

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

O.A.210/00785/2016

Dated this Tuesday the 3rd day of December, 2019

Coram: Dr.Bhagwan Sahai, Member (Administrative)
Shri R.N. Singh, Member (Judicial).

Krishnarao Bajirao Mahadik,
Working in the office of
Commissioner of Central Excise,
Pune IV Commissionerate,
ICE House, 41A, Sassoon Road,
Pune - 411 001 and
Residing at : Pratik Nagar,
Building No.11, Flat No.6,
Yerwada, Pune - 411 006. .. Applicant.

(By Advocate Shri A.A. Manwani).

Versus

1. Union of India, through
the Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi - 110 001.
2. Commissioner of Central Excise,
Pune-IV, ICE House,
41A, Sassoon Road,
Pune - 411 001. .. Respondents.

(By Advocate Shri S.C. Dhawan).

Order reserved on : 06.08.2019
Order delivered on : 03.12.2019

O R D E R
Per : Dr.Bhagwan Sahai, Member (A)

Shri K.B. Mahadik has filed this O.A. on 21.10.2016 seeking quashing and setting aside of charge-memo issued to him on 31.03.2016, staying of the departmental proceedings initiated against him vide above charge-memo and direction to Respondent

No.2 not to proceed with the charge-memo till final disposal of Special Case No.12/2012 pending before the Special Judge, Pune. He also seeks cost of this application from the respondents.

2. Summarized facts:

2(a). The applicant has stated that after joining Central Excise Department at Pune as Inspector on 25.11.1981, he was promoted as Superintendent of Central Excise from 01.09.1997 and since then has been working on that post. He was on deputation with Intelligence Unit of D.G. Central Excise, Pune from 16.10.2006 to 07.01.2011. During that period he booked 20 cases against TMT Steel Bars Manufacturing Industrial Units at Jalna and recovered Rs.15 Crore of evaded excise duty. Because of strong action taken by him, the Steel Manufacturers filed a case with CBI against him in two other cases related to Wildlife Protection Act for possession of Black Buck Skin and for holding assets disproportionate to his source of income.

2(b). In the first case the CBI Special Court acquitted him of the charge, against which no appeal was filed. In the second case the matter was taken for summary trial and on filing of closure report by the investigating agency, it was accepted by the Special CBI Court, Pune.

2(c). Thereafter a third case was initiated against him on 07/08.01.2011 under Section 7 of Prevention of Corruption Act, 1988 and Section 120B of IPC and he was kept under suspension from 08.01.2011 till 16.03.2015. CBI filed the charge-sheet on 25.04.2012 before the CBI Special Court, Pune and the case is going on.

2(d). The impugned charge-sheet was served on the applicant on 31.03.2016 to which he replied pointing out that the same matter was pending before the Special CBI Court, Pune and, therefore, departmental proceedings were not warranted against him at that stage and thus they should be kept in abeyance till disposal of the case by the Special CBI Court.

2(e). In the letter dated 26.05.2016, Respondent No.2 i.e. Commissioner of Central Excise, Pune-IV citing DOPT OM dated 01.08.2007 clarified that merely because criminal trial is pending against the applicant, the departmental enquiry involving the very same charges is not barred and the only exception to it was if the charge in the criminal case is of grave nature involving complicated question of law and facts. The Respondent No.2 also sought from the applicant status of the criminal case going on against him.

2(f). He submitted detailed information by letter dated 26.05.2016. Thereafter Respondent No.2 issued

two orders on 23.09.2016 appointing Shri S.K. Singh, Assistant Commissioner, Central Excise, Pune-IV as the Inquiry Officer and Shri P.P. Kullarwar, Superintendent, Central Excise, Ranjangaon-II Range, South Shirur Division, Pune-IV as the Presenting Officer for conducting inquiry against the applicant. Therefore, the present O.A. has been filed.

