

**HON'BLE SRI JUSTICE A.RAJASHEKER REDDY
AND
HON'BLE SRI JUSTICE K.LAKSHMAN**

Writ Petition Nos.10451 & 10471 OF 2020

COMMON ORDER:

Both these writ petitions are directed against orders passed by the Central Administrative Tribunal (CAT), Hyderabad in O.A.No.21/184 of 2019 and O.A.21/288 of 2019, respectively, wherein and whereby the CAT dismissed the applications filed by the petitioners for staying the disciplinary proceedings on the ground that the criminal proceedings are pending on identical charges.

It is the case of the petitioners that they are working as Office Assistants in the office of Senior Superintendent of Post Offices, Hyderabad City Division. While so, the Central Bureau of Investigation (CBI), Hyderabad branch registered a case vide FIR No.27(A)/2016, dated 03.12.2016 against the petitioners and some others and also filed a final report under Section 173 of Cr.P.C before the Court of Special Judge for CBI Cases, Hyderabad during 2017. The petitioners were arrayed as A4 and A3 respectively. The Court of the Special Judge for CBI Cases, has taken cognizance of the offences reported by the CBI under Section 109, 120B r/w 409, 420 and 477-A of IPC and Section 13(2) r/w 13(1)(c) and (d) of Prevention of Corruption Act, 1988 vide C.C.No.15 of 2017 and after framing charges, commenced trial. The CBI simultaneously recommended initiation of disciplinary proceedings against the petitioners. The 5th respondent issued charge Memo dated 18.01.2019, to which, the petitioners submitted explanation on 28.01.2019 denying the charges, duly bringing the fact of pending of criminal proceedings covering the very same charges. The 5th respondent also appointed an Inquiry Officer vide Memo dated

11.02.2019 to inquire into the charges, who issued notice to commence the disciplinary inquiry. Challenging the same, they filed O.A.No.21/184 of 2019 and O.A.No.21/288 of 2019 for stay of disciplinary proceedings. The CAT dismissed the applications filed by the petitioners, without considering the fact of pendency criminal proceedings. Aggrieved by the same, present writ petitions are filed.

Heard Sri K.R.K.V.Prasad, learned counsel for the petitioners as well as Sri Namavarapu Rajeshwar Rao, learned Assistant Solicitor General for the respondents.

Learned counsel for the petitioners submits that the charges in criminal case as well as charges in the disciplinary proceedings are almost identical. He also submits that the witnesses and the documentary evidence relied on are also common in both the matters. He submits that complicated questions of law and fact are involved in the matter and that already five witnesses were examined in criminal case, registered by CBI; that due to Covid-19, the trial could not be proceeded further. He submits that if the disciplinary proceedings are allowed to continue, the petitioners will be forced to disclose their defence, but the CAT, without considering the said aspects, erroneously dismissed the applications filed by the petitioners. He submits that though there is no bar for continuation of disciplinary proceedings pending criminal case, but when identical charges are framed basing on the same set of facts, the authorities should postpone the disciplinary proceedings. In support of his contention, he relied on the judgment reported in **Stanzen Toyotetsu India Private Limited v. Girish V.**¹ and also relied on the clause 81 of Postal Manual (Volume III) of Central Civil Services (Classification, Control and Appeal) Rules, 1965 and Schedule of Administrative Powers of Officers and also Office

¹ (2014) 3 Supreme Court Cases 636

Memorandum No.11012/6/2007-Estt.A, dated 01.08.2007 issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions Department of Personnel and Training, New Delhi. He further submits that though several accused are involved in criminal case, but some of the co-accused are also made as witnesses in the case. He submits that when complicated questions of law and fact are involved, it is desirable that the disciplinary proceedings should be kept in abeyance or postponed, till conclusion of criminal proceedings. He also submits that the charge sheet in criminal case is filed in the year 2017, whereas the disciplinary proceedings are initiated in the year 2019. He submits that even when the petitioners brought to the notice of the competent authority about the pendency of criminal proceedings, the competent authority had not considered the desirability of postponing the disciplinary proceedings as per Clause 81 of the Postal Manual or Office Memorandum dated 01.08.2007.

On the other hand, Sri Namavarapu Rajeshwar Rao, learned Assistant Solicitor General appearing for the respondents, vehemently opposing the writ petitions, submits that the petitioners are involved in serious crime and there is no bar in simultaneous continuance of disciplinary proceedings as well as criminal proceedings. He also submits that CAT has rightly come to the conclusion that the disciplinary proceedings can proceed as criminal proceedings will take long time. He also submits that the petitioners, as a matter of fact, cannot seek staying of disciplinary proceedings pending criminal proceedings. He also submits that all the witnesses in criminal case are not the witnesses before the disciplinary authority, as such, the CAT, after considering the said aspects, rightly dismissed the applications of the petitioners. He further submits that the nature of proof in criminal case is beyond reasonable doubt, but whereas the strict proof is not

required in disciplinary proceedings as preponderance of probability is sufficient to indict delinquent employee.

