

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on: 25.05.2012
Judgment pronounced on: 29.05.2012

+ **W.P.(C) 3203/2012**

Sh. Rakesh Kumar S/o Sh. O.P. Gupta, (IFS:1972) Petitioner

versus

The Union of India Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Mukul Sharma
For the Respondent : Mr. Sumeet Pushkarna

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE V.K.JAIN

V.K. JAIN, J.

The petitioner is a member of Indian Foreign Service (IFS) and was on deputation with Indian Council of Cultural Relations (ICCR), as its Director General from 19.08.2003 to 12.09.2005. An FIR under Sections 420/468/471 IPC and Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act was registered by the Central Bureau of Investigations, on 27.02.2006. On completing investigation, the CBI filed a charge-sheet on 24.12.2007 against five persons, including the petitioner. A charge-sheet comprising the following charges was served upon the petitioner, vide memorandum dated 01.04.2008.

Article I: That the said Shri Rakesh Kumar, while working as Director General, Indian Council for Cultural Relations (ICCR), facilitated empanelment of a bogus cultural group called “Mehak Punjab Di”.

Article II: That the said Shri Rakesh Kumar, while working as Director General of Indian Council for Cultural Relations, illegally trafficked nine individuals to Germany under the guise of the said cultural group “Mehak Punjab Di” by misusing his official position for extraneous considerations.

Article III: That the said Shri Rakesh Kumar, while working as director General of Indian council for Cultural Relations, entered into a criminal conspiracy with some persons with a motive to cheat ICCR (Government of India) by way of illegal human trafficking from India to Germany on government expenses, for their personal gains/illegal gratification.

Article IV: That the said Shri Rakesh Kumar, while working as DG, ICCR, exercised undue influence on the members of the Experts’ Sub Committee for empanelment of cultural group “Mehak Punjab Di” though the performance of the group was not up to the mark.

Article V: That the said Shri Rakesh Kumar, while working as DG, ICCR, tampered with the official file containing minutes of the Experts Sub-committee by removing the note dated 24.08.2005 of Shri M.S. Grover, the then DDG (P), for approval of President, ICCR, and substituting the same with a note dated 25.08.05 of Shri R.M. Aggarwal, the then DDG.

Article VI: That the said Shri Rakesh Kumar, while working as DG, ICCR, approved the

empanelment list on the note of Shri R.M. Aggarwal, the then DDG (P) on 25.08.2005 without obtaining the approval of President ICCR, against the precedent followed in ICCR regarding the procedure of empanelment of cultural groups/artistes.

Article VII: That the said Shri Rakesh Kumar, while working as DG ICCR, sent a letter Dy No. OCD/165/2005-2006 dated 05.09.05 to Joint Secretary, Europe I Division seeking political clearance for the said group “Mehak Punjab Di” in which Shri Rakesh Kumar conveyed factually incorrect information that the said group was visiting Germany and other neighbouring countries whereas the said group was slated to visit Germany only.

Article VIII: That the said Shri Rakesh Kumar, went to Ludhiana, Punjab, on 01.09.2005-02.09.2005 to Shri Hargulab Singh and Shri Shiv Kumar Sharma, on the pretext of watching the performance of “Mehak Punjab Di”. Shri Rakesh Kumar sexually exploited a lady artist named Ms. Anju in Hotel Classic Retreat, Ludhiana. No prior/post approval for the said visit was obtained by Shri Kumar, who claimed an amount of Rs 170 towards Daily Allowance for one-day stay at Ludhiana. Payment of the said amount was made to Shri Kumar vide cheque No.023543 dated 24.02.06.”

2. OA No.1876/2008 was filed by the petitioner before the Central Administrative Tribunal (herein after referred to as the ‘Tribunal’), Principal Bench, New Delhi, challenging the charge-sheet. The same was disposed of by the Tribunal vide order dated 22.12.2009. The Tribunal noted that the petitioner had

made a representation dated 13.05.2008 to the President of India, taking a number of grounds, but the Disciplinary Authority, while considering the representation and deciding to institute an inquiry, had not discussed the points raised by the petitioner. The Tribunal directed the Disciplinary Authority to pass a speaking order on the representation of the petitioner. It was further directed that the Disciplinary Authority would not take any action in the disciplinary case till the decision was taken on the representation.

