

HIGH COURT OF TRIPURA

A_G_A_R_T_A_L_A

WP(C) No.1201 of 2019

Shri Amit Debbarma, Son of Shri Sukrai Debbarma, resident of Khamparpara, Durga Chowdhury ADC Village, P.S. Lefunga, P.O. Kamalghat, District West Tripura.

.....Petitioner(s)

Versus

1. State of Tripura, represented by the Secretary to the Government of Tripura in the Home Department having its office at Civil Secretariat, New Capital Complex, P.O Kunjaban, Agartala, District- West Tripura.

2. Director General of Police, Government of Tripura, having his office at Akhaura Road near Fire Brigade Chowmuhani, P.O- Agartala, District- West Tripura.

3. Commandant, 2nd Battalion, TSR, Government of Tripura.

.....Respondent(s)

B_E_F_O_R_E

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI

For Petitioner(s) : Mr. T.D. Majumder, Advocate.

For Respondent(s) : Mr. D. Bhattacharya, G.A.

. Whether fit for reporting : YES.

JUDGMENT & ORDER (ORAL)

The petitioner Amit Debbarma has prayed for a stay of disciplinary proceedings instituted by the competent authority under a charge-sheet dated 9th November, 2018 till conclusion of a criminal trial which he is facing and in which according to him the charges and the

evidence are substantially similar to those involved in the departmental charge-sheet.

[2] Briefly stated the facts are as under :

The petitioner is employed as a Naib Subedar in Tripura State Rifles. At the relevant time, he was posted in 2nd Battalion of TSR stationed at Bodhjungnagar. On 21.11.2017 an untoward incident of death of one Sudip Datta Bhowmik who was a journalist of Syandan Patrika by bullet injuries inside the Bodhjungnagar campus of TSR had taken place. In connection with the said incident, an FIR was lodged by Sub-Inspector of Police of Bodhjungnagar Police Station on 21.11.2017 in which it was recorded that he had received a telephonic information from a TSR official that one personal guard of Commandant of 2nd Battalion had fired on a civilian inside the Battalion Complex and the person was probably dead. The informant thereupon proceeded to the scene of incident and made quick preliminary inquiries which revealed that Sudip Datta Bhowmik had received two bullet injuries which had been fatal. Before the incident, Sudip Datta Bhowmik had an appointment with Tapan Debarma, Commandant of 2nd Battalion of TSR and met him at about 11.30 in the morning. During the interview Tapan Debarma went to the washroom. When he returned he found that an

envelope containing cash was missing from his room. The Commandant called his Rifleman and instructed him to carry out the search of Sudip Datta Bhowmik who objected and tried to escape and ran towards the ground upon which Nanda Kumar Reang a Rifleman opened fire from his A.K 47 rifle causing the death of the reporter. In the FIR, therefore, Nanda Kumar Reang was shown as an accused for commission of offence under Section 302 of IPC read with Section 27 of the Arms Act.

[3] It appears that the FIR was registered by the police on the basis of information hurriedly collected regarding the incident. The departmental authorities carried out its own internal inquiry which was entrusted to Assistant Commandant of 2nd Battalion. He recorded the statements of several witnesses who were present around the scene of incident at the time when this incident took place and had some information to share with the department. He presented his report on 24.09.2018. According to this report, there was more than what meets the eye. In the nutshell, the reporter Sudip Datta Bhowmik was shot by Nanda Kumar Reang under the instructions of the Commandant Tapan Debbarma and in the incident the present petitioner Amit Debbarma and Dharmendra Kumar Singh were also involved. As per the witnesses, it was the petitioner along with Dharmendra Kumar Singh and Nanda

Kumar Reang who had taken the reporter to the parade ground and it was again the petitioner Amit Debbarma who had gone to the office and returned to the ground few minutes later and ordered Nanda Kumar Reang to fire on the reporter under the orders of the Commandant upon which Nanda Kumar Reang had shot the reporter.

[4] Looking to the sensitivity of the case a Special Investigation Team was constituted by the Home Department for conducting the investigation, upon culmination of which the police had issued a charge-sheet dated 14.02.2018 against Tapan Debbarma the Commandant, the petitioner and also against Nanda Kumar Reang and Dharmendra Kumar Singh for commission of offences punishable under Sections 302, 109, 120(B) of IPC read with Section 27 of the Arms Act. As per this charge-sheet, Commandant Tapan Debarma had illicit relations with a lady about which Sudip Datta Bhowmik was publishing stories in the newspaper. The reporter was also blackmailing Tapan Debbarma due to which he had made a plan to liquidate him. As per the conspiracy, he would involve Sudip Datta Bhowmik in a false case of stealing money and that is how the incident of 21.11.2017 took place.

