

(2023) 01 CAT CK 0041
In the Central Administrative Tribunal
Case No : Original Application No. 947 Of 2021

Vikas Kumar

APPELLANT

Vs

Vs Union Of India & Ors

RESPONDENT

Date of Decision : 25-01-2023

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19, 20
Prevention Of Corruption Act, 1988 — Section 7
Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 14

Citation : (2023) 01 CAT CK 0041

Hon'ble Judges : Om Prakash VII, Member (J); Dr. Sanjiv Kumar, Member (A)

Bench : Division Bench

Advocate : S.K. Kushwaha, Vinod Kumar Pandey

Final Decision : Disposed Of

Judgement

Dr. Sanjiv Kumar, Member (A)

1. By means of the instant original application filed under section 19 of Administrative Tribunals Act 1985, the applicant has prayed for quashing the impugned charge memo dated 04.09.2020 as also the entire disciplinary proceedings emanating therefrom. Prayer has also been made to issue a time bound order or direction to the respondent no. 4 i.e. disciplinary authority to take a reasoned and speaking decision as mandated and required under law by several DOPT and CVC circulars and judicial verdicts and not to hold a parallel departmental inquiry on the charges mentioned in the charge sheet alongside and simultaneous with the criminal proceedings and instead keep them in abeyance till the conclusion of the criminal proceedings.

2. The facts of the case of the applicant, in brief, are that the applicant was initially appointed on 12.5.1995 on the post of Inspector and subsequently, he was promoted and joined the post of Superintendent (Audit) on 31.5.2018. It is stated that the applicant was implicated in a criminal case giving rise to the impugned disciplinary proceedings. The respondents had issued office order

dated 23.7.2018 and Circle-2, Group-3 of Meerut Commissionerate for conducting the audit of M/s Ajay Kumar Power Construction. While working on the post of Superintendent, office of the respondents had issued establishment order no. 13/2019 dated 21.06.2019 and allotted Group-3 of Circle-2 for the Division Shamli and Division I & II of Meerut CGST for audit and teams were formed for audit. Applicant and two others i.e. Shri Kuldeep Singh and Shri Shramesh Gaurav were made the members of Group-3 of Circle-2 for Division Shamli and Division I and II of Meerut GST vide this order. In pursuance of the aforesaid instructions, a letter dated 06.08.2019 was issued to the assessee for providing 26 documents. It is contended that on the complaint of assessee Mr. Ajay Kumar, the applicant was implicated in a criminal case following an F.I.R. No. RC 1202019A0005 dated 12.09.2019, registered at C.B.I. (ACB), Ghaziabad U.P. under Section 7 of the Prevention of Corruption Act, 1988, for the alleged charge of applicant being a public servant attempting to obtain an undue advantage for himself, with the intention to perform or cause performance of public duty improperly or dishonestly by himself. In pursuance of the said F.I.R., the applicant was arrested on 12.09.2019 from the office where he was working vide arrest memo. dated 12.09.2019. Due to arrest in respect of the criminal offence under investigation, the applicant was put under deemed suspension until further orders vide Order No. 01/2019. (Annexure A-3). The inquiry officer of C.B.I. had submitted chargesheet dated 08.11.2019 under Section-7 of P.C. Act, 1988 before the Court. The inquiry officer has submitted charge sheet with list of documents in 18 in numbers to substantiate the charges with 19 persons as witnesses, which were attached with the chargesheet for trial of the applicant against the alleged allegation and the appointing authority had issued sanction order for prosecution of the applicant in the aforesaid criminal case on 26.12.2019 (Annexure A-5). Subsequently, on the same set of facts, evidence and witnesses respondents have issued impugned Major Punishment chargesheet under Rule 14 of C.C.S.(C.C.A.) Rules, 1965 on 04.09.2020 (Annexure A-1). The applicant submitted his reply to the charge sheet dated 04.09.2020 and denied the charges leveled against him. The applicant got temporary bail in the aforesaid case, so the suspension case has been reviewed by the review committee and extended the period of suspension for 180 days w.e.f. 16.09.2020 vide order dated 16.09.2020. On the other hand, the inquiry officer had issued letter dated 08.09.2021 fixing date for inquiry on 29.09.2021 for holding preliminary inquiry (Annexure A-8). On the date fixed for 29.09.2021, Inquiry officer has directed the applicant to inspect the originals of the listed documents on 12.10.2021 and directed the presenting officer to supply the photocopies of the listed documents. I.O. has further directed the applicant to submit the list of additional documents and defense witnesses by 12.10.2021 (Annexure A-9). Thereafter, the applicant represented to the inquiry officer and requested him to defer the inquiry from 12.10.2021, as the applicant is under sick and due to mental distress could not engage the defence counsel for the disciplinary proceedings. It is contended that without considering the request of the applicant, the inquiry officer proceeded with the inquiry on 12.10.2021 and

recorded the statement of witness in stereo-typed manner. Inquiry officer has himself admitted that the documents are the same which CBI has filed in the prosecution case.

