IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-9149-2022
Reserved on: 02.05.2022
Pronounced on : 30.05.2022

Baldev Singh Sandhu

……Petitioner

Versus

Union of India and others

……Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE VIKAS SURI

Present: Mr. Rajiv Atma Ram, Senior Advocate with
Mr. Abhinav Chadha, Advocate for the petitioner.

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G.S. Sandhawalia, J.

Challenge in the present writ petition filed under Article 226 of the Constitution of India is to the order passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as 'the Tribunal') dated 18.04.2022 (Annexure P-7), whereby the Tribunal has declined to stay the departmental proceedings which have been initiated against the petitioner.

2. While dismissing the original application filed by the petitioner herein, the Tribunal came to the conclusion that there was lapse on the part of the successive Inquiry Officers and they had failed to conclude the inquiry proceedings, though an undertaking had been given in Original Application No.060/908/2014. Resultantly, directions were issued to the Union Revenue Secretary to place the entire mater before the disciplinary authority, who had to monitor the whole inquiry proceedings, which were pending before the Inquiry Officer-respondent No.3 herein, keeping in view

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the law laid down by the Apex Court in **Prem Nath Bali Vs. High Court of Delhi & others, (2015) 16 SCC 415 .**

3. Senior counsel for the petitioner strenuously submitted that the Tribunal was in error in not staying the departmental proceedings while placing reliance upon the judgments of the Apex Court **Kusheshwar Dubey Vs. Ms Bharat Coking Coal Ltd. and others, (1988) 4 SCC 319; M/s Stanzen Toyotetsu India P. Ltd. Vs. Girish V and others, (2014) 1 SCC (L&S) 641** and **Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd., (1999) 3 SCC 679.** He submitted that since the petitioner was being prosecuted on the criminal side and a charge-sheet had been framed under various provisions of Prevention of Corruption Act, his defence would be prejudiced in case the departmental proceedings are allowed to continue.

4. It was, accordingly, contended that Central Civil Services (Classification, Control & Appeal) Rules, 1965 (hereinafter referred to as '1965 Rules) provided that a mandate was there that the inquiry proceedings should be concluded within a period of six months. If it was not possible to adhere to the time limit specified, the Inquiring Authority may record the reasons and seek extension from the disciplinary authority and extension was not to be allowed exceeding six months at a time while referring to sub-Rule 24 of Rule 14 of 1965 Rules. It was, accordingly, submitted that the charge-sheet had been issued on 05.10.2012 (Annexure A-1), but the

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proceedings had not been culminated, leading to the mis-carriage of justice to the petitioner. The petitioner had also been prosecuted on the criminal side, where charge had been framed on 07.05.2015 (Annexure A-16) on the same set of circumstances.

5. After hearing senior counsel for the petitioner, we are of the considered opinion that it is settled principle that no hard and fast rule is applicable that the departmental proceedings have to be stayed at the instance of the employee at the asking. Due regard has to be taken to the fact that departmental proceedings cannot always be delayed, which in the present case have already lingered for over a decade. In the present case even though there were directions issued by the Tribunal vide order dated 28.10.2014 (Annexure A-8) at the instance of the petitioner himself that the inquiry proceedings would be concluded expeditiously, the same have not been concluded.

6. It is not disputed that at that point of time when the petitioner was in service, he himself had filed the Original Application No.60/908/2014, wherein the alternative prayer was allowed to complete the inquiry proceedings in a time bound manner. He eventually superannuated on 30.09.2015 and now has had a change of heart, as the prayer made in the present original application which was filed in September, 2021 was to keep the inquiry proceedings in abeyance till the conclusion of the criminal trial in the FIR. It was in such circumstances the Tribunal has also held that he attempted to play hide and seek and there is a inherent

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contradiction in both the prayers and he cannot be allowed to make the said prayer at this stage.

7. The paper-book would go on to show that an FIR bearing No.RC.3/A/2005-SCR.I dated 12.04.2005 under Sections 13 (2), 13 (1) (e) of Prevention of Corruption Act, 1988 read with Section 109 of Indian Penal Code was lodged by the Superintendent of Police, CBI, New Delhi, at Police Station, CBI, New Delhi, against the petitioner who was then working as a Commissioner of Income Tax at Ahmedabad. The same was on account of the fact that his assets have grown grossly disproportionate to his known sources of income from the year 1999 onwards. Criminal proceedings were initiated against him by noting the assets which had been acquired by him, his father, mother and son from 01.04.1999 to 28.02.2005. The properties which were acquired by them are as under:-