In this case, a perusal of Articles I to IV framed against petitioner in Memo No.Vig/DM/RC-27(A)/R-14/KSK, dated 18.01.2019 and charges framed in criminal case goes to show that the charges are almost similar on same set of facts apart from the documents. The witnesses are also common. Though the figure of witnesses referred to in the disciplinary proceedings are less, but nonetheless common witnesses are found in both the cases. The allegations made against the petitioners in the charge sheet as well as Articles of charges I to IV go to show that both are interlinked. No doubt, charge sheet is filed against other accused also, but the disciplinary proceedings are initiated against individuals, wherein the facts are interconnected.

In view of the above, we are of the opinion that if disciplinary proceedings are allowed to continue, the petitioners would be forced to disclose their defence before the trial commences in criminal proceedings. These aspects were not considered by the CAT in proper perspective while considering the applications filed by the petitioners for stay of disciplinary proceedings pending criminal case. No doubt, the nature of proof required in criminal case and the nature of proof in disciplinary proceedings, as observed by the CAT is not the same. In criminal case, the nature of proof should be proof beyond reasonable for a person to be convicted, whereas in disciplinary proceedings, the person is to be convicted, whereas in disciplinary proceedings, preponderance of probability is sufficient to indict the person. A reading of the charge sheet in criminal case and Articles of Charge in disciplinary proceedings goes to show that complicated questions of fact and law are involved, as such, on that ground also disciplinary proceedings need to be postponed.

No doubt, in a catena of decisions, the Hon'ble Apex Court held that there is no bar in continuance of disciplinary proceedings pending criminal cases, but when it comes to initiation of both the proceedings almost on identical facts, the Hon'ble Supreme Court in **Stanzen Toyotetsu India Private Limited v. Girish V. (supra)**, held as follows:

“19. In the circumstances and taking into consideration all aspects mentioned above as also keeping in view the fact that all the three courts below have exercised their discretion in favour of staying the ongoing disciplinary proceedings, we do not consider it fit to vacate the said order straightaway. Interests of justice would, in our opinion, be sufficiently served if we direct the court dealing with the criminal charges against the respondents to conclude the proceedings as expeditiously as possible but in any case within a period of one year from the date of this order. We hope and trust that the trial court will take effective steps to ensure that the witnesses are served, appear and are examined. The court may for that purpose adjourn the case for no more than a fortnight every time an adjournment is necessary. We also expect the accused in the criminal case to cooperate with the trial court for an early completion of the proceedings. We say so because experience has shown that the trials often linger on for a long time on account of non-availability of the defence lawyers to cross-examine the witnesses or on account of adjournments sought by them on the flimsiest of the grounds. All that needs to be avoided. In case, however, the trial is not completed within the period of one year from the date of this order, despite the steps which the trial court has been directed to take the disciplinary proceedings initiated against the respondents shall be resumed and concluded by the inquiry officer concerned. The impugned orders shall in that case stand vacated upon expiry of the period of one year from the date of the order.”

That apart, clause 81 of the Postal Manual reads as follows:

“81. Once a charge-sheet has been filed in the court against an employee, the disciplinary proceedings, if any, initiated against him on the same facts of the case should be kept in abeyance till the finalization of the criminal proceedings. Similarly, an appeal filed against the penalty imposed in the departmental case should not be disposed of, if in the meantime criminal proceedings on the same facts of the case have been initiated.”

In view of the law laid down by the Hon'ble Supreme Court as well as clause 81 of the Postal Manual, we are of the opinion that the disciplinary proceedings needs to be postponed pending criminal proceedings. The Office Memorandum dated 01.08.2007 also makes it mandatory that 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. These aspects were not considered by the competent authority before initiating disciplinary proceedings. However, staying of disciplinary proceedings pending criminal proceedings will depend upon the facts and circumstances of each case.

In view of above facts and circumstances, we are of the opinion that the disciplinary proceedings may be kept in abeyance for a period one year keeping in view of the prevailing circumstances. The trial Court is also to take steps for disposal of criminal case against petitioners, as already five witnesses were examined, as expeditiously as possible. In case, the criminal proceedings cannot be concluded within a period of one year, it is for the competent authority to once again review the situation and take a decision for continuation of disciplinary proceedings.

Accordingly, these writ petitions are allowed to the extent indicated above. There shall be no order as to costs. As a sequel thereto, miscellaneous applications, if any, pending in these Writ Petitions, shall stand dismissed.

A.RAJASHEKER REDDY, J

K.LAKSHMAN, J

Date: 24.07.2020
kvs/tk

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