3. Vide order dated 09.03.2010, the petitioner was informed that his representation dated 13.05.2008 had been rejected. The petitioner filed OA No.2393/2010, challenging the order dated 09.03.2010, on the ground that it was a non speaking order. The OA was disposed of vide order dated 02.11.2010 by directing the Disciplinary Authority to pass a detailed order. In compliance of the order passed by the Tribunal, order dated 10.08.2011 was passed by the respondent, again rejecting the representation submitted by the petitioner. This order was challenged by the petitioner by way of original application No.3307/2011. The Tribunal, vide impugned order dated 12.04.2012, upheld the order dated 10.08.2011 passed by the respondent. Being aggrieved, the petitioner is before us by way of this writ petition.

4. In **Delhi Cloth and General Mills Ltd. v. Kushal Bhan:** AIR (1960) SC 806, the Supreme Court held that the employer should not wait for the decision of the criminal court, before taking any disciplinary action against the employee and that such decision on the part of the employer does not violate the principles of natural justice. The court, however, was of the view that if the case is of a grave nature or involves questions of facts and law, which are not simple, it would be advisable for the employer to await the decision of the trial court, so that the defence of the employee in the criminal case may not be prejudiced. This principle was reiterated by the Apex Court in **Tata Oil Mills Co. Ltd. v. Its Workmen:** AIR 1965 SC 155.

5. In **Kurusheshwar Dubey v. Bharat Coking Coal Ltd.:** AIR 1988 4 SCC 319, the Supreme Court was of the view that it is neither possible nor advisable to evolve a hard and fast, straight-jacket formula valid for all cases and of general application with regard to the particulars of the individual-situation and, therefore, it would depend on the facts and circumstances of a particular case as to whether there should or should not be simultaneous proceedings against the employee, one under the disciplinary rules applicable to him and the other under the criminal law.

6. In **Nelson Motis v. Union of India and Anr.:** (1992) 4 SCC 711, the Supreme Court held that disciplinary proceedings can be legally continued even

where the employee is acquitted in the criminal case, as the nature of proof required in criminal case are different from those in the departmental proceedings.

7. In **State of Rajasthan v. B.K. Meena and Ors.** (1996) 6 SCC 417, the Supreme Court inter-alia observed and held as under:-

“.....The staying of disciplinary proceedings, it is emphasised, is a matter to be determined having regard to the facts and circumstances of a given case and that no hard and fast Rules can be enunciated in that behalf. The only ground suggested in the above decisions as constituting a valid ground for staying the disciplinary proceedings is "that the defence of the employee in the criminal case may not be prejudiced." This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law. In our respectful opinion, it means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, 'advisability', 'desirability' or 'propriety', as the case may be, has to be determined in each case taking into consideration all the facts and circumstances of the case. The ground indicated in D.C.M. and Tata Oil Mills is also not an invariable rule. It is only a factor which will go into the scales while judging the advisability or desirability of staying the disciplinary proceedings. One of the contending consideration is that the disciplinary enquiry cannot be - and should not be - delayed unduly. So far as criminal cases are concerned, it is well-known that they drag on endlessly where high officials or persons holding high public offices are involved. They get bogged down on one or the

other ground. They hardly ever reach a prompt conclusion.....

It must be remembered that interests of administration demand that undesirable elements are thrown out and any charge of misdemeanour is enquired into promptly. The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. The interest of the delinquent officer also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges, his honour should be vindicated at the earliest possible moment and if he is guilty, he should be dealt with promptly according to law. It is not also in the interest of administration that persons accused of serious misdemeanour should be continued in office indefinitely, i.e., for long periods awaiting the result of criminal proceedings. It is not in the interest of administration. It only serves the interest of the guilty and dishonest.”

8. This question again came up for consideration of the Supreme Court in

Captain M. Paul Anthony v. Bharat Gold Mines Ltd. & Anr.: JT (1999) 2 SC

456, and the Court inter-alia held as under:-

5. (i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

6. (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.

7. (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.

8. (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.

9. (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.”

9. In *Ajit Kumar Nag v. General Manager (PJ), Indian Oil Corporation Ltd., Haldia and Ors.* (2005) 7 SCC 764, the Supreme Court inter-alia observed as under:-

“.....Acquittal by a criminal court would not debar an employer from exercising power in accordance with Rules and Regulations in force. The two proceedings - criminal and departmental - are entirely different. They operate in different fields and have different objectives. Whereas the

object of criminal trial is to inflict appropriate punishment on offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with service Rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond reasonable doubt', he cannot be convicted by a court of law. In departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of 'preponderance of probability'.....”

