State of Rajasthan

Vs

B. K. Meena and Others

Civil Appeal No. 12563 of 1996

(B. P. Jeevan Reddy, K. Venkataswami JJ)

27.09.1996

JUDGMENT

B. P. JEEVAN REDDY, J. –

1. Leave granted. Heard counsel for the parties.

2. This appeal is preferred against the order of the Central Administrative Tribunal, Jaipur staying the departmental enquiry against the respondent till the conclusion of the criminal trial pending against him.

3. The respondent is a member of the Indian Administrative Service belonging to the Rajasthan cadre. He was working as Additional Collector, Development-cum-Project Director. District Rural Development Agency (DRDA), Jaipur during the year 1989. He was transferred from the said post on 21-10-1989. On 8-12-1989, the successor to the respondent lodged an FIR (No. 346 of 1989) against the respondent in Police Station Bani Park, Jaipur inter alia alleging misappropriation of public funds by the respondent to the tune of Rs. 1.05 crores. The Anti-Corruption Department of the State of Rajasthan investigated into the said offence and found that the respondent was involved in the offence and accordingly registered FIR No. 10 of 1990 dated 12-3-1990. On 22-5-1990, the respondent was placed under suspension. The respondent was arrested on 26-3-1990 and remained in custody till 10-8-1990.

4. On 31-3-1992, the State of Rajasthan requested the Government of India for grant of sanction for prosecuting the respondent under the Prevention of Corruption Act, 1988. On 9-9-1992, the Government of India, while not granting the sanction for prosecution, advised the Government of Rajasthan to initiate disciplinary proceedings against the respondent. Accordingly, on 13-10-1992, the State Government issued the memo of charges accompanied by articles of charges. On 9-2-1993, the respondent submitted his written statement (running into 90 pages) in reply to the charges served upon him. At our direction, the learned counsel for the respondent has filed a copy of the said written statement. It purports to be in response to the memo of charges dated 13-10-1992 communicated to him. Though at the end, the respondent reserves his "right to add new points when and if the documents as mentioned above are furnished to me or if the investigating agency furnishes other documents of additional points not disclosed to me till now", the written statement is a detailed rebuttal of the charges framed against the respondent. The respondent, no doubt, says that since all the documents were not furnished to him, he proposes to file a fuller statement after receiving those documents but that does not mean that the respondent has not put forward his case

in reply to the charges framed against him. Putting forward his case in reply to memo of charges cannot but mean putting forward his defence.

5. On 13-4-1993, the respondent filed OA No. 212 of 1993 before the Central Administrative Tribunal, Jaipur challenging the various orders passed against him including the memo of charges.

6. On 15-5-1993, charge-sheet was filed in the Court of the Chief Judicial Magistrate, Jaipur, against the respondent and cognizance thereof taken by the learned CJM.

7. At the instance of the respondent, the Central Administrative Tribunal issued an order on 4-8-1993 staying the disciplinary proceedings against the respondent. The State of Rajasthan thereupon reinstated the respondent in service, revoking the order of suspension pending enquiry. The respondent amended his OA requesting that the disciplinary enquiry against him be stayed pending the criminal trial.

8. When the original application came up for final hearing, the only ground urged by the respondent was that the departmental proceedings be not allowed to go on so long as the criminal proceedings are pending against him. It was opposed by the State of Rajasthan stating inter alia that inasmuch as the respondent has filed a detailed written statement of defence on 9-2-1993 (in response to memo of charges framed against him) and because the respondent has disclosed all possible defences in the said written statement, there is no occasion or warrant for staying the disciplinary proceedings.

9. The Tribunal found that the charge-sheet in the criminal case and the memo of charges in the disciplinary proceedings are based upon same facts and allegations. It rejected the State's plea that the respondent having already disclosed his defence, will not be prejudiced in any manner by proceeding with the disciplinary enquiry. The Tribunal observed :

> "We cannot say at this stage what will emerge during the enquiry proceedings after examination of the evidence. The applicant may well have to put forward further defence as and when material against him emerges during the enquiry proceedings and disclosure of his defence at that stage could well prejudice his defence in the criminal trial."

