

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD.

ORIGINAL APPLICATION NO. 929 OF 2016

DIST.: DHULE

Shri Vinod s/o Arjun Wagh,
 Age: 42 Years., Occu: Service,
 (as Sectional Engineer),
 R/o : 15, Vishnunagar,
 Jai-hind colony Road,
 Deopur, Dist. Dhule.

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APPLICANT

V E R S U S

1. The State of Maharashtra,
 Through its Secretary,
 Public Works Department,
 M.S. Mantralaya, Mumbai-32.

2. The Regional Departmental Enquiry Officer,
 Nasik Division, Nasik.

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RESPONDENTS

APPEARANCE : Ms. Preeti R. Wankhade, Learned
 Advocate for the Applicant.

: Smt. Deepali S. Deshpande, Learned
 Presenting Officer for Respondents.

CORAM: HON'BLE SHRI RAJIV AGARWAL, VICE CHAIRMAN (A)
AND
HON'BLE SHRI B.P. PATIL, MEMBER (J)

DATE : 18.08.2017.

O R D E R

[Per- Hon'ble Shri B.P. Patil, Member (J)]

1. By filing the present Original Application, the applicant is seeking stay to the further proceeding in

common Departmental Enquiry initiated against him till final decision in Special Case No. 40/2014 pending before the Special Judge, Dhule.

2. The applicant belongs to S.C. category and he has acquired qualification of diploma in Civil Engineering in the year 1992 and degree of Bachelor of Civil Engineering in the year 1995. He entered service of respondent no. 1 as Junior Engineer on 17.7.1995 and promoted as Sectional Engineer w.e.f. 01.04.2001.

3. In the year 2013, he was serving as Sectional Engineer at Dhule. On 28.03.2013, he was placed under suspension by respondent no. 1 on the basis of his alleged involvement in the offences punishable under sections 7, 12 and 13(1)(d) r/w section 13(2) of the Prevention of Corruption Act, 1988, in the crime bearing C.R. No. 3024/2013 of Dhule City Police Station, Dhule. It is his contention that charge sheet has been filed against him and one Shri Pankaj Bhamre in the Court of the Special Judge, Dhule and it is registered as Special Case no. 40/2014.

4. On 28.09.2015, the respondent no. 1 initiated common Departmental Enquiry against him and one Shri Pankaj Bhamre. Copy of the memorandum of charge has been supplied to them. The charges leveled in Departmental Enquiry are similar to the charges leveled against them in the Criminal Case bearing Special Case No. 40/2014. Witnesses and evidence in Departmental Enquiry and Special Case are also same. If the evidence and defence of the applicant is disclosed in the Departmental Enquiry, it will cause prejudice and hardship to him in defending the Special Case No. 40/2014. He filed his reply to the memorandum of charge on 6.11.2015 contending of all these facts. On 17.11.2016, he appeared before the Enquiry Officer in view of the communication dated 13.10.2016 received to him from the respondent no. 2. He had submitted his representation and requested the Enquiry Officer to stay the Departmental Enquiry till the final decision in Criminal Case bearing Special Case No. 40/2014. But the respondent no. 2 had not taken decision on it. Therefore, the applicant approached this Tribunal by filing the present O.A. and prayed to stay the common

Departmental Enquiry initiated against him in view of the order of the respondent no. 1, till conclusion of the Special Case No. 40/2014 pending before the Special Judge, Dhule.

5. The respondent Nos. 1 and 2 have filed their affidavit in reply and resisted the contentions of the applicant. It is their contention that the applicant was working as a Sectional Engineer Class-II in the Public Works Sub-Division, Dhule, Dist. Dhule and one Shri Pankaj Vishnu Bhamre, was working as a Civil Engineering Assistant Class-III in the same office since 1.6.2006 and 10.11.2008 respectively. They demanded bribe of Rs. 10000/- from Shri Pravin Suvalal Sonawane, resident of Morane, Dist. Dhule, for issuing no objection certificate. Shri Sonawane was not willing to pay bribe to them, therefore, he approached to Anti-Corruption Bureau and filed the complaint. Anti-Corruption Bureau arranged a trap on 25.03.2013. Shri Bhamre was caught red handed, while accepting bribe of Rs. 10000/- on behalf of the applicant from Shri Sonawane. The applicant and Shri Bhamre misused their position as public servant and accepted bribe