S.No.	**Particulars**	**Period of acquisition**	**Amount in Rs.**
1.	DDA flat category-III, Dwarka, New Delhi	Year 2003	4,70,520/-
2.	Flatn No.H, 4th floor, Surya Kiran Building, The Mall, Ludhiana	Year 2003	18,65,000/-
3.	Agricultural land at village Fatehgarh Panjgrain Tehsil Dhuri, 7 Biswas (son)	Year 2003	74,200/-
4.	Agricultural land at village Fatehgarh Panjgrain Tehsil Dhuri, 1 Bigha 1 Biswa (son)	Year 2003	55,850/-
5.	Agricultural land at village Fatehgarh Panjgrain Tehsil Dhuri, 5 Bighas (son)	Year 2004	3,12,440/-

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6.	House No.847, Guru Nanak Colony Tehsil Malerkotla (faher)	Year of construction 1999	20,71,500/-
7.	Land owned by M/s Satkartar Rice Mill, Nabha Road, Malerkotla (company owned by father)	Year 1999	34,80,560/-
8.	Agricultural land at village Fatehgarh Panjgrain Tehsil Dhuri, 8 Bighas 2 Biswas and 15 Biswansi (father)	Year 2004	4,50,000/-
9.	Agricultural land at village Fatehgarh Panjgrain Tehsil Dhuri (father) 3 Bighas 9 Biswas	Year 1999	1,18,235/-
10.	Agricultural land at village Fatehgarh Panjgrain Tehsil Dhuri (father) 54 Bighas 8 Biswas	Year 1999 and 2001	20,98,805/-
11.	Agricultural land at village Fatehgarh Panjgrain Tehsil Dhuri (father) 2 Bighas 18 Biswas	Year 2004	1,84,040/-
12.	Agricultural land at village Ahmednagar Malerkotla (mother) 27 Bighas 12 Biswas	Year 1999	11,90,840
		Total	1,23,71,990/-

8. Apart from the factum of the income which was received by the said family, the expenditure was also taken into consideration to come to the conclusion that assets were disproportionate to the extent of Rs.60,60,190/-. In the FIR it was also mentioned that he has *benami* rice shellers, residential and commercial properties and large chunks of agricultural land and movable assets like jewellery, vehicles, balances in the bank accounts, which were not included in the calculation.

9. On 05.10.2012 (Annexure A-1) under Rule 14 of the 1965 Rules, Articles of Charge and the Statement of Imputation of

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misconduct and misbehaviour was served upon him, apart from the fact that by abusing his official position and by corrupt and illegal means, he had acquired properties from 01.04.1999 to 14.04.2005. There were allegations that without taking prior permission or giving any intimation to the competent authority in violation of the provisions of Rule 18 (2) and (3) of the Central Civil Services (Conduct) Rules, 1964 (hereinafter referred to as '1964 Rules') he had made the investments. Similarly the fact that he had failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a public servant and contravened the provisions of Rule 3 (1) (i to iii) of the 1964 Rules, was among the article of charge. Articles of charge reads as under:-

> "**Articles of charge framed against Shri Baldev Singh Sandhu, Commissioner of Income Tax, CIB (sic. CBI), Ahmedabad (IRS Civil No.81027).**
>
> Shri Baldev Singh Sandhu while working as a public servant in different capacities at different places in the Income Tax Department during the period 01.04.1999 to 14.04.2005, by abusing his official position and by corrupt and illegal means, acquired moveable and immovable assets in the name of self and his family members during the said period that were disproportionate to the tune of Rs.2,59,43,921/- to his known legal sources of income which he has not been able to explain.
>
> Shri Baldev Singh Sandhu had made investments during the period 01.04.1999 to 14.04.2005 in the various moveable and immovable properties as mentioned in the statement of moveable and and immovable assets (Statement- B) without obtaining any prior permission of giving any intimation in this regard to his competent

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> authority in violation of the provisions of Rule 18(2) and 18(3) of the CCS (Conduct) Rules, 1964.
>
> By his aforesaid act, Shri Baldev Singh Sandhu, Commissioner of Income Tax failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a public servant and thereby contraended the provisions of Rule 3(1)(i), 3(1) (ii) and 3(1)(iii) of CCS (Conduct) Rules, 1964."

10. Similarly Statement of Imputation would go on to show that he acquired moveable and immoveable assets of Rs.3,74,43,257/-, which were disproportionate to the tune of Rs.2,59,43,921/- and the same was done without taking prior permission or giving intimation.