3. Contentions of the parties:

The applicant in the O.A., rejoinder and during the arguments of his counsel on 12.04.2019 and 06.08.2019 contends that -

3(a). he has been charged with serious offences punishable under Section 120B of the IPC and Section 7 of Prevention of Corruption Act, 1988. The charge in the criminal case is of very grave nature involving complicated questions of law and facts. Therefore, the present proceedings deserve to be stayed till final disposal of the special case by Special CBI Court, Pune as advised by DOPT OM in its OM dated 01.08.2007;

3(b). in his letter dated 26.05.2016 to Respondent No.2, the applicant had requested to make a judicious call on his representation dated 13.04.2016 but the Respondent No.2 has not made any such judicious call and without application of mind, in a mechanical manner has appointed the Inquiry

Officer and Presiding Officer to conduct the inquiry;

3(c). the Respondent No.2 has not made any independent investigation into the matter and has relied upon the CBI investigation which has lodged a false prosecution case against him. He would be compelled to disclose his defence in the departmental proceedings which would be used against him in the criminal trial;

3(d). in various judgments the Apex Court has permitted both the departmental proceedings and criminal trial to proceed simultaneously when the charges of corruption involved are such that expeditious decision on the matter is needed as to whether the employee concerned deserve to be retained in service or he deserves to be removed from service. But in the present case the applicant has almost reached the age of superannuation and he is due to retire on 31.05.2017, therefore, he should not be compelled to disclose his defence and the disciplinary proceedings should be stayed;

3(e). based on the incident on 07.01.2011, the CBI has filed the charge-sheet in the criminal case on 25.04.2012 whereas the charge-memo of the departmental proceedings was issued on 31.03.2016 i.e. after 5 years of incident and filing of the charge-sheet by the CBI. Inspite of inordinate

delay of further 5 years, the Department is now in haste for completing the inquiry to deprive him of legitimate retirement benefits under the service rules;

3(f). in Para 9 of the reply, the respondents have admitted that the charges levelled against him are very serious and grave in nature. Neither the various Supreme Court judgments nor instructions issued by DOPT based on those judgments provide for any limitation on keeping disciplinary proceedings pending during pendency of the criminal trial.

3(g). The applicant has relied on the following caselaws:

(i). Thulia Kali Vs. State of Tamil Nadu (1972)

3 SCC 393,

(ii). P. Sirajuddin Vs. State of Madras (1970) 1

SCC 595,

(iii). Lalita Kumari Vs. Government of Uttar Pradesh 2013 AIR SCW 6386;

(iv). Captain M. Paul Anthony Vs. Bharat Gold Mines Ltd. 1999 AIR SCW 1098,

(v). Divisional Controller, Karnataka State Road Corporation Vs. M.G. Vittal Rao (2012) 1 SCC 442 dated 18.11.2011,

(vi). Kusheshwar Dubey Vs. M/s. Bharat Coking Coal Ltd. And others (1988) 4 SCC 319.

3(h). After the order was reserved in this case on 06.08.2019, the applicant's counsel has submitted written notes along with a copy of decision of Special Judge, CBI, Pune dated 05.09.2019 acquitting the applicant in the Special Case No.12/2012 of the offences punishable under Section 120B of the IPC and Section 7 of Prevention of Corruption Act, 1988.

In the reply, sur-rejoinder and during the arguments the respondents have contended that-

3(i). the O.A. is totally premature since final orders have not been passed in the departmental proceedings and he has not exhausted the statutory remedies available to him as required under Section 20 of the Administrative Tribunals Act, 1985 read with provisions of Rule 23 of CCS (CCA) Rules, 1965. Therefore, the O.A. should be dismissed on this ground;

3(j). as per law settled in case of Capt. M Paul Anthony, 1999(1) SCSLJ 429, Sr. Superintendent of Post Vs. S.A. Gupalan, AIR 1999 SC 1514 and State Bank of India & others Vs. Neelam Nag & Anr., (2016) 9 SCC 491, pendency of criminal proceedings cannot be the sole basis to suspend or stay the disciplinary proceedings, as evidence required to prove the charge in criminal case and departmental proceedings is different;

3(k). opportunity of judicial review of orders issued by the Disciplinary Authority, Appellate Authority and Revisionary Authority is available to the applicant. Therefore, at this stage there is no justification for either staying the departmental proceedings or setting them aside;

