground for interference by the Tribunal at this stage, however, before parting it is necessary to take note of one another submission also, made by learned counsel qua non supply of document. Learned counsel has submitted that despite the demand of the applicant he has not been provided documents by the Authority, so also the disciplinary proceeding is not as per law. He urged that applicant gave representation 11.11.2019 for change of enquiry officer and supply of the documents but there is no response. Glance of the

representation, dated 11.11.2019 (Annexure A/15) shows that it is addressed to the Hon'ble Minister, M/O Communication Technology Govt. of India and qua document the only averment made therein is in Para 2 which reads:- (i) A large part of the documents provided against Serial Nos. 23 & 35 of the listed documents is not readable, (ii) a part of the document listed at Serial No.5 and the entire documents at Serial Nos.9, 12, 13, 17, 18, 19, 20 is neither Hindi or English and applicant is unable to understand and (iii) CVC advice provided is incomplete. No detail or specific averment that documents were not supplied to him is there in this representation. The enquiry has yet to start and this contention can't be sufficient to quash charge Memo. Anyhow I would fail in discharge of my duty if some direction/observation relating to this submission be not made. The respondents ought not to be oblivious to their statutory duty and it is expected that grievance of the applicant, qua document pointed out above, if has not been redressed would be redressed as per norms.

20. In view of factual & legal scenario, discussed above, the OA being devoid of merits is dismissed at this motion hearing stage.

(M.C.Verma)
Member (J)

Nk.