11. It is not disputed that an Inquiry Officer namely Ms. Nishi Singh, the then Chief Commissioner of Income Tax, Ludhiana, was also appointed on 02.09.2014 (Annexure A-6). At that point of time the grievance of the petitioner as such was against the order of the appointment of the Inquiry Officer and the learned Tribunal had passed the following order on 28.10.2014 (Annexure A-8):-

> "By means of the present O.A, at the first instance, the applicant seeks quashing of impugned letter (Annexure A/5) and order dated 02.09.2014 (Annexure P/6) and in the alternative prayer, he has sought issuance of a direction to the respondents to complete the inquiry proceeding in a time bound period, as envisaged even as per CVC instructions.
>
> 2. Notice of motion was issued on 13.10.2014 and Sh. Sanjay Goyal, Advocate appeared and accepted notice on

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behalf of the respondents and the matter was posted for hearing for 20.10.2014. On that date, a statement was made by the learned counsel appearing on behalf of applicant that he would restrict his prayer to the limited extent to direct the respondents to conclude the inquiry proceedings initiated against the applicant within some stipulated time. The respondents were granted time to have instruction in this behalf.

3. Today, Sh. K.K.Thakur, Advocate appeared on behalf of the respondents and submitted that the authorities have no objection to the acceptance of alternative prayer of the applicant for concluding the enquiry proceeding expeditious as per the CVC guidelines, subject to co-operation of the applicant.

4. Sh. Navjot Singh, learned counsel for the applicant submitted that the applicant has already submitted his defence statement, therefore, the respondents be directed to conclude the enquiry proceeding expeditiously.

5. Considering the consensual agreement arrived between the parties and without commenting on the merit of the case, we dispose of the present O.A with a direction to the competent authority amongst the respondents to conclude the enquiry proceeding expeditiously as per the CVC guidelines and we hope and expect that the applicant would also co-operate in the proceedings.

6. No costs."

12. The Tribunal has noticed that various inquiry officers have changed and it is a matter of fact that the petitioner also retired on 30.09.2015 and, therefore, at this stage the threat as such of dismissal will no longer loom over him. It is to be seen that many times departmental proceedings are sought to be stayed on this ground, if the same are conducted expeditiously, which might result

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in dismissal of the employee, whereas on criminal side he might get the benefit of acquittal on the same set of allegations.

13. Obviously notice having been served by respondent No.3 on 11.02.2021 (Annexure A-9) upon the petitioner to come forth in the departmental proceedings, had led to the change of heart. It is to be noticed that prior to this on 07.05.2015 (Annexure A-16) charge was framed by the Special Judge, CBI, Patiala. The order framing the charge reads as under:-

> "**<u>Charge-sheet</u>**
>
> I, Kanwaljit Singh Bajwa, Special Judge, CBI, Punjab, Patiala, do hereby charge you accused Baldev Singh Sandhu, Bhagwan Singh Sandhu, Gurdial Singh Sandhu, Karamjeet Kaur and Ravinder Kaur as follows:-
>
> Firstly, that during the period from 1.4.1999 to 14.4.2005 you accused Baldev Singh Sandhu while posted in Income Tax Department, Govt. of India, in various capacities and lastly as Commissioner of Income Tax, as public servant acquired assets in your name and in the names of your co-accused mentioned above, which were disproportionate to your known source of income to the tune of ₹2,59,43,921/-, which you could not satisfactorily account for and thereby committed the offence of criminal misconduct, specified in Section 13 (I) (e) read with 13 (2) of the Prevention of Corruption Act, 1988 and within the cognizance of this Court.
>
> Secondly, that you accused Bhagwan Singh Sandhu, Gurdial Singh Sandhu, Karamjeet Kaur and Ravinder Kaur during the above said period instigated/intentionally aided your co-accused Baldev Singh Sandhu in the commission of said offence of

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criminal misconduct under Section 13 (I) (e) read with 13 (2) of the Prevention of Corruption Act, 1988, which was committed in consequence of your abetment in as much as you accused accumulated assets in your names by using ill-gotten wealth of your co-accused Baldev Singh Sandhu, thereby committed an offence punishable under Section 109 of Indian Penal Code read with Section 13 (I) (e) read with 13 (2) of the Prevention of Corruption Act, 1988 and within the cognizance of this Court.

And I hereby direct that you all the above mentioned accused be tried by this Court on the above said charge.

(Kanwaljit Singh Bajwa)
Special Judge, CBI, Punjab,
Patiala 7.5.2015

Certified that the contents of the charge sheet have been readover and explained to the accused in simple Punjabi and they have fully understood it.

(Kanwaljit Singh Bajwa)
Special Judge, CBI, Punjab,
Patiala 7.5.2015"

14. It is not disputed that as observed by the Tribunal out of 195 prosecution witnesses, 32 have been examined and 63 witnesses are yet to be examined and there are also 77 covering witnesses.