3. On the point of maintainability and continuity of departmental inquiry by the inquiry officer it is necessary to point out here that a bare perusal and comparison of the charge-sheet filed against the applicant as well as charge-sheet served on the applicant for the purposes of disciplinary proceedings, would reveal that they contain the very same charges/allegations, and are based upon the same set of evidence and proposed to be established by the same set of witnesses ditto. In fact, the departmental charge memo issued to the applicant is admittedly and on the very face of records, bases entirely upon the investigation of Police and the charges mentioned therein are proposed to be established on that basis alone. It is stated that whether departmental proceedings under the relevant Discipline and Appeal Rules can be held against such delinquent employee who is also simultaneously being prosecuted criminally for the same, or similar charges, is no longer res-integra but, instead, has been answered and conclusively settled by a catena of judicial decisions all the way upto the Apex Court upon holding that the scope and purpose of both the proceedings are different and the two can very well be held simultaneously, not the least because the standard of proof required for establishing the guilt of the accused/delinquent in the two proceedings is different. While the standard of proof required for convicting and punishing an accused in a criminal proceeding is that the charges framed against him must be proved beyond all reasonable doubt, the standard of proof in a disciplinary proceedings for establishing the guilt, the imposing penalty upon a delinquent employee, is only preponderance of probability. The aforesaid ratio laid down by the courts on the subject of simultaneous conduct of criminal and departmental proceedings comes with a caveat, and a caution, namely that where the charges in the two proceedings are the same, and the evidence and witnesses through which they are proposed to be substantiated are also the same then, ideally, the departmental proceedings should await the conclusion of the criminal proceedings and be kept in abeyance till the latter have ended lest, disclosure of defence in the departmental proceedings by the delinquent may seriously prejudice his defence in the criminal case. For this purpose, it has been held that while it is not possible to lay down an invariable straitjacket formula as to when departmental proceedings can go on simultaneously with the criminal proceedings and when they should be kept in abeyance pending conclusion of the criminal case- since this decision would depend upon the peculiar facts and circumstances of each case, every time a Disciplinary Authority is called upon to take the decision regarding conduct of disciplinary proceedings parallel to criminal proceedings, he has to do so after considering the evidence and material collected against the delinquent and whether the charges in the criminal case are grave and serious in nature involving complicated questions of fact and law.

4. It is further stated that the essence , the upshot of the above is, that the

decision on the part of the Disciplinary Authority to hold disciplinary proceedings on the same, or very similar charge, simultaneous with and parallel to, the criminal proceedings, has to be an informed one, and is required to be taken only after careful application of mind to the crucial questions as to whether the charges in the criminal case are grave and serious in nature involving complicated questions of fact and law, and whether the conduct of parallel disciplinary proceedings would prejudice the defence of the delinquent in the on-going criminal proceedings. What's more, this decision, invariably, has to be preceded by an independent and careful consideration of the material and evidence collected against the delinquent. The above position has also been well documented, and reiterated, by both, the DoPT and the Central Vigilance Commission, in various O.Ms and circulars issued by them from time to time for the guidance of all concerned Government departments like DoPT O.M. No. 11012/6/2007-Estt.A dated 01.08.2007 issued on the subject of "Simultaneous action of prosecution in a court and initiation of departmental proceedings. In para-3 of this O.M. it is stated that, ".....However, if the charge in the criminal case 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. This will depend upon the nature of offence and the evidence and material collected against the Government servant during investigation or as reflected in the chargesheet." Further in para 4 of the same O.M. it is stated that, "In the case of Hindustan Petroleum Corporation Ltd. Vs. Sarvesh Berry, it has been held that, "it is not 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 back drop of its own fact and circumstances. There would be no bar to proceed simultaneously with departmental inquiry and trial of a criminal case unless the charge in the criminal trial is of a grave nature involving complicated questions of fact and law." Finally vide para 5 of the said O.M. it has been clarified that, "stay of disciplinary proceedings is not a must in every case where there is criminal trial on the very same charges and the concerned authority may decide on proceeding with the departmental proceedings after taking into consideration the facts and circumstances of each case and the guidelines given by the Hon'ble Supreme Court.....".

