

* HIGH COURT OF DELHI AT NEW DELHI
+ LPA 223/2002
% Date of Decision: 17th March, 2008

BRAHMA PRAKASH KALRA Appellant
Through: Mr.K.P. Mavi, Advocate

Versus

NATIONAL THERMAL POWER CORPORATION
& OTHERS Respondents
Through: Mr.S.K.Taneja, Sr.Advocate with
Mr.Rajesh Gupta and Mr.T.K.Tiwari,
Advocates.

CORAM:

HON'BLE THE CHIEF JUSTICE
HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether reporters of local papers be allowed to see the judgment ? yes
2. To be referred to the Reporter or not ? yes
3. Whether the judgment should be reported in the Digest ? yes

DR. MUKUNDAKAM SHARMA, CJ

1.The issue that arises for consideration in this appeal is whether the departmental proceeding which is initiated against the appellant should continue to remain stayed pending final disposal of the criminal trial, which is also pending against the appellant.

2.The allegation against the appellant was that he demanded/received bribe and was caught red-handed by the

raiding party of the CBI. Consequent thereupon a criminal case was registered against him which is at the trial stage. Departmental proceeding has also been initiated against the appellant pursuant to which a charge sheet has been issued containing statement of articles of charge as annexed to the memorandum of charges dated 6th August, 2001.

3. Contending, inter alia, that both the criminal case and the departmental proceeding are based on identical and similar facts and that witnesses for both the proceedings would also be the same, the writ petition was filed by the appellant praying that the departmental proceedings should be stayed pending finalisation of the criminal case. The learned Single Judge considered the aforesaid contention raised and held that departmental proceedings cannot be said to be of such a nature that the same need to be stayed pending adjudication of the criminal case filed against him. The aforesaid conclusion was arrived at by the learned Single Judge on the basis of his finding that a reference to the statement of charge would show that so far as the respondents are concerned, if in case it is shown that the appellant had even demanded an illegal gratification, the same would be sufficient to proceed against the appellant. It was held

that the very nature of the charge is such that the exigency of good administration would require the disciplinary proceeding to be concluded expeditiously. The writ petition was consequently dismissed.

4. Aggrieved by the said order, the appellant preferred the present appeal. While issuing notice in the appeal, continuation of the departmental proceedings was stayed by an interim order passed by this Court. By order dated 5th February, 2003 the appeal was admitted but subsequently an order came to be passed on 9th February, 2005 by this Court wherein the following observations were made by the earlier Division Bench:

“We have given our careful consideration to the arguments advanced by the learned counsel for both the parties. Normally, the departmental proceedings are initiated to maintain probity in service and it is for the department concerned to take appropriate/suitable measures so as to keep the administrative hierarchy in order. Therefore, Court should normally not interfere and stay departmental proceedings.”

Having recorded the prima facie finding as aforesaid, the Division Bench held that it would not be appropriate to stay the departmental proceedings. Consequently, the interim order was

vacated, but to safeguard the interest of the appellant a direction was issued to the effect that the respondents would continue the departmental proceeding and would complete the same, but would keep the final order in a sealed cover to be opened subject to further orders by this Court.

5. Thereafter, the appeal was listed for hearing and the same was placed before us for hearing arguments of the counsel for the parties. We have accordingly heard the counsel appearing for the parties and also perused the records.

6. Consequent upon passing of the aforesaid order by the Division Bench of this Court, the departmental proceedings initiated against the petitioner have reached finality. We are informed during the course of hearing that the inquiry proceeding has been concluded and findings have been submitted, but the final order is not communicated in view of the order passed by the Division Bench. The contention that was raised by the appellant all along and even before us was that continuation of the departmental proceeding against the appellant on the same facts as those of the criminal case, which is pending for trial, would prejudicially affect the defence of the appellant in the criminal trial, for once the appellant discloses his defence in the departmental proceedings,

the same would prejudicially affect the criminal trial. The appellant also relied upon various judgments in support of this contention.

7.It is well settled that departmental proceedings and criminal case are separate and distinct and can go on simultaneously. Departmental proceeding are decided on the basis of preponderance of probability and in such proceedings, the standard of proof and the provisions of Evidence Act are not applicable. On the other hand, the standard of proof in a criminal trial is as per the provisions of the Indian Evidence Act, 1872, which requires proof beyond all reasonable doubt. There is also difference with regard to the object and purpose of the two proceedings. The object and purpose of a departmental proceedings is to determine whether the delinquent officer is guilty of misconduct. Disciplinary proceedings are initiated for the purpose of maintaining discipline and efficiency in public service. Criminal prosecution is launched for an offence of breach of law, which implies infringement of public duty punishable under criminal law as distinguished from mere private rights in disciplinary proceedings. (See: **Hindustan Petroleum**

Corporation Ltd v. **Sarvesh Berry** reported in (2005) 10 SCC

471)

8. What is required to be seen in such cases is whether the departmental proceedings and criminal case are based on same set of facts and whether the evidence may be common. The other aspect to be considered is whether the departmental proceedings, if allowed to continue, would seriously prejudice the delinquent employee in his defence at the trial of the criminal case. No straitjacket formula can be applied and each case has to be considered on its own facts and on its own merit. This aspect has been examined by the Supreme Court in **Depot Manager, A.P. SRTC v. Mohd. Yousuf Miya** (1997) 2 SCC 699; **State of Rajasthan v. B.K.Meena** (1996) 6 SCC 417 and other cases. In **State of Rajasthan v. B.K.Meena** (supra), after referring to several judgments, the following conclusions were promulgated:

“22. 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, the administration may get rid of him at the earliest."

9. In the case of **Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and another** reported in (1999) 3 SCC 679, to which the learned Single Judge has also referred to in the impugned judgment, it was held that there is consensus of judicial opinion on

the basic principle that proceedings in a criminal case and departmental proceedings can go on simultaneously, unless there are certain special circumstances, which attract factors mentioned in clauses (ii) and (iii) as propounded in **B.K.Meena's** case (supra). Even factors mentioned in clauses (ii) and (iii) 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 and they should be concluded within a reasonable time. Ratio laid down in the aforesaid decisions was reiterated by the Supreme Court in the case of **Kendriya Vidyalaya Sanghathan & Others v. T. Srinivas** reported (2004) 7 SCC 442.

10. Keeping in mind the aforesaid parameters which depict the settled position of law, we have analysed the facts to determine the case in hand. The criminal case which is pending for consideration is at the stage of recording of evidence whereas the disciplinary proceedings stand concluded. The defence of the appellant is already disclosed and, therefore, there is no question of the appellant being prejudicially affected in the trial of the criminal case pending against him. The departmental proceeding having been concluded, there is no bar now for communication of

the order of the disciplinary authority on the findings recorded by the Inquiry Officer. Copy of the inquiry report was also served on the appellant. In the said inquiry report, the defence of the appellant is fully disclosed. The defence having been revealed, we find no justification for staying further action in the departmental proceedings. This is not a case which can be regarded as one where grave prejudice would be caused to the appellant. There is already delay in finalising the departmental proceedings and any further delay in communication of the order would, in our opinion, jeopardise the interest of the department.

11. In this view of the matter, we find no reason to take a different view than that taken by the learned Single Judge. The appeal has no merit and is accordingly dismissed.

CHIEF JUSTICE

(REVA KHERTAPAL)
JUDGE

17th MARCH, 2008
“V”