10. Purporting to follow the decision of this Court in Kusheshwar Dubey v. Bharat Coking Coal Ltd. [(1988) 4 SCC 319 : 1988 SCC (L&S) 950 : AIR 1988 SC 2118] the Tribunal allowed the respondent's plea and stayed the disciplinary proceedings pending the criminal proceedings.

11. We are of the opinion that the order of the Tribunal is unsustainable both in law and on the facts of the case. In S. A. Venkataraman v. Union of India [AIR 1954 SC 375 : 1954 SCR 1150] the petitioner therein was subjected to disciplinary proceedings in the first instance and was dismissed from service on 17-9-1953. On 23-2-1954, the police submitted a charge-sheet against the petitioner therein in a criminal court in respect of the very same charges. The petitioner challenged the initiation of criminal proceedings on the ground that it amounts to putting him in double jeopardy within the meaning of clause (2) of Article 20 of the Constitution of India. A Constitution Bench of this Court rejected the said plea holding that there is no legal objection to the initiation or continuation of criminal proceedings merely because he was punished earlier in disciplinary proceedings. It is thus clear - and the proposition is not disputed by Mr K. Madhava Reddy, learned counsel for the respondent - that in law there is no bar to, or prohibition against, initiating simultaneous criminal proceedings and disciplinary proceedings. Indeed not only the said two

proceedings, but if found necessary, even a civil suit can also proceed simultaneously. Mr Madhava Reddy, however, submits that as held by this Court in certain later decisions, it would not be desirable or appropriate to proceed simultaneously with the criminal proceedings as well as disciplinary proceedings.

12. In Delhi Cloth and General Mills Ltd. v. Kushal Bhan [(1960) 3 SCR 227 : AIR 1960 SC 806 : (1960) 1 LLJ 520] it was held that the principles of natural justice do not require that the employer should wait for the decision of the criminal court before taking disciplinary action against the employee. At the same time, the Court observed : "We may, however, add that if the case is of a grave nature or involves questions of fact or 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." In Tata Oil Mills Co. Ltd. v. Workmen [(1964) 7 SCR 555 : AIR 1965 SC 155 : (1964) 2 LLJ 113] it was observed, following D.C.M. [(1960) 3 SCR 227 : AIR 1960 SC 806 : (1960) 1 LLJ 520] that

> "it is desirable that if the incident giving rise to a charge framed against a workman in a domestic enquiry is being tried in a criminal court, the employer should stay the domestic enquiry pending the final disposal of the criminal case. It would be particularly appropriate to adopt such a course where the charge against the workman is of a grave character, because in such a case, it would be unfair to compel the workman to disclose the defence which he may take before the criminal court. But to say that domestic enquiries may be stayed pending criminal trial is very different from saying that if an employer proceeds with the domestic enquiry in spite of the fact that the criminal trial is pending, the enquiry for that reason alone is vitiated and the conclusion reached in such an enquiry is either bad in law or mala fide."

13. In Jang Bahadur Singh v. Baij Nath Tiwari [(1969) 1 SCR 134 : AIR 1969 SC 30 : (1969) 1 LLJ 567] the contention that initiation of disciplinary proceedings during the pendency of criminal proceedings on the same facts amounts to contempt of court was rejected. After considering the ratio of these three decisions, this Court held in Kusheshwar Dubey [(1988) 4 SCC 319 : 1988 SCC (L&S) 950 : AIR 1988 SC 2118] : (SCC p. 323, paras 7 and 8)

> "The view expressed in the three cases of this Court seem to support the position that while there could be no legal bar for simultaneous proceedings being taken, yet, there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case. In the latter class of cases it would be open to the delinquent employee to seek such an order of stay or injunction from the court. Whether in the facts and circumstances of a particular case there should or should not be such simultaneity of the proceedings would then receive judicial consideration and the court will decide in the given circumstances of a particular case as to whether the disciplinary proceedings should be interdicted, pending criminal trial. As we have already stated that it is neither possible nor advisable to evolve a hard and fast, strait-jacket formula valid for all cases and of general application without regard to the particularities of the individual situation. For the disposal of the present case, we do not think it necessary to say anything more, particularly when we do not intend to lay down any general guideline.

In the instant case, the criminal action and the disciplinary proceedings are grounded upon the same set of facts. We are of the view that the disciplinary proceedings should have been stayed and the

High Court was not right in interfering with the trial court's order of injunction which had been affirmed in appeal."

