

(2018) 04 CAT CK 0003

In the Central Administrative Tribunal

Case No : Original Application No. 845 Of 2018, Miscellaneous Application No. 930 Of 2018

Gurbachan Singh

APPELLANT

Vs

Comm. Of Police

RESPONDENT

Date of Decision : 18-04-2018

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Citation : (2018) 04 CAT CK 0003

Hon'ble Judges : Jasmine Ahmed, J; Praveen Mahajan, Member (A)

Bench : Division Bench

Advocate : Ajesh Luthra, R.N. Singh, Amit Sinha along, Vaibhav Pratap Singh

Final Decision : Allowed

Judgement

Praveen Mahajan, Member (A)

1. Through the medium of this Original Application, filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has challenged Annexure A-1 order dated 05.05.2017, whereby the respondents have initiated a Departmental Enquiry (DE) parallel to criminal case, Annexure A-2 summary of allegations along with list of witnesses and documents issued by the Inquiry Officer in pursuance to Annexure A-1 order and Annexure A-3 order dated 06.07.2017 whereby the request of the applicant to keep in abeyance the DE has been rejected.

2. The applicant seeks, quashing of the aforesaid orders, or, in the alternate to keep the DE in abeyance till the final decision of the criminal case or till such time the four private persons are cross examined in the criminal trial.

3. We have heard learned counsel for the parties on the question of interim relief.

4. Briefly stated, the facts of the case are that the applicant was working as Assistant Sub Inspector (Min.) in Delhi Police. On 10.05.2014 an FIR

No.221/2014 PS Mundka was registered against him u/s 420/468/471/120-B IPC. Following the said FIR, he was placed under suspension on 10.09.2014. However, he was released on bail on 02.02.2015. It is stated that a regular DE has been initiated against the applicant vide order dated 05.05.2017 solely on the allegations contained in the FIR No.221/2014 dated 10.05.2014 u/s 420/468/471/120-B IPC PS Mundka. The respondents have appointed an Inquiry Officer in pursuance to the order dated 05.05.2017 who has issued summary of allegations along with list of documents and list of witnesses on 21.06.2017 (Annexure A-2).

5. The applicant states that the DE has been initiated only on the alleged material related to the criminal case, and no independent or additional material is available or relied upon by the respondents. It is averred that a comparison of the summary of allegations with the FIR/Charge-sheet, the list of witnesses in the DE, and the documents sought to be relied upon in the enquiry proceedings would show that the same are similar as in the criminal case. So are expert opinion reports. Besides, the Investigating Officer in the criminal case is also cited as a witness in both the trials. Thus, there is no difference of witnesses and documents in both the trials being simultaneously conducted against the applicant. The applicant contends that complicated question of law and facts are involved since the allegations pertain to forgery of documents and cheating etc.

6. In view of these facts, the applicant submitted a representation dated 06.06.2017 (Annexure A-5) requesting the authorities to withhold the DE and keep it in abeyance till the finalization of the criminal case. However, vide impugned Annexure A-3 order dated 06.07.2017, the request of the applicant has been rejected by a non-speaking and cryptic order and none of the contentions of the applicant has been considered or dealt with.

7. The applicant further submits that he is being victimized due to a well planned conspiracy against him and as a result he has been falsely implicated in five criminal cases of similar nature. For each FIR, respondents have ordered a separate DE.

8. During the course of hearing, learned counsel for the applicant reiterated the issues raised in the OA and also relied upon the decision of Principal Bench of CAT in the case of M.L. Dhussa Vs. UOI & Ors. (OA-1277/2004) dated 15.12.2004.

8.1 Repelling the contentions raised by the applicant, the learned counsel for the respondents stressed upon the fact that there is no bar for the criminal case, departmental proceedings to proceed simultaneously. In support, he relied upon the following judgments:- Learned counsel for the respondents relied upon the following judgments:-

(i) Noida Entrepreneurs Association Vs. Noida & Ors., (2007) 10 SCC 385.

(ii) Stanzen Toyotetsu India Pvt. Ltd. Vs. Girish V. & Ors., (2014) 3 SCC 636.

(iii) Captain M. Paul Anthony Vs. Bharat Gold Mines Ltd. & Anr., (1999) 3 SCC 679.

(iv) State of Rajasthan Vs. B.K. Meena & Ors., (1996) 6 SCC 417.

9. We have considered the rival contentions raised by both sides as well as the citations relied upon by them. It is a settled position of law that there is no legal bar for simultaneous proceedings to be held, yet, there may be cases where it would be appropriate to defer the disciplinary proceedings awaiting the decision of the criminal case. Hon'ble Supreme Court in the case of Kusheshwar Dubey Vs. Bharat Coking Coal Ltd., (1988) 4 SCC 319 has held that:-

"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, straight-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."

There are other cases where the Hon'ble Supreme Court on noting that proceedings in criminal trial were going to take long time have confirmed orders staying the disciplinary proceedings till conclusion of the criminal trial.

10. Be that as it may, 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 can be reconsidered if criminal trial is unduly delayed. The findings of Hon'ble Supreme Court in the case of State of Rajasthan Vs. B.K. Meena & Ors, (1996) 6 SCC 417 read thus:-

"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."

11. The ratio of the decision of the Hon'ble Supreme Court in the case of Depot Manager, A.P. State Road Transport Corporation Vs. Mohd. Yousuf Miya and Others, (1997) 2 SCC 699, in our view would apply to the present case. It was held therein that :-

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."

12. In the instant case, the applicant is not asking for an indefinite stay for keeping the departmental enquiry in abeyance. His limited prayer is that respondents should stay further proceedings of the departmental inquiry till final decision of the criminal case or till such time the four private persons mentioned are cross examined in the criminal trial. Taking into account the entire facts of the case, we feel that the request of the applicant is justified. We, therefore, direct the respondents to stay the disciplinary proceedings against the applicant for a period of six months by which time, hopefully the cross examination of the four key witnesses would be completed in the criminal trial. Interim relief prayed for is granted as aforesaid.

13. List the O.A. for hearing on 28.05.2018.