

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.23719 of 2016 (O&M)

Date of Decision: November 17, 2016

P.K.Mandal

---Petitioner

Versus

Union of India and others

---Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Harinder Singh Sidhu**

**Present: Mr.Bipan Sharma and Mr.Abhimanyu Kalsy, Advocates
for the petitioner.**

HARINDER SINGH SIDHU, J.

1. Challenge in the present writ petition is to order dated 30.5.2016 passed by Central Administrative Tribunal, Chandigarh Bench, Chandigarh, whereby Original Application filed by the petitioner praying for quashing of charge-sheet dated 11.3.2015 issued to him for major penalty under Rule 14 of Central Civil Services (Classification, Control and Appeal) Rules, 1965 and also for quashing the orders dated 29.4.2015 appointing Enquiring Authority and Presenting Officer for holding enquiry into the said charge-sheet, was dismissed.

2. On 20.3.2013 when the petitioner was posted as Assistant Manager in CSD Depot, Bathinda, his house in the CSD residential complex Bathinda was searched and huge quantity of CSD General Stores worth ₹5 to 6 lacs, 32 bottles of liquor of different brands and cash amounting to ₹14,22,965/-, was recovered. He was charge-sheeted for un-authorised

possession of CSD General Stores and liquor. FIR No.52 dated 14.5.2013 under Section 13(1)(e) of the Prevention of Corruption Act, 1988 was also registered against the petitioner at Police Station Bathinda Cantt. After the presentation of report under Section 173 Cr.P.C., the petitioner is facing trial for the said offence before the Special Court, Bathinda.

3. The only grievance which the petitioner pressed before the Tribunal was that, as the criminal trial and the disciplinary proceedings are based on identical facts and contain identical charges, therefore, initiation of enquiry proceedings during the pendency of the criminal trial will gravely prejudice his defence in the criminal trial. It was accordingly prayed that the enquiry proceedings be kept in abeyance till the conclusion of the criminal trial.

4. The Tribunal took note of the fact that as per the list of witnesses, annexed with the charge-sheet and the list of witnesses annexed with the report under Section 173 Cr.P.C only four witnesses, namely Ranjit Singh, Investigating Officer, Parveen Saini, Manager, State Bank of India, Sandhya Kujur, Area, Manager, CSD Depot and Lt. Col. Keshoo Ram were common in both the proceedings. The said four witnesses and two other witnesses had already been examined in the criminal trial. As all the four common witnesses had already been examined, no prejudice would be caused to the petitioner if the disciplinary enquiry is allowed to proceed against him. Accordingly, the OA was dismissed.

5. Assailing the order of the Tribunal, Ld. Counsel for the petitioner has placed reliance on a decision of this Court in CWP No.9033 of 2013 titled **“Union of India and others vs. Central Administrative Tribunal & others”** decided on 30.7.2013, where considering that

departmental proceedings and the criminal case were based on identical facts and the same evidence was to be relied upon in the criminal case as well as in the disciplinary proceedings, it was directed that as soon as the employee takes his defence in the criminal case, whether during the course of cross-examination of the prosecution witnesses and/or by leading defence evidence, the department would be at liberty to proceed with departmental action as that would be a stage which shall cause no prejudice to the delinquent official.

6. The Tribunal considered the aforesaid case and concluded that the question of disclosing petitioner's defence in the enquiry proceedings, which may prejudice him in the criminal trial, does not arise as the material witnesses common in both the proceedings have already been examined in the criminal case and they have also been cross-examined by the petitioner. Therefore, there would be no prejudice to the petitioner in the criminal trial.

7. We see no reason to disagree with the view taken by the Tribunal.

8. The question of stay of disciplinary proceedings during pendency of a criminal trial has recently been considered by Hon'ble the Supreme Court in **Stanzen Toyotetsu India (P) Ltd. v. Girish V. and others, (2014) 3 SCC 636**, where after a review of the case law it was concluded as under:

“13. It is unnecessary to multiply decisions on the subject for the legal position as emerging from the above pronouncements and the earlier pronouncements of this Court in a large number of similar cases is well settled that disciplinary proceedings and proceedings in a criminal case can proceed simultaneously in the absence of any legal bar to

such simultaneity. It is also evident that while seriousness of the charge levelled against the employees is a consideration, the same is not by itself sufficient unless the case also involves complicated questions of law and fact. Even when the charge is found to be serious and complicated questions of fact and law that arise for consideration, the court will have to keep in mind the fact that departmental proceedings cannot be suspended indefinitely or delayed unduly.

14. In Paul Anthony this Court went a step further to hold that departmental proceedings can be resumed and proceeded even when they may have been stayed earlier in cases where the criminal trial does not make any headway.

15. To the same effect is the decision of this Court in State of Rajasthan v. B.K. Meena, where this Court reiterated that there was no legal bar for both proceedings to go on simultaneously unless there is a likelihood of the employee suffering prejudice in the criminal trial. What is significant is that the likelihood of prejudice itself is hedged by providing that not only should the charge be grave but even the case must involve complicated questions of law and fact. Stay of proceedings at any rate cannot and should not be a matter of course.”

9. It has been held that ordinarily the departmental proceedings and criminal case can go on simultaneously unless there is a likelihood of the employee suffering prejudice in the criminal trial. Also not only should the charge be grave but the case must involve complicated questions of law and fact.

10. In the present case, in view of the fact that the material witnesses common in both the proceedings have already been examined in the criminal case and they have also been cross-examined by the petitioner, we do not see any serious prejudice to the petitioner in the criminal trial if

the departmental proceedings were to continue. Nor to our mind does the case involve any complicated questions of law and fact to warrant stay of the departmental proceedings till the conclusion of the criminal trial.

11. Accordingly, there is no merit in the petition and the same is dismissed.

(RAJESH BINDAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

November 17, 2016

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Whether speaking/ reasoned:

Yes/No

Whether Reportable:

Yes/No