
(2010) 01 DEL CK 0011

In the Delhi High Court

Case No : Writ Petition (C.) No. 13066 of 2009

Sh. R.S. Negi

APPELLANT

Vs

DDA and Another

RESPONDENT

Date of Decision : 25-01-2010

Acts Referred:

Citation : (2010) 01 DEL CK 0011

Hon'ble Judges : Mool Chand Garg, J;Anil Kumar, J

Bench : Division Bench

Advocate : Apurb Lal, for the Appellant; Pawan Mathur, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner challenges the order dated 28th October, 2009 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A No. 3050/2009 titled Sh. R.S. Negi v. Delhi Development Authority dismissing his petition seeking stay of disciplinary proceedings in view of the criminal trial already pending against him.

2. The petitioner was an assistant with Delhi Development Authority and he sought stay of departmental proceedings initiated against him pursuant to charge sheet dated 7th April, 2008. The charges against the petitioner are that on 11th March, 2005 Mohd. Ashiqueen lodged a complaint in Anti Corruption Branch alleging that his brother had purchased a flat from Smt. Janki Devi and after making full payment approached petitioner for possession of the same, however, the petitioner demanded Rs. 20,000/- as illegal gratification for the same and on inability shown by the brother of the purchaser, the petitioner agreed to take the amount in two installments. The first installment of Rs. 10,000/- was payable on 11th March, 2005 and on a trap being led, the petitioner was caught red handed while accepting bribe. This conduct of the petitioner exhibited lack of absolute devotion to duty, lack of absolute integrity and he acted in a manner unbecoming of a Government servant and he also contravened Regulation 4.1(I)(ii) and (iii)

of DDA Conduct, Disciplinary and Appeal Regulations, 1999.

3. A criminal case being C.C. No. 67/2006 State v. Rajinder Singh Negi was also initiated against the petitioner for accepting bribe from the complainant Mohd. Ashiqeen for giving possession of DDA house in Inderlok, Delhi. The petitioner is tried for committing an offence u/s 7 of the Prevention of Corruption Act, 1988. The criminal case is also for criminal misconduct as specified u/s 13(i)(d) and punishable u/s 13(2) of Prevention of Corruption Act, 1988.

4. The plea of the petitioner before the Tribunal for staying the departmental proceedings was that the evidence before the criminal Court and in the departmental proceedings shall be the same and the matter before the departmental proceedings may involve complicated questions of facts and law and, therefore, the departmental proceedings should be stayed.

5. After considering the pleas and contentions and the record, the Tribunal inferred that the case before the departmental authorities does not involve complicated questions of facts and law and it is a simple case of petitioner being trapped accepting bribe of Rs. 10,000/- red handed and, therefore, there are no grounds to stay the departmental proceedings.

6. The learned Counsel for the petitioner has very emphatically contended that the departmental proceedings involve complicated questions of facts and law and relying on Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, . and Kusheshwar Dubey Vs. Bharat Coking Coal Ltd. and Others, . it is asserted that the departmental proceedings should be stayed.

7. After hearing the learned Counsel for the parties and perusing the precedents relied on by the learned Counsel for the petitioner it cannot be disputed that there is no legal bar for simultaneous proceedings being taken. The standard of proof in a criminal case is different from the standard of proof before the departmental proceedings. This is also not disputed that there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case. In Capt. M. Paul Anthony (supra), the Supreme Court had crystallized factors from various decisions of the Apex Court relevant for deciding whether the departmental proceedings should be stayed or not pending criminal trial. The Supreme Court had held that the conclusions which are deductible from the various decisions of Court are as under:

(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.