10. It would, thus, be seen that there is no legal bar on disciplinary proceedings and criminal trial proceedings simultaneously, against the same person. Since the standard of proof required in a criminal trial is much higher than the standard of proof required in a departmental inquiry, the rules of evidence applicable to a criminal trial, do not necessarily apply to departmental proceedings and, more importantly, neither the findings rendered in disciplinary proceedings are binding on the criminal court nor does the acquittal in criminal trial ipso facto lead to termination of disciplinary proceedings, the disciplinary proceedings should

ordinarily not be stayed during the pendency of the criminal trial. We cannot lose sight of the fact that a criminal trial, particularly in the cases investigated by the CBI, drags for a number of years and instances are not uncommon where some of the witnesses either die or become untraceable on account of reasons such as change of address, during the pendency of the criminal trial. On the other hand, departmental proceedings, if the Inquiry Officer is prompt and vigilant, can be concluded much faster. We also have to keep in mind the distinction between the rules of evidence which apply to a departmental inquiry viz a viz the rules which apply to a criminal trial. It is neither in the interest of the employee nor of the administration to stall the disciplinary proceedings pending decision in a criminal trial. The only exception to the general rule that the disciplinary authority and criminal trial should be allowed to proceed independent of each other are the cases in which the charges against the employee are grave and the case necessarily involves adjudication of complicated questions of law and fact, which a court is better suited to decide, as against the disciplinary authority.

11. On examination, the case of the petitioner, in the light of the aforesaid proposition of law, we are of the view that the charges against the petitioner do not require adjudication on complicated questions of fact and law. We find that vide note dated 10.08.2011, the Director (CNV), Ministry of External Affairs (Vigilance

Unit) took the following view on the note of the petitioner dated 13.05.2008 seeking stay in the departmental proceedings, till finalization of criminal trial.

“6.(i) So far as Article I is concerned, the same may be verified by examining the relevant orders passed by the delinquent officers while dealing the application submitted by cultural group “Mehak Punjab Di”.

(ii) So far Article II is concerned, the truth can be found out again by examining the orders passed by the delinquent while dealing with the case of the said group.

(iii) So far as Article III is concerned, the same can also be examined by recalling for the relevant records made basis to send the aforesaid cultural group to Germany on Government expenses.

(iv) So far as Article IV is concerned, it is again related to misuse of power and influencing the members of the sub-committee. The truth of the said allegations could be ascertained after verifying the relevant notings and orders in the file approved by such committees which were not in existence in ICCR as their tenure had already expired. The issue of tenure can be ascertained very easily by calling for the relevant file and examining the custodial of the said file.

(v) So far as Article V is concerned, the same is related to the tampering with the official file containing minutes of the Experts Sub-Committee. The said allegation can again be verified by calling for the relevant official file containing the minutes of the Experts Sub-Committee.

(vi) As far as Article No. VI, VII and VIII are concerned the same again are related to the violation of procedure, conveying incorrect

information to the higher authorities and availing hospitality on the pretext of watching the performance of “Mehak Punjab Di” and related to the sexual exploitation of the lady artist. The said allegations can also be examined by calling for the relevant records and recording the statement of the Artist.”

We are of the view that in the case before us, no complicated question of law or fact is involved. In view of decision of the Supreme Court in *B.K.Meena* (supra), the disciplinary proceedings cannot be stayed merely because the charges are grave. The twin requirement of charges being grave and complicated questions of law or fact arising in the matter needs to be fulfilled, before such proceedings can be stayed. Though, considering the nature of the charges against the petitioner, it will not be appropriate for us to analyze the charges against the petitioner in detail lest it prejudices the disciplinary proceedings or the criminal trial, we are of the view that no complicated questions of fact or law is likely to arise for consideration of the Inquiry Officer/Disciplinary Authority.

12. It was contended by the learned counsel for the petitioner that if the witnesses are examined in the disciplinary proceedings, before their examination in criminal trial then that is likely to prejudice the petitioner. We, however, find no merit in this contention. If the witness is examined in the criminal trial, subsequent to his examination in inquiry proceedings, the petitioner will get an opportunity to cross-examine him also with reference to his statement in the disciplinary

proceedings and confront him with contradictions, if any, between his previous statement and his statement in the criminal court. As noted earlier by us, the findings in the disciplinary proceedings are not binding upon the criminal court and the standard of proof required for conviction in a criminal case is much higher than the standard of proof required to prove the charge in disciplinary proceedings. We, therefore, find no reasonable possibility of any prejudice being caused to the petitioner, on account of departmental proceedings being held simultaneously with the criminal trial.

12. For the reasons stated hereinabove, we find no merit in the writ petition and the same is hereby dismissed with no orders as to costs.

V.K.JAIN, J

BADAR DURREZ AHMED, J

MAY 29, 2012

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