[5] I am informed that all the four accused were arrested. Subsequently the petitioner and Dharmendra Kumar Singh have been released on bail. The other co-accused i.e. Tapan Debbarma and Nanda Kumar Reang are still in custody. When this sessions trial was going on, under a notification dated 17.03.2018 the investigation was handed over to Central Bureau of Investigation (*CBI, for short*). An application was, therefore, filed before the learned Sessions Judge to stay the further trial in view of these developments. The trial Court rejected the application by an order dated 18.06.2018 upon which the State Government moved the High Court by filing a revision petition in which by an order dated 04.07.2018 further proceedings in the trial were stayed. The CBI thereafter collected the material produced by the police and carried out further investigation. After detailed investigation, the CBI filed a supplementary charge-sheet before the Chief Judicial Magistrate, West Tripura, Agartala. I am informed that the charge-sheet papers are not yet supplied to the accused, presumably on account of the slowdown in court functioning due to coronavirus. To appreciate the complexities in the case, I had requested learned Government Advocate to make available a copy of the supplementary charge-sheet filed by CBI, copy of which may be taken on record. As noted though, the charge-sheet and accompanying documents are yet to be supplied to the accused, I see no

harm in discussing contents thereof since upon filing of the charge-sheet before the Court the same is in public domain. Perusal of this detailed charge-sheet would show that the CBI has now recorded statements of various witnesses and has also collected documents on the basis of which it has presented a version before the trial Court, gist of which is as under :

Tapan Debbarma had illicit relationship with a lady doctor. Deceased Sudip Datta Bhowmik was a newspaper reporter and he had published news items disclosing the extra-marital relationship of these persons in Syandan Patrika on 20.09.2017 using pseudonyms. The reporter and accused Tapan Debbarma also had a meeting on 12.11.2017 after which Tapan Debbarma had decided to liquidate Sudip Datta Bhowmik and had devised a plan to do it in which he had also taken help of other co-accused. As per plan, the newspaper reporter would be called for a meeting during which time envelope carrying currency notes would be left unattended expecting that the newspaper reporter would take the envelope. Spy cameras to record the incident were also installed. However, it appears that even when the reporter got the opportunity, being alone in the room with the currency filled envelope lying on the top of the table, he did not pick it up. He was instructed to

pick up by someone which he did but refused to put it in his pocket. Still, he was taken out of the office of the Commandant and taken to an isolated place in the parade ground by three persons Nanda Kumar Reang, Amit Debbarma i.e. the petitioner and Rifleman Dharmendra Kumar Singh. The petitioner carried the instructions of Tapan Debbarma to Nanda Kumar Reang to shoot the reporter. Nanda Kumar Reang thereupon fired twice from his A.K. 47 rifle. The CBI has collected Whatsapp records of the Commandant Tapan Debbarma which were in close proximity of the shooting incident. CBI has also collected the video recording of the spy camera. The A.K 47 rifle from which the bullets were fired and which was allotted to Nanda Kumar Reang has been recovered and forensic evidence collected to establish that the bullets were fired from the same gun. According to the CBI, it was a case of pre-planned cold blooded murder. Tapan Debbarma was the main person behind the crime, nevertheless other three accused had also been part of the conspiracy and had played active role in furtherance of accomplishing the object of the conspiracy and commission of the offence. Thus, though Nanda Kumar Reang may be the person who actually fired the bullets, the petitioner and Dharmendra Kumar Singh were equally responsible for commission of the offence.

[6] On 20.08.2019 the petitioner moved an application before the Inquiry Officer and requested that the departmental inquiry against him may be stayed till the criminal case is decided. In this application he canvassed that the case rests on complicated facts. If the departmental inquiry is carried on he would be forced to disclose his defence which would prejudice him in the pending criminal trial.

[7] This application was rejected by the Inquiry Officer by an order dated 03.09.2019 which reads as under :

“Ref Your letter dated 20.08.2019 addressed to the E.O of the DP No.03.2018 dated 09.11.2018.