3(l). as per DOPT OM dated 01.08.2007, while directions were given to the Disciplinary Authorities that it would be desirable to stay the departmental proceedings till conclusion of criminal case if the charge in the criminal case is of grave nature involving complicated questions of law and facts but further it was clarified in Para 5 that stay of disciplinary proceedings is not a must in every case, whereas there is a criminal trial on the very same charges and the same authority may decide on proceeding with the departmental proceedings after considering the facts and circumstances of the each case. Therefore, the competent authority have to proceed with the departmental proceedings against the applicant. Since the proceedings with Special CBI Court, Pune in the criminal case have not yet concluded since 2012, it is necessary to proceed with the departmental proceedings;

3(m). on 06.08.2019, the applicant's counsel specifically submitted that examination of witnesses and evidence in the criminal case by the Special CBI

Court was already over and decision was accepted by end of that month. Therefore, the O.A. should be dismissed;

3(n). since the applicant was due to retire by 31.05.2017 there is urgency to proceed with the departmental proceedings so as to complete them expeditiously. The applicant would be granted opportunity to inspect the documentary evidence and for questioning the oral evidence by cross examination and to adduce any other evidence in his defence during the departmental proceedings. Hence the O.A. be dismissed.

4. Analysis and conclusions:

We have perused the OA memo and its annexes, rejoinder of the applicant, reply and surrejoinder filed by the respondents, caselaws relied by the both the sides and considered the arguments advanced by them on 06.08.2019.

4(a). The main contention of the applicant in this O.A. is that the departmental proceedings should be stayed till final disposal of the criminal case by the Special CBI Couert, Pune apprehending that he would be compelled to disclose his defence during the departmental proceedings and it might be used against him in the criminal proceedings. However, as submitted by the respondents counsel on 06.08.2019, examination of evidence by the Special

CGI Court, Pune was already over. Further as per submission of the applicant's counsel dated 20.09.2019 along with a copy of the decision of the Special CBI Court in the Criminal Case No.12/2012 dated 05.09.2019, the criminal case has already been decided and the applicant has been acquitted of the offence in that case. In view of these facts, the issue of simultaneously going on criminal proceedings and departmental proceedings is no more relevant now.

4(b). We also note that although based on same facts, the charges in the two proceedings are also different. In the departmental proceedings, the main charges relate to acceptance of bribe by the applicant for official work, his failure to maintain integrity and devotion to duty, and this act of his being unbecoming of a public servant. But in the criminal case, the offences have been registered under Section 120 B of the Indian Penal Code and under Sections 8, 10 and 15 of the Prevention of Corruption Act, 1988.

4(c). Articles of Charge against the applicant in the disciplinary proceedings are related to deletion from the laptop and pen drive seized by the applicant during investigation by the applicant of vital evidence containing information of clandestine removal of excisable goods by Shri Dinesh Bharuka

and further searches carried out by him as Senior Intelligence Officer for dishonest consideration of Rs.1,09,68,500/- as a reward for doing so it from Shri Bharuka and demanding and accepting of illegal gratification of Rs.1,09,68,500/-. This is an extremely serious charge of bribery against the applicant. Even though the applicant has been acquitted in the Special CBI case by the Criminal Court and it is not known whether the respondents have challenged that decision.

4(d). In this context, it is to be noted that in the departmental proceedings, the standard of proof is one of preponderance of probabilities whereas the standard of proof required in a criminal case is that the charge has to be proved by the prosecution beyond reasonable doubt. Thus even if the two proceedings are based on the same set of facts and evidence, the standard of proof is different in the two proceedings. It is also necessary to consider that the disciplinary inquiry is intended to maintain discipline in service and efficiency of public service and, therefore, it is necessary to conduct the disciplinary proceedings and complete them expeditiously.

4(e). As assured by the respondents during their submissions, the applicant would be provided adequate opportunity to defend himself during

departmental proceedings and after their conclusion and passing of necessary orders by the Disciplinary Authority, he will have further opportunity of challenging such an order in an appeal before the Appellate Authority and in revision proceedings before the Revisionary Authority. After availing of those statutorily available avenues, then if the applicant still has any grievance, he can thereafter approach the Tribunal. At present stage, therefore, as contended by the respondents, the O.A. is at premature stage and, therefore, in our considered opinion it does not have merit. Hence it deserves to be dismissed.

5. Decision:

O.A. is dismissed. No costs.

M.A.Nos.101/2017 and 226/2018 also stand~~s~~

disposed of.

(R.N. Singh)
Member (J)

(Dr.Bhagwan Sahai)
Member (A).

H.

JD
03/12