15. A comparison of the charge-sheet issued on the departmental side and the charge framed by the criminal Court would go on to show that they operate within a different ambit regarding the non-disclosure of the properties which had been purchased without obtaining prior permission, which is nothing to do with the factum of the prosecution on the criminal side. Similarly, the charge of maintaining absolute integrity in the duty and had acting in a manner unbecoming of public servants as contravened

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the provisions of service rules and nothing is interconnected with criminal proceedings and, therefore, the departmental proceedings are operating within a different framework.

16. In similar circumstances the coordinate Bench of this Court in **Dr. Balwinder Kumar Sharma Vs. Hon'ble Punjab and Haryana High Court, through Registrar General and another, 2021 (3) SCT 25** wherein similar prayer was made, had dismissed the writ petition on the ground that highest standards of propriety and moral conduct of the Registrar (Recruitment) which was to be maintained, was another aspect before the departmental proceedings and it was not to be gone into and punished on the criminal side. It was also held after taking into consideration the judgments which have been cited by the learned Senior counsel herein also that the grant or decline of stay on the criminal side always depends on the facts of the case and there is no straight jacket formula.

17. Similar observations have also flowed from the Apex Court in the case of **Kusheshwar Dubey (supra)** regarding the hard and fast straight jacket formula validity, though the relief had been granted, since the High Court had opted for vacating the injunction, which had been granted by the Courts below. In the case of **Capt. M. Paul Anthony (supra)** the employee had been placed under suspension and subsistence allowance had not been paid to him during the pendency of the departmental proceedings and the criminal proceedings. Eventually he was acquitted on that side and

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resultantly the appeal was allowed, since the request for reinstatement had been rejected and the inquiry proceedings were held *ex parte,* the same were held vitiated on account of the violation of principles of natural justice and on account of non payment of subsistence allowance.

18. In the case of **M/s Stanzen Toyotetsu India P. Ltd. (supra)** while relying upon the earlier decision of the Apex Court in **State of Rajasthan Vs. B.K. Meena, 1996 (4) SCT 707,** it was held that the stay of proceedings could not be a matter of course. However, keeping in view the fact that all the three Courts had exercised their discretion in favour of staying the on-going departmental proceedings, the Apex Court thought it fit not to vacate the stay and directed the criminal Court to conclude the proceedings expeditiously and also with the condition that if the trial is not concluded within a period of one year, the stay would be deemed to be vacated.

19. We have also noticed the delay which has occurred in the present case is on account of large number of witnesses which had been arrayed by the CBI. Therefore, we are of the considered opinion that no such benefit is liable to be granted for staying the proceedings as asked for, since the matter has already lingered for the last over a decade and the Tribunal has rightly directed the monitoring of the said case, so that it can be concluded at the earliest.

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20. In **Kendriya Vidyalaya Sangathan & others vs T.Srinivas, AIR 2004 SC 4127,** the High Court had upheld the order of the Tribunal staying the departmental proceedings on the ground that the charge was inter-connected. The Apex Court held that the seriousness of the charge which pertained to acceptance of illegal gratification and the desirability of continuing the appellant in service when he was guilty of such conduct, once the mode of enquiry and the rules governing the enquiry and trial in both the cases are distinct, would not justify in staying of the proceedings. It was, accordingly, held that the stay of disciplinary proceedings is not must in every case.

21. In the case of **State Bank of India and others Vs. Neelam Nag and another, (2016) 9 SCC 491,** similar observations flowed from the Apex Court while keeping in mind the earlier judgment of the Apex Court in **Divisional Controller, Karnataka SRTC Vs. M.G.Vittal Rao, (2012) 1 SCC 442.** A three Judge Bench of the Apex Court **Depot Manager, Andhra Pradesh State Road Transport Corporation Vs. Mohd Yousuf Miya & others AIR 1997 SC 2232,** has also rejected the said plea, wherein it was held that the inquiry in departmental proceedings would relate the conduct of the delinquent officer and has to be conducted expeditiously to effectuate efficiency in public administration. Keeping in mind the said principles, the stay granted by the High Court was vacated.

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22. Thus, keeping in mind the cumulative weightage of the precedents which are against the petitioner, we are of the considered opinion that keeping in view the allegations levelled against him, which go deep into the misconduct of the public servant, it would not be appropriate to stay the departmental proceedings. The fact that on an earlier occasion the petitioner himself was keen that the same should be conducted within a time bound frame is also being kept in mind. The petitioner, thus, cannot be allowed to blow hot and cold at his own convenience.

23. Accordingly, there is no merit in the present writ petition and the same is dismissed in limine.

(G.S. SANDHAWALIA)
JUDGE

May 30, 2022 **(VIKAS SURI)**
Naveen **JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No

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