14. It would be evident from the above decisions that each of them starts with the indisputable proposition that there is no legal bar for both proceedings to go on simultaneously and then say that in certain situations, it may not be 'desirable', 'advisable' or 'appropriate' to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. 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. [(1960) 3 SCR 227 : AIR 1960 SC 806 : (1960) 1 LLJ 520] and Tata Oil Mills [(1964) 7 SCR 555 : AIR 1965 SC 155 : (1964) 2 LLJ 113] 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 considerations 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. That is the reality in spite of repeated advice and admonitions from this Court and the High Courts. If a criminal case is unduly delayed that may itself be a good ground for going ahead with the disciplinary enquiry even where the disciplinary proceedings are held over at an earlier stage. The interests of administration and good government demand that these proceedings are concluded expeditiously. 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. While it is not possible to enumerate the various factors, for and against the stay of disciplinary proceedings, we found it necessary to emphasise some of the important considerations in view of the fact that very often the disciplinary proceedings are being stayed for long periods pending criminal proceedings. Stay of disciplinary proceedings cannot be, and should not be, a matter of course. All the relevant factors, for and against, should be weighed and a decision taken keeping in view the various principles laid down in the decisions referred to above.

15. We are quite aware of the fact that not all the disciplinary proceedings are based upon true charges; some of them may be unfounded. It may also be that in some cases, charges are levelled with oblique motives. But these possibilities do not detract from the desirability of early conclusion of these proceedings. Indeed, in such cases, it is all the more in the interest of the charged officer that the proceedings are expeditiously concluded. Delay in such cases really works against him.

16. Now, let us examine the facts of the present case. The memo of charges against the respondent was served on him, along with the articles of charges, on 13-10-1992. On 9-2-1993, he submitted a detailed reply/defence statement, running into 90 pages, controverting the allegations levelled against him. The challan against him was filed on 15-5-1993 in the criminal court. The respondent promptly applied to the Tribunal and got the disciplinary proceedings stayed. They remain stayed till today. The irregularities alleged against the respondent are of the year 1989. The conclusion of the criminal proceedings is nowhere in sight. (Each party blames the other for the said delay and we cannot pronounce upon it in the absence of proper material before us.) More than six years have passed by. The charges were served upon the respondent about 4 years back. The respondent has already disclosed his defence in his elaborate and detailed statement filed on 9-2-1993. There is no question of his being compelled to disclose his defence in the disciplinary proceedings which would prejudice him in a criminal case. The charges against the respondent are very serious. They pertain to misappropriation of public funds to the tune of more than rupees one crore. The observation of the Tribunal that in the course of examination of evidence, new material may emerge against the respondent and he may be compelled to disclose his defence is, at best, a surmise - a speculatory reason. We cannot accept it as valid. Though the respondent was suspended pending enquiry in May 1990, the order has been revoked in October 1993. The respondent is continuing in office. It is in his interest and in the interest of good administration that the truth or falsity of the charges against him is determined promptly. To wit, if he is not guilty of the charges, his honour should be vindicated early and if he is guilty, he should be dealt with appropriately without any avoidable delay. The criminal court may a decide - whenever it does - whether the respondent is guilty of the offences charged and if so, what sentence should be imposed upon him. The interest of administration, however, cannot brook any delay in disciplinary proceedings for the reasons indicated hereinabove.

17. There is yet another reason. The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him under the Prevention of Corruption Act (and the Indian Penal Code, if any) are established and, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. Staying of disciplinary proceedings pending criminal proceedings, to repeat, should not be a matter of course but a considered decision. Even if stayed at one stage, the decision may require reconsideration if the criminal case gets unduly delayed.

18. We must make it clear that we have not cast, and we should not be understood to have cast, any reflection on the merits of either party's case. What we have said is confined to the question at issue, viz., the desirability or advisability of staying the disciplinary proceedings against the respondent pending the criminal proceeding/case against him.

19. For the above reasons, it must be held that the Tribunal was in error in staying the disciplinary proceedings pending the criminal proceedings against the respondent. The appeal is accordingly allowed with costs. The order of the Tribunal is set aside. The disciplinary proceedings against the respondent shall go on expeditiously without waiting for the result of the criminal proceedings. The costs of the appellant are estimated at Rs. 5000.