2. With reference to your letter dated 20/08/2019, it is stated that the charges levelled against you were enquired and it was proved prima facie. There is sufficient evidence of misconduct available for the purpose in the course of preliminary enquiry.

3. The charge framed against you were communicated to you vide this office Memorandum No. DP-03/2018/TSR-II/Estt/ADB/NKR/DKS/2018/9414(A) dated 09/11/2018.

4. As per Rule-14 of CCS (CCA) Rules, 1965, it is mandatory to enquire into the charge which is not accepted by the charge officer. It is obligatory to hold a formal inquiry before coming to a decision about the quantum of penalty.”

[8] At that stage the petitioner has filed the petition praying for stay of the departmental inquiry till completion of the trial. Appearing for the petitioner learned counsel Shri T.D. Majumder submitted that the

allegations and the material relied upon by the department in the departmental inquiry is same as those relied upon by the prosecution in the criminal trial. The case involves extremely complicated questions of facts and law. If the departmental inquiry is therefore continued, the petitioner would be forced to disclose his defence which will be prejudicial to him in his defence in the criminal trial. He, therefore, submitted that the departmental inquiry pending the trial be stayed. In support of his contentions, he relied on following decisions :

(a) In case of *Capt. M. Paul Anthony versus Bharat Gold Mines Ltd. and another* reported in (1999) 3 SCC 679;

(b) In case of *Stanzen Toyotetsu India Private Limited versus Girish V. and others* reported in (2014) 3 SCC 636;

(c) In case of *State Bank of India and others versus R.B. Sharma* reported in (2004) 7 SCC 27;

(d) In case of *State Bank of India and others versus Neelam Nag and another* reported in (2016) 9 SCC 491.

[9] On the other hand, learned Government Advocate opposed the petition contending that the case against the petitioner in the departmental charge-sheet is entirely different from in the trial pending against him. As per law laid down by the Supreme Court in series of

judgments the nature of proof required in a departmental proceedings is vastly different from one insisted upon by the criminal courts. For clean administration it is necessary that the inquiry be completed as soon as possible. During such inquiry the petitioner would have full opportunity to defend himself. If the charges are true and proved the petitioner must be visited with appropriate punishment. If not, he must be absolved of all charges and honour be restored to him. He relied on following decisions :

(a) In case of *Hindustan Petroleum Corporation Ltd. and others versus Sarvesh Berry* reported in (2005) 10 SCC 471;

(b) In case of *Ajay Kumar Choudhary versus Union of India and another* reported in (2015) 7 SCC 291.

[10] The question whether departmental proceedings should be stayed when the Government servant is also facing a criminal trial, has received attention of the Supreme Court on several occasions. In case of *State of Rajasthan versus B.K. Meena and others* reported in (AIR) 1997 SC 13, the Supreme Court held and observed that there is no legal bar for both departmental and the criminal proceedings to go on simultaneously, however in certain situations it may not be desirable, advisable or appropriate to proceed with the disciplinary inquiry when a

criminal case is pending on identical charges. Staying of the disciplinary proceedings is a matter to be determined having regard to the facts and circumstances of a given case and the only ground suggested (in the decisions noted by the Supreme Court) would be that the defence of the employee in the criminal case may not be prejudiced. This ground however has been hedged by providing further that it may be done in cases of grave nature involving questions of facts and law. It was further observed that one consideration would be that the disciplinary inquiry should not be delayed unduly. The criminal cases drag on endlessly. It was further observed that the interests of administration and good Government demand that the departmental proceedings are concluded expeditiously. Following observations of the Court may be noted.

“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 emphasized, 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.(AIR 1960 SC 806) and Tata Oil Mills (AIR 1965 SC 155) is not also 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 consideration 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 the undesirable elements are thrown out and any charge of misdemeanor 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 misdemeanor 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”

[11] In case of *Kusheswar Debey versus M/s Bharat Coking Coal Ltd. and others* reported in (1988) 4 SCC 319 it was observed as under :

“7. 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, straight- 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.”