from Shri Sonawane. Therefore, Anti-Corruption Bureau registered a Crime bearing No. 3024/2013 on 25.3.2013, against the applicant and Shri Bhamre with Dhule City Police Station, District Dhule for the offences punishable under sections 7, 12 and 13 (1)(d) r/w Section 13(2) of the Prevention of Corruption Act, 1988. Superintendent Engineer, Public Works Circle, Dhule had suspended the applicant from the post of Sectional Engineer by his order dated 28.03.2013. Thereafter, the competent authority accorded sanction to prosecute the applicant and Shri Bhamre for the above stated offences vide order dated 30.05.2014. Thereafter, charge sheet has been filed against the applicant in the Court of Special Judge, Dhule and the same was registered as Special Case No. 40/2014.

6. The Government had decided to initiate the Departmental Enquiry against the applicant and Shri Bhamre, under Rule 8 and 12 of the Maharashtra Civil Services (Discipline and Appeal) Rule, 1979 for their misconduct and misbehavior. Accordingly, a charge sheet was issued to them vide memorandum of charge dated

28.09.2015 and it was served on the applicant on 31.10.2015. The applicant submitted his statement of defence to the Government on 6.11.2015 and denied the charges leveled against him. After considering his reply, the charges have been framed and the Regional Departmental Enquiry Officer, Nashik Region, Nashik has been appointed as a Enquiry Officer by order dated 29.2.2016. The Enquiry Officer issued notice to the applicant on 13.10.2016 and called him to remain present before him on 17.11.2016.

7. It is further contention of the respondents that meanwhile meeting of the Suspension Review Committee constituted under Chairmanship of Additional Chief Secretary had considered the proposal for reinstatement of the applicant in its meeting dated 3.12.2015. The committee recommended to re-instate the applicant, subject to condition that, after reinstatement, he should be posted on Non-Executive post outside the Nashik Region. Accordingly, the applicant was reinstated by order dated 20.1.2016, subject to condition of the outcome of the Departmental Enquiry. It is their contention that the Government had

taken decision to initiate Departmental Enquiry against the applicant, considering the facts in the matter. There is no legal bar to initiate Departmental Enquiry, though Criminal Case is pending against the applicant/delinquent, as the applicant accepted bribe through his subordinate, while discharging his duties as public servant by abusing his position as public servant and it amounts misconduct. It is their contention that in view of the settled legal position, there is no bar to initiate Departmental Enquiry against the applicant, though criminal case is pending. It is their further contention that there is no just reason to stay the Departmental Enquiry and therefore, they prayed to reject the Original Application.

8. We have heard Ms. Preeti R. Wankhade, learned Advocate for the Applicant and Smt. Deepali S. Dehpande, learned Presenting Officer for the respondents. We have perused the affidavit, affidavit in reply and various document placed on record by the respective parties.

9. Admittedly, the applicant was serving as a Sectional Engineer at Dhule in the year 2013 and one Shri

Bhamre was serving as a Civil Engineering Assistant Class-III at the same time. Admittedly, in a trap arranged by the A.C.B., Shri Bhamre caught red handed while accepting bribe of Rs. 10000/- for the applicant from complainant Shri Pravin Suvalal Sonawane, resident of Morane, Dist. Dhule on 25.03.2013 for issuance of No Objection Certificate for excavation work by misusing their position as public servants. It is alleged that the applicant accepted the bribe through Shri Bhamre. There is no dispute about the fact that a crime bearing No. 3024/2013 dated 25.3.2013 has been registered against the applicant and Shri Bhamre with Dhule City Police Station at Dhule for the offences punishable under section 7, 12 and 13(1)(d) r/w section 13(2) of the Prevention of Corruption Act, 1988 and thereafter, charge sheet has been filed against them in the Court of the Special Judge, Dhule. The same is registered as Special Case 40/2014 and the case is still pending. It is not much disputed that the applicant came to be suspended on the post of Sectional Engineer by the Superintendent Engineer, Public Works Circle, Dhule by his order dated 28.03.2013. It is not much disputed that a common

Departmental Enquiry has been initiated against the applicant and Shri Bhamre and the applicant was called upon to file his reply. The Applicant filed his reply and thereafter, charges have been framed against him and Enquiry Officer was appointed for conducting Departmental Enquiry. On receiving notice from the Enquiry Officer, the applicant appeared before him and filed his written statement of defence and also filed application to stay the proceedings in the Departmental Enquiry, till conclusion of the criminal case i.e. Special Case. Admittedly, no decision has been taken by the Enquiry Officer on the decision of the respondent no. 2, when the applicant filed this Original Application.