8. In the present facts and circumstances it is not disputed that the petitioner was earlier dismissed from service without any enquiry by order dated 14th March, 2005 after he was arrested on 11th March, 2005. The petitioner had challenged his order of dismissal in the High Court by filing a writ petition being W.P(C) No. 19038/2005 titled Rajinder Singh Negi v. Municipal Corporation of Delhi holding that there was no reason as to why witness would not come forward and the opinion that the witnesses would not come forward to depose, was not based on an objective and fair assessment and the intention not to hold the enquiry could not be held to be in public interest. Therefore, the order dated 14th March, 2005 dismissing the petitioner from service without holding the enquiry was set aside and the DDA was directed to hold a proper enquiry as petitioner was only on deputation to Municipal Corporation of Delhi. Pursuant to order dated 3rd February ,2006 setting aside the order dated 14th March, 2005 by dismissing the petitioner without holding an enquiry, the enquiry proceedings have been initiated by the respondent.

9. Though the learned Counsel for the petitioner contended that the case involves substantial questions of law and complicated questions of facts, however, perusal of the petition reveals that not a single such question has been framed or raised. The learned Counsel for the petitioner despite being asked repeatedly as to what are the complicated questions of law, has not been able to elaborate any such complicated questions of law which may not be decided by the enquiry officer and would entail interference by this Court for staying the departmental proceedings.

10. The learned Counsel for the respondent has also pointed out by producing the copy of the proceedings on 11th December, 2009 in the Court reflecting that the petitioner and the respondent had agreed before the enquiry officer that matter is not to be argued orally and it was decided and agreed that brief written submissions shall be filed by both the parties before the enquiry officer by 31st

December, 2009 and on account of this consensus before the enquiry officer, the enquiry is stated to be over.

11. If the enquiry is already over, and no complicated questions of law and facts have been raised, it will not be appropriate to stay the further proceedings before the enquiry officer. Now the enquiry officer has to submit his report to the disciplinary authority and the disciplinary authority has to take its decision in accordance with law.

12. This cannot be disputed by the parties that disciplinary proceedings should not be stayed as a matter of course as has been held in Capt. M. Paul Anthony (Supra), The Delhi Cloth and General Mills Ltd. Vs. Kushal Bhan, and Depot Manager, Andhra Pradesh State Road Transport Corporation Vs. Mohd. Yousuf Miya, etc., It is no more *res integra* that the advisability, desirability or propriety of staying the departmental enquiry has to be determined in each case taking into consideration all the facts and circumstances.

13. In the case of petitioner the enquiry is already over and the enquiry officer only has to submit his report to the disciplinary authority. Even in the criminal trial the prosecution witnesses have already been recorded. According to the learned Counsel for the petitioner the matter was listed for the defence statement u/s 313 of Criminal Procedure Code. In the circumstances the petitioner can't even propound that it will not be appropriate for him to disclose his evidence as it has already been done. In any case in such cases as that of petitioner, it is appropriate that the allegations against the petitioner for taking bribe for handing over the possession, if correct be decided as early as possible as an early departmental proceeding will be beneficial not only for the department but as well as for the public.

14. This is also not disputed that since the standard of proof required in departmental proceedings is not the same as required to prove the criminal charges, therefore, the departmental enquiry would not be seriously prejudice to the petitioner in his defense in criminal trial. As already held the petitioner cannot propound this as a ground to stay the departmental proceedings at this stage of the departmental proceeding and in the criminal trial. The Supreme Court in the case of Noida Entrepreneurs Assn. Vs. Noida and Others, had held that it is always expedient that the disciplinary proceedings are conducted as expeditiously as possible. The observations made by the Apex Court are as under:

The purpose of departmental enquiry and of prosecution is 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 guidelines 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 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 Indian Evidence Act, 1872 (in short 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 of law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. Under these circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances.

15. In the light of the aforesaid there are no grounds to interfere with the order of the Tribunal declining to stay the departmental proceedings on account of pendency of criminal trial against the petitioner. Considering the totality of facts and circumstances, therefore, there are no grounds to stay the departmental proceedings against the petitioner. The order of the Tribunal dated 28th October, 2009 does not suffer from any illegality or irregularity which will require interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

16. The writ petition is, therefore, without any merit and it is dismissed. Parties are, however, left to bear their own cost.