[12] In case of *Depot Manager, A.P. State Road Transport Corporation versus Mohd. Yousuf Miya and others* reported in [(1997) 2 SCC 699], the Supreme Court referred to the decisions in case of

Kusheswar Debey (*supra*) and ***B.K. Meena*** (*supra*) and observed as

under :

“8. We are in respectful agreement with the above view. The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public(sic duty), as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Evidence Act. Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct of breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. The enquiry in the departmental proceedings relates to the conduct of the delinquent officer and proof in that behalf is not as high as in an offence in criminal charge. It is seen that invariably the departmental enquiry has to be conducted expeditiously so as to effectuate efficiency in public administration and the criminal trial will take its own course. The nature of evidence in criminal trial is entirely different from the

departmental proceedings. In the former, prosecution is to prove its case beyond reasonable doubt on the touchstone of human conduct. The standard of proof in the departmental proceedings is not the same as of the criminal trial. The evidence also is different from the standard point of Evidence Act. The evidence required in the departmental enquiry is not regulated by Evidence Act. Under these circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances. In this case, we have seen that the charge is failure to anticipate the accident and prevention thereof. It has nothing to do with the culpability of the offence under Sections 304-A and 338, IPC. Under these circumstances, the High Court was not right in staying the proceedings.”

[13] In case of *Capt. M. Paul Anthony versus Bharat Gold Mines Ltd. and another [(1999) 3 SCC 679]* the Supreme Court referred to the decisions in case of *Mohd. Yousuf Miya (supra)*, *B.K. Meena (supra)* and *Kusheswar Debey (supra)* and laid down general principles emerging from various decisions on the point as under:

“22. The conclusions which are deducible from various decisions of this Court referred to above are :

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee 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.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the Departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest.”

[14] In case of *State Bank of India and others versus R.B. Sharma* [(2004) 7 SCC 27] the decision in case of *Capt. M. Paul Anthony* (*supra*) was noted with approval. It was further observed as under :

“11. There can be no straightjacket formula as to in which case the departmental proceedings are to be stayed. There may be cases where the trial of the case gets prolonged by the dilatory method adopted by delinquent official. He cannot be permitted to, on one hand, prolong criminal case and at the same time contend that the departmental proceedings should be stayed on the ground that the criminal case is pending.”

[15] In case of *Sarvesh Berry (supra)* these aspects were reiterated.

[16] In case of *Stanzen Toyotetsu India Private Limited (supra)* it was reiterated as under :

“16. Suffice it to say that while there is no legal bar to the holding of the disciplinary proceedings and the criminal trial simultaneously, stay of disciplinary proceedings may be an advisable course in cases where the criminal charge against the employee is grave and continuance of the disciplinary proceedings is likely to prejudice their defense before the criminal Court. Gravity of the charge is, however, not by itself enough to determine the question unless the charge involves complicated question of law and fact. The Court examining the question must also keep in mind that criminal trials get prolonged indefinitely especially where the number of accused arraigned for trial is large as is the case at hand and so are the number of witnesses cited by the prosecution. The Court, therefore, has to draw a balance between the need for a fair trial to the accused on the one hand and the competing demand for an expeditious conclusion of the ongoing disciplinary proceedings on the other. An early conclusion of the disciplinary proceedings has itself been seen by this Court to be in the interest of the employees.”

[17] In case of *Neelam Nag (supra)* these principles were reiterated.

[18] From the above decisions it can be seen that right from the inception in the judgment in case of *Kusheswar Debey* and even earlier, the Supreme Court has been stressing upon the point that there is no legal bar on the departmental inquiry proceeding when the criminal trial

is pending. The departmental inquiry is instituted for alleged misconduct in course of the service whereas the criminal proceedings are initiated on the allegations of commission of offence. The nature of proof required in the departmental inquiry is vastly different from one required to prove a charge in a criminal Court. The former proceeds on the preponderance of probabilities whereas the later insists on proof beyond reasonable doubt. The departmental inquiry is also not shackled by technical rules of evidence. It is also stated that it is in the interest of clean administration as well as in most cases in the interest of the employee that the departmental inquiry is concluded expeditiously. If the charges are proved the Government servant must face commensurate punishment. If he is otherwise innocent, he must be absolved of all charges and his honour must be restored. Having said that, none of these decisions completely shut out the scope for staying the departmental proceedings till the trial is over. Howsoever rare and few and far between such cases may be, there are bound to arise situations, every once in a rare while, where such powers should be exercised by the departmental authorities themselves failing which by the writ court. Going by the decisions of the Supreme Court noted above and in particular in cases of *Kusheswar Debey (supra)*, *B.K. Meena (supra)*, *Mohd. Yousuf Miya (supra)* and *Capt. M. Paul Anthony (supra)* such

instance would be when the departmental inquiry and the criminal trial are based on same set of facts, evidence relied upon is substantially similar, the case of grave nature and presents complicated facts and law and on account of which compelling the Government servant to participate in the departmental proceedings, would expose him to serious prejudice in his defence in the criminal trial.