10. It is also admitted fact that meanwhile, the proposal for reinstatement of the applicant in the service by revoking his suspension order has been placed before the Suspension Review Committee on 3.12.2015 and the committee recommended to reinstate the applicant subject to condition that he will be posted on non-executive post out of Nashik Division. Accordingly, the applicant was reinstated

in the Government service by order dated 20.1.2016, subject to condition of the outcome of the Departmental Enquiry.

11. It is not much disputed that the respondent no. 2 decided the application of the applicant dated 17.11.2016 in view of the direction given by this Tribunal on 14.02.2017 and rejected the request of the applicant to stay Departmental Enquiry. By communication dated 6.3.2017, the respondents rejected the representation of the application to stay the Departmental Enquiry.

12. Learned Advocate for the applicant has submitted that the facts and evidence in the Departmental Enquiry and the Criminal case bearing Special Case No. 40/2014 are one and the same. The enquiry is based on the alleged incidence of trap arranged by A.C.B. against the applicant and Shri Bhamre. Witnesses in both the Criminal Case and Departmental Enquiry are one and the same. She has submitted that four witnesses cited in the Departmental Enquiry are the witnesses in the Criminal Case. If the Departmental Enquiry is proceeded against the applicant, then he will have to disclose his defence. Therefore, it will

cause prejudice and hardship to him in defending the criminal trial. Therefore, she prayed to stay the further proceeding in the Departmental Enquiry. In support of her submission, she has placed reliance on the judgment delivered in case of **State Bank of India and Ors. Vs. Neelam Neelam Nag** reported in **AIR 2016 SC 4351** where, it is observed as under:-

“21. Accordingly, we exercise discretion in favour of the Respondent of staying the ongoing disciplinary proceedings until the closure of recording of evidence of prosecution witnesses cited in the criminal trial, as directed by the Division of the High Court and do not consider it fit to vacate that arrangement straightway. Instead, in our opinion, interests of justice would be sufficient served by directing the criminal case pending against the Respondent to be decided expeditiously but not later than one year from the date of this order. The Trial Court shall take effective steps to ensure that the witnesses are served, appear and are examined on day-to-day basis. In case any adjournment becomes inevitable, it should be for more than a fortnight when necessary.”

13. To this submission, the learned Presenting Officer has replied that there is no bar to proceed with the D.E., when the Criminal Case is pending against the delinquent, as no strict rules of evidence and procedure would apply to the D.E. proceeding. She has submitted that the standard of proof of Criminal case and Departmental Enquiry are totally different. The object of Criminal Trial is to inflict appropriate punishment on offender, the purpose of enquiry proceedings is to deal with delinquent departmentally and to impose penalty in accordance with service Rule. Therefore, merely because criminal trial is pending, Departmental Enquiry involving same charges is not barred. In support of her submission, she has placed reliance on the judgment of Hon'ble Supreme Court in case of **Ajit Kumar Nag Vs. General Manager, Indian Oil Corporation** reported in **J.T. 2005 (8) SC, 425**, wherein it is observed as follows:-

““The law is fairly well settled. Acquittal by criminal court would not debar an employer from exercising power in accordance with rules and regulations in force. The two proceedings i.e. Criminal and departmental as entirely different”. They operate in different fields and

have different objective. Whereas the object of criminal trial is to inflict appropriate punishment on offender, the purpose of enquiry proceeding is to deal with delinquent departmentally and to impose penalty in accordance with service Rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond reasonable doubt' he cannot be convicted by a court of law. In Departmental enquiries, on the other hand, penalty can be imposed on the delinquent officer on the findings recorded on the basis of preponderance of probability.

The Division Bench of Hon'ble Supreme Court in the case of Samar Bahadur Singh Vs.

