

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1381 OF 2014**

Mr. Rammani Tripathi

.. Petitioner.

vs.

The Union of India and anr.

.. Respondents.

Mr. A.M. Saraogi for the Petitioner.

Ms Pooja Saxena i/b T.J. Pandian for Respondent No.1.

Mr. C.P. Yadav, AGP for Respondent No.2.

**CORAM: D.H. WAGHELA, C.J. AND
M.S.SONAK, J.**

DATE : 08 MARCH 2016

P.C.:

1] The challenge in this petition is to the order dated 11 December 2013 made by the Central Administrative Tribunal (CAT), dismissing the petitioner's Original Application No.712 of 2013 seeking a stay upon departmental proceedings initiated under chargesheets dated 7 June 2013 and 12 June 2013, till the disposal of criminal cases, i.e., Special Cases Nos. 8 of 2012 and 9 of 2012 pending before the CBI Court at Kalyan.

2] Mr. A.M. Saraogi, learned counsel for the petitioner, placed reliance upon the decision of the Hon'ble Supreme Court in case of *Kusheswar Vs. Bharat Cooking Cool Ltd.*¹, has submitted that since the departmental proceedings and the criminal prosecution is on the basis of same set of facts, the CAT should have exercised its discretion and stay the departmental

¹ AIR 1988 SC 2118

proceedings until disposal of the criminal prosecution. Mr. Saraogi submitted that in the criminal prosecution, the petitioner has a right to remain silent in terms of the constitutional guarantees contained in Article 20(3) of the Constitution of India. Therefore, Mr. Saraogi submitted that in the departmental proceedings the petitioner cannot be forced to disclose his defence and such disclosure might embarrass the trial in the criminal prosecution. For these reasons, Mr. Saraogi submitted that the impugned order made by the CAT, which is even otherwise a non-speaking order, warrants interference.

3] Mr. Saraogi is perhaps right in his criticism of the CAT order being a non-speaking one. However, in the peculiar facts and circumstances of the present case, rather than remand the matter to the CAT, we have permitted Mr. Saragoi to make submissions in the context of the reliefs applied for by the petitioner in the original application, which has since been dismissed by the impugned order. Upon due consideration of such submissions as well as the material on record, we are satisfied that the conclusion recorded in the impugned order warrants no interference in the exercise of writ jurisdiction under Articles 226 and 227 of the Constitution of India. Admittedly, cases under the Indian Penal Code and the Prevention of Corruption Act, in the form of Special Case Nos. 8 of 2012 and 9 of 2012 are pending before the Special Judge under the Prevention of Corruption Act at Kalyan, involving the petitioner. These cases are pending since June 2013. The chargesheets in the departmental proceedings also

came to be issued to the petitioner in June 2013. As recorded in the impugned order, the departmental proceedings, even when the impugned order was made on 11 December 2013 were at fairly advanced stage. In these circumstances, it cannot be said that the CAT either failed to exercise jurisdiction or exercised its discretion unreasonably, in declining to stay the departmental proceedings.

4] The decision in case of *Kusheswar (supra)*, relied upon by the learned counsel for the petitioner is not an authority for the proposition that in every case, the Court must stay departmental proceedings, merely because a criminal prosecution is pending. Even the said decision speaks about exercise of discretion. Such exercise of discretion depends upon several factors and the stage at which the departmental proceedings have reached, is certainly one of the relevant factor.

5] In fact, it is settled position in law that merely because a criminal trial is pending, a departmental enquiry involving the very same charges is not barred. Further, the approach and objective in criminal prosecution and departmental proceedings is altogether distinct and different. In the former case, if the misconduct is proved, it may result in imposition of penalty like removal from service etc.. Whereas in the later case, if the allegation against the employee are proved beyond reasonable doubt, the same may result in imposition of a sentence. In fact, the Hon'ble Supreme Court in various cases, including the *State of*

***Rajasthan Vs. B.K. Meena & ors.*², *Capt. M. Paul Anthony Vs. Bharat Gold Mines Limited*³, *Kendriya Vidyalaya Sangathan & ors Vs. T. Srinivas*⁴ and *Hindustan Petroleum Corporation Ltd. Vs. Sarvesh Berry*⁵** have laid down the various parameters to be taken into consideration, when discretion is to be exercised in such matters. Therein, amongst other matters, it has been held that in serious cases like acceptance of illegal gratification, Competent Authority may proceed with the departmental action taking into consideration the desirability of continuing the Government servant in service. Only in a case where it is established that the charge in the criminal case is of a grave nature and complicated questions of fact and law are involved, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case. For taking such decision, the nature of offence, the material collected against the Government servant during the investigation or as reflected in the chargesheet would be some of the relevant factors. Even in such a situation, if it is found that the criminal case does not proceed or is unduly delayed, the departmental proceedings can be resumed. This should be done with a view to concluding the departmental proceedings so that if the Government servant is not found guilty, his honour may be vindicated and in case if he is found guilty, the department may impose appropriate penalty.

2 1996(6) SCC 417

3 1999 (3) SCC 679

4 2004(6) SCALE 467

5 2004(10) SCALE 340

6] Thus, there are no hard and fast or inflexible rules, which can apply in all cases invariably and each case has to be considered in the backdrop of its own facts and circumstances.

7] In the present case, the learned counsel for the petitioner, in the context of parameters referred to above, has been unable to satisfy us that the departmental proceedings, which were already at an advanced stage, are required to be stayed pending the criminal prosecution. In fact, considering the position that the departmental proceedings were at an advanced stage on 11 December 2013 when the impugned order was made, by now, it is legitimate to proceed on the basis that the departmental proceedings stand concluded. However, neither of the counsel were able to make any statement in this regard. Suffice to record that upon application of aforesaid parameters to the facts of this matter, this is not a fit case for stay of departmental proceedings pending the criminal prosecution.

8] For the aforesaid reasons, this petition is dismissed. There shall, however, be no order as to costs.

CHIEF JUSTICE

(M.S.SONAK, J.)