This position is also reflected in Central Vigilance Commission Circular dated 01.07.2018 issued on the subject, "Simultaneous action of prosecution and initiation of departmental proceedings-guidance thereof" wherein, vide para-4, it has been stated, "

Further, a view as to whether simultaneous disciplinary proceedings are to be initiated need to be invariably taken by the competent authorities at the time of considering the request for grant of sanction for prosecution itself. However, the Disciplinary Authority may withhold departmental proceedings only in exceptional cases wherein the charge in the criminal trial is of grave nature which involves questions of fact and law. In other words, in complex matters where, in case it is

not possible to delineate the misconduct for the purpose of RDA. If the charge in the criminal case 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....”.

5. It is stated that the applicant has been served with major penalty charge sheet, almost after lapse of about 9 months from the date of issuance of the sanction of prosecution by the competent authority, which is mandatorily required under the Rules that in a view as to whether simultaneous disciplinary proceedings, parallel to the criminal proceedings, were to be initiated against him was necessarily required to be taken by the competent authority at the time of considering the request for grant of sanction for prosecution itself, which is being violated by the respondents. It is further stated that belated issuance of departmental charge memo to the applicant is not done after any application of mind to the relevant questions referred to above, but, seemingly, only at the behest of the C.B.I. and the CVC. It is further stated that the oral request of the applicant for keeping the departmental proceedings in abeyance till the conclusion of the criminal proceedings went unheeded and un-responded to by the disciplinary proceedings.

6. In support of his contentions, the applicant has relied upon two decisions rendered by the Principal Bench of this Tribunal in O.A. No. 1876/2008 and 2393/2010, decided on 22.12.2009 and 02.11.2010, respectively and one judgment of this Allahabad Bench of this Tribunal rendered in O.A. No. 943/2011 decided on 24.08.2012, wherein, in facts and circumstances very similar to the ones in this O.A, it was held that no parallel disciplinary proceedings could be held on the same set of charges and evidence on which a criminal proceeding was already going on without the Disciplinary Authority. first taking a conscious, reasoned and speaking decision as to the questions whether the charges and evidence in the criminal case were grave in nature involving complicated questions of fact and law, and whether the conduct of disciplinary proceedings simultaneous with the criminal proceedings would not prejudice the defence of the delinquent in the criminal proceedings. He further relied upon a judgment of the Hon'ble High Court, Allahabad in recent case of Afaq Haider Vs. State of U.P. and others decided on 09.09.2019 in which the Hon'ble High Court has relied on the earlier decisions which are binding in nature being not further challenged or reversed that view. Finally, learned counsel for the applicant has relied upon a judgment of Hon'ble Supreme Court in the case of Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd and another - 1999 (3) SCC 679, and the Hon'ble Apex Court has further reiterated the dictum of Capt. M. Paul Anthony in case of Stazen Toyotetu India Pvt. Ltd Vs. Girish V and others - 2014(3) SCC 636 as well as in case of S.B.I. & ors. Vs. Neelam Nag and others -2016(9) SCC 491. As such on the basis of aforesaid judgments, in case of the applicant, a perusal of the two in the present case would reveal that the list of witnesses and evidences are similar and the nature of allegations in the criminal case as also in the charge sheet are also same. In recent matter of Shashi Bhushan Prasad Vs. Inspector

General, C.I.S.F. in case No. C.A. No. 7130 of 2009 decided on 01.08.2019 has categorically held that the two proceedings can go simultaneously except where the witnesses and the evidences are same which in the instant case appear to be same.