State of U.P. and others 2011 (6) Mh. L.J. 740 has held that acquittal in the criminal case shall have no bearing or relevance to the fact of the departmental proceedings as the standard of proof in both the cases are totally different. In a criminal case, the prosecution has to prove the criminal case beyond all reasonable doubt whereas in a departmental proceeding the department has to prove only preponderance of probabilities.

The Division Bench of Hon'ble High Court, Bombay Bench at Bombay while passing the order dated 8.3.2016 in Rammani Tripati Vs Union of India and anr in Writ Petition No. 1381 of 2014 has held that "it is settled position in law that merely because a criminal trial is pending, a departmental enquiry involving the very same charges is not barred. Further, the approach and objective in criminal prosecution and departmental proceedings is altogether distinct and different. In the former case, if the misconduct is proved, it may result in imposition of penalty like removal from service etc. Whereas in the latter case, if the allegation against the employee are proved beyond reasonable doubt, the same may result in imposition of a sentence. In fact, the Hon'ble

Supreme Court in various cases, including the State of Rajasthan Vs. B.K. Meena & ors., Copt, M. Paul Anthony Vs. Bharat Gold Mines Limited, Kendriya Vidyalaya Sangathan & Ors. Vs. T. Srinivas and Hindustan Petroleum Corporation Ltd. Vs. Sarvesh Berry have laid down the various parameters to be taken in to consideration, when discretion is to be exercised in such matters. Therein, amongst other matters, it has been held that in serious cases like acceptance of illegal gratification, Competent Authority may proceed with the departmental action taking into consideration the desirability of continuing the Government servant in service. Only in a case where it is established that the charge in the criminal case is of a grave nature and complicated questions of fact and law are involved, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case. For taking such decision, the nature of offence, the material collected against the Government servant during the investigation or as reflected in the charge sheet would be some of the relevance factors. Even in such a situation, if it is found that the criminal case does not proceed or is unduly delayed, the departmental proceedings can be resumed. This should be

done with a view to concluding the departmental proceedings so that if the Government servant is not found guilty, his honor may be vindicated and in case if he is found guilty, the department may impose appropriate penalty.”

14. Learned Presenting Officer has further submitted that, it is settled legal position that the Departmental Enquiry cannot be stayed during the pendency of the criminal trial. She submitted that the Departmental Enquiry against the applicant has been proceeded further and it is concluded now and therefore, she prayed to reject the present O.A.

15. On going through the documents and considering the submission advanced by both the parties, it is crystal clear that the Departmental Enquiry against the applicant has been proceeded further during the pendency of the O.A. and evidence of Disciplinary Authority has been completed. The Criminal Trial is not yet commenced. No doubt the incident mentioned in both the Departmental Enquiry and Criminal case is one and the same, but the charges are

different. The very purpose of Departmental Enquiry is to punish the Government servant in Service Rules. The standard of proof of both in Criminal Trial and Departmental Enquiry are totally different. Therefore, in our view there is no just ground to stay the proceeding in Departmental Enquiry.

16. We have gone through the decisions referred by both the parties. We have no dispute regarding settled legal principles laid down therein.

17. We have gone through the decision cited by the learned Advocate for the applicant and considering the fact and circumstances in that case, the Hon'ble Apex Court was pleased to stay the disciplinary proceedings until the closure of recording of evidence of prosecution witnesses cited in the criminal trial, as directed by the Division Bench of the High Court and further directed to be decided expeditiously but not later than one year from the date of this order. The said directions have been given by the Hon'ble Apex Court considering the facts in that case and therefore, the said decision is not much useful to the applicant in the present

case, considering the facts in the present case. Therefore, we do not find substance in the submissions advanced by the learned Advocate for the applicant in that regard. The principles laid down in the decision cited by the learned Presenting Officer, is most appropriately applicable in the instant case.

18. Considering the fact that the enquiry is at the advance stage and the issues involved in the Departmental Enquiry and the criminal case are totally different, in our opinion, there is no just ground to stay the proceeding of Departmental Enquiry. We find no merit in the present O.A. Consequently, it deserves to be dismissed.

19. In view of the above facts and circumstances, the Original Application stands dismissed with no order as to costs.

MEMBER (J)

VICE CHAIRMAN (A)

Kpb/DB OA No 929 of 2016 BPP 2017