[19] With this background we may revisit facts on record. The allegations against the petitioner and other co-accused and co-delinquents can be seen in three stages. When the Sub-Inspector of Police on being telephonically informed visited the site and registered an FIR, his hurried collection of facts merely showed that a reporter, who had come for an interview, suspected to have stolen money, was trying to run away and was gunned down. When the investigation was carried out further, more disturbing details surfaced. The charge-sheet filed by the Special Investigation Team constituted by the State for such purpose unearthed a complex conspiracy to liquidate the reporter on account of his publishing news reports of illicit relationship of the Commandant Tapan Debbarma. Such investigation revealed a complex design to lure the reporter in the office of the Commandant under the guise of giving an interview during which an envelope containing money would be left

on the top of the table and the reporter would be given sufficient opportunity to pick it up when the Commandant would excuse himself to visit the washroom and hoping that the reporter would do so, spy cameras were installed in the cabin. The reporter though did not pick up the bait, he was taken away by the petitioner and other two accused as per the original plan to the parade ground. The petitioner relayed the orders of the Commandant to Nanda Kumar Reang to shoot the reporter. The third level of investigation was when the investigation was handed over to the CBI. The CBI in its charge-sheet has more or less confirmed what the police investigation had revealed. However further deeper and more incisive investigation has been carried out by the CBI during which further material has been collected. Witnesses have been examined. The CBI relies on not just the oral statements of various witnesses but also on seized materials such as the weapon used in the offence, the electronic evidence in the nature of Whatsapp messages by the accused persons and also the footage of the spy camera.

[20] In my opinion this is a fit case which falls under the exceptional category where the departmental inquiry must be stayed till the criminal trial is completed. The allegations in the departmental charge-sheet and the criminal case may be, as is bound to be, worded

differently. Nevertheless, they both relate to the same incident and implicate the petitioner for the same misconduct/offence. The witnesses cited in the departmental charge-sheet are also cited in the criminal trial. Of course, some of the witnesses in both proceedings are uncommon. The allegations are grave and case involves extremely complicated facts and applicable of law. It was presumably because of such complexities that the State which had previously resisted handing over investigation to the CBI before the High Court in a petition filed by the relative of the deceased, later on agreed to the same and even after the investigation was completed by the SIT and which resulted into filing of the charge-sheet, the case was handed over to the CBI for further investigation. Under such circumstances, forcing the petitioner to participate in the departmental proceedings would seriously prejudice him in the pending criminal trial. The petitioner would be compelled to disclose his defence in the departmental inquiry which will hamper his defence in the criminal trial. Merely because the petitioner is alleged to have committed a heinous crime, he cannot be dismissed from his service in a summary manner. As in the criminal case, also in the departmental inquiry he must have full opportunity to defend himself, of course in consonance with the service rules governing the departmental inquiry proceedings and the principles of natural justice which generally have

applicability to such domestic inquires. If the petitioner is compelled to participate in the departmental proceedings, he would have a difficult choice to make. He may either be handicapped in his defence in the departmental proceedings and invite the possibility of dismissal from service without full defence, or make full disclosures in his defence in such inquiry, inviting a possibility of his defence in the criminal trial being seriously prejudiced and thereby exposing him to a graver risk of being convicted of a serious offence of pre-planned murder. For him the situation would be like devil and the deep sea.

[21] Having said this, one cannot ignore the need for the departmental inquiry and criminal trial being completed expeditiously. The other co-accused are not before the Court, nor is the CBI a party in the present petition. This would not however prevent him from making broad recommendations and suggestion to the prosecution as well as to the trial Court to complete the trial expeditiously. While therefore allowing this petition and staying the departmental proceedings against the petitioner till completion of the criminal trial, the learned trial Judge is requested to give priority to the present case and to dispose of the case expeditiously and preferably within one year from today.

Learned Government Advocate may please ensure that a copy of this order is placed before the learned Judge.

[22] Petition is disposed of accordingly. Pending application(s), if any, also stands disposed of.

(AKIL KURESHI, CJ)

Dipesh



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