7. In the short counter affidavit 01.12.2022, the respondents have stated that the applicant was caught red handed on 12.09.2019 by ACB, CBI, Ghaziabad and an amount of Rs, 3,00,000/- was recovered from him. The CBI filed a charge sheet on 08.11.2019 and subsequently departmental proceedings were also initiated. The applicant has admitted in his submission that on same set of facts, evidences and witnesses, the charge sheet under Rule 14 of CCS (CCA) Rules 1965 was issued to him and the same was being pursued by the respondents. They further contend that Rule 14 of the CCS (CCA) Rules demands regular hearing on day to day basis and completion of inquiry within a period of 06 months is mandated. It is stated that due to the applicant being in judicial custody and covid protocol, the inquiry could not be progressed for almost one year. They rely on the judgment of Hon'ble Supreme Court dated 16.12.2015 passed in Civil Appeal No. 958/2010 – Prem Nath Bali Vs. Registrar of High Court of Delhi and another and submitted that the Hon'ble Apex Court has viewed the delay in handling of disciplinary cases adversely. The applicant appeared on 12.02.2021 for first time to participate in the inquiry and examined the witnesses at length. The proceedings dated 27.10.2021 and 11.11.2021 were adjourned on the request of the applicant and the additional documents required by him were allowed. The departmental proceedings has been conducted as per the CCS (CCA) Rules, as evident from the record produced by the applicant himself. All the circulars and the decision make it clear that there is no bar on simultaneous initiation / continuation of departmental proceeding. In this regard, the respondents have referred to DOPT Office Memorandum F. No. 11012/6/2007-(Estt.(A-III)) dated 21.07.2016. This OM refers to the decision of Hon'ble Apex Court in the case of R.P. Kapoor Vs. U.O.I & Anr – AIR 1964 SC 787 wherein it is held that "if the trial of the criminal charge results in conviction, disciplinary proceedings are bound to follow against the public servant so convicted. Even in case of acquittal is other then honourable". It is stated that the Acquittal by the criminal court would not debar an employer from exercising power in accordance with rules and regulations in force. The criminal and departmental proceedings are entirely different and they operate in different field and have different objectives. They also relied on several cases including the judgment in the case of Capt. M. Paul Anthony (Supra) and state that merely because a criminal trial is pending, a departmental inquiry involving the very same charges as is involved in the criminal proceedings is not barred. However, if the charges in the criminal case is of grave nature which involves complicated question of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case. In the instant case, the applicant has failed to bring anything on record to show that the criminal case involves complicated question of law and fact which requires consideration till the disposal of the criminal proceedings,

hence the instant original application is not maintainable. The respondents have further stated that this OA is also not maintainable as it is not against any final order and the applicant has not yet exhausted the remedy of representing the matter to the disciplinary authority, who are primarily directed by the Hon?ble Apex Court to decide, based on the facts and circumstances of the each case on the issue whether both the criminal proceeding and disciplinary proceeding should continue simultaneously or not and they should first exhaust all the remedies provided within the department, as required under Section 20 of the Administrative Tribunals Act, 1985.

8. The respondents have also filed detailed counter affidavit on 02.02.2022 where they reiterated their most of the points mentioned in the short counter affidavit alongwith certain documents.

9. The applicant has also filed rejoinder affidavit on 19.10.2022 reiterating most of the contents of the OA.

10. The case came up for hearing on 17.01.2023. Shri S.K. Kushwaha, learned counsel for the applicant and Shri Vinod Kumar Pandey, learned counsel for the respondents were present. Heard both the learned counsel for the parties and the written submissions filed on behalf of the respondents is taken on record.

11. We have carefully gone through and examined the rival contentions and all the materials available on record.

12. Although in the relief, the applicant asked to quash the impugned charge memo dated 04.09.2022 as also the entire disciplinary proceedings emanating therefrom, but in his averments and arguments, nowhere has he bothered to pursue this particular relief and it is not supported with any documentary or oral evidence on record. Learned counsel for the applicant mostly argued on why simultaneously disciplinary enquiry alongwith criminal proceeding should not be continued and has relied upon judgments of different courts including Hon?ble Apex Court. It is very well settled principle that in certain cases, the departmental proceedings should await the conclusion of the criminal proceedings and be kept in abeyance till the latter have ended and such exceptional cases where that should happen is based on the consideration of whether the charges in the criminal case are grave and serious in nature involving complicated questions of facts and law. Both the parties have relied on the same set of judgments.

13. Now, in the instant case whether the charges in the criminal case was grave and serious in nature involving complicated questions of facts and law is to be substantiated by the applicant as he has brought this ground for his defence. But nowhere either in his OA or in the rejoinder affidavit or in his oral submissions, he has put forth any specific matter which may even distantly show that this case is not a routine matter of illegal gratification and nothing is forthcoming in terms of substantiating even prima facie that there is complicated questions of fact and law involved in this case. Which are those complicated questions of facts

and laws have to be substantiated, and the applicant has to convince the authority taking such decision about the same. And in doing so, the applicant has measurably failed.

14. We also find from the record and submissions of the respondents that this matter was not raised before the disciplinary authority as all the Apex Court's judgments specifically refers that, this question should have been raised before the disciplinary authority abinitio and evidence could have been adduced on whether it is a case involving complicated questions of fact and law, and the authority could have taken a view on the same and the applicant could have exhausted the departmental remedy on the matter. Except a feeble mention in the OA that orally the applicant raised the issue with the authority, there is no evidence to substantiate that this matter was ever forcefully raised before the departmental authorities for a specific decision.

15. Since, the applicant has not exhausted the remedies available before the appropriate authority within the department on the issues, considering this fact, we direct the applicant to first exhaust the departmental remedies available to him. With the above observation, the OA is disposed off accordingly; without getting into merits of the case.

16. No order as to costs.