

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 314 OF 2016  
(Subject: Departmental Enquiry)**

**DISTRICT: - PARBHANI**

**Mohd. Majeed S/o Mohd. Faku** )  
**Miyan Deshmukh,** )  
Age : 55 years, Occu : Service as Surveyor, )  
In the office of Deputy Superintendent of )  
Land Record, Sonpeth, Dist. Parbhani. )...**APPLICANT**

**V E R S U S**

- 1. The Deputy Director of Land Records)**  
Aurangabad. )
- 2. The District Superintendent of )**  
**Land Records,** )  
Nanded. )..**RESPONDENTS**

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**APPEARANCE** : Shri S.D. Joshi, learned Advocate for  
the applicant.  
: Shri M.P. Gude, learned Presenting  
Officer for the respondent.

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**CORAM** : **Shri V.D. Dongre, Member (J)**  
**And**  
**Shri Bijay Kumar, Member (A)**

**Reserved on** : **17.01.2023.**

**Pronounced on** : **01.03.2023.**  
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**O R D E R****(Per: Shri V.D. Dongre, Member (J))**

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, this Original Application is filed seeking to quash and set aside charge sheet at Annexure 'A-2' dated 16.12.2015 initiating departmental enquiry against the applicant holding the same to be illegal and unjust for having been issued while criminal prosecution vide Annexure 'A-1' in the shape of Charge-sheet No. 77 of 2017 on the same facts and material is awaiting adjudication.

2. The facts in brief giving rise to this Original Application can be summarized as follows:-

(i) The applicant is Government servant holding a Civil post under the State. He joined service as Peon in the office of Taluka Inspector of Land Records Loha, Dist. Nanded on 28.06.1999. He came to be promoted as Correction Clerk and was posted in the same office on 13.02.2004. The posts of Correction Clerk and of Surveyor are inter-transferable and as such the applicant came to be transferred to Nanded in the office of Taluka Inspector of Land Records on 29.05.2009.

The applicant is working as Surveyor in the office of Taluka Inspector of Land Records, Nanded.

(ii) While the applicant was posted to work as Surveyor in the office of Taluka Inspector of Land Records, Nanded, a trap came to be laid by Anti Corruption Bureau Authorities at the instance of one Shri Shaikh Rahemat Shaikh Nabisaab, R/o Haidarbagu No.1, Degloor Naka, Nanded. The applicant has been falsely implicated in the said case which culminated in filing Charge-sheet No. 77 of 2015 (Annexure 'A-1') under Section 7, 13 (1) (d) read with Sec. 13 (2) of the Prevention of Corruption Act, 1988 and thereof criminal case bearing No. 15/2015 is registered against the applicant in the Court of Special Judge, Nanded.

(iii) The trap was conducted on 10.02.2015 and on the very next day, the applicant came to be placed under suspension by order dated 11.02.2015. While under suspension, he came to be transferred from Nanded to Sonpeth, Dist. Parbhani by order dated 21.02.2015. As such the applicant has been now working (under suspension) in the office of Deputy Superintendent of Land Records, Sonpeth, Dist. Parbhani.

(iv) While the applicant was posted under suspension, he has been served with the memorandum of charges (Annexure 'A-2') under Rule 8 of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 dated 16.12.2015 by the respondent No.1 along with Annexure Nos. 1 to 4. The said departmental enquiry is initiated against the applicant when the applicant has already been subjected to criminal prosecution before the Special Judge, Nanded as stated above. As the applicant is facing departmental enquiry on the facts of the criminal case, the applicant made representations dated 28.12.2015 to the Deputy Director of Land Records, Aurangabad and dated 01.04.2016 to the District Superintendent of Land Record, Nanded (Annexure 'A-3') seeking to stay the hearing of the departmental enquiry further pending criminal prosecution in view of various case laws of the Hon'ble Apex court.

(v) It is submitted that initiation of departmental enquiry against the applicant by the respondent No. 1 under memorandum of charges dated 16.12.2015 (Annexure 'A-2'), which is being objected too, for being proceeded with, on account of pending Criminal Case on the same set of facts and on the basis of the witnesses in the Criminal Case only. In view of that permitting the respondent No.1 to proceed with

departmental enquiry would indeed result in putting the applicant in an embarrassing position, in so far as his defence in the criminal prosecution is concerned.

(vi) It is further submitted that in normal course, the departmental prosecution need not necessarily be stayed pending criminal trial. As per settled principle there is no strait jacket formula for holding initiation of departmental enquiry based on the facts of the criminal prosecution case. It is required to be seen as to whether continuation of departmental enquiry is likely to cause prejudice to delinquent in criminal prosecution case as he is required to disclose his defence in departmental enquiry. In view of that the applicant is entitled for the relief of queshment of charge sheet in departmental enquiry being illegal in view of pending criminal prosecution case on the similar facts. Hence this application.

3. The Original Application is resisted by filing affidavit in reply on behalf of the respondent Nos. 1 & 2 by one Vasant Sadashiv Nikam working as the District Superintendent of Land Record, Nanded District Nanded, thereby he denied the adverse contentions raised in the Original Application.

(i) It is denied that the applicant has been falsely implicated in the trap case of ACB and that initiation of departmental enquiry in the background of criminal prosecution case is illegal. It is specifically submitted that charges leveled against the applicant in departmental enquiry may be similar to that of the facts of the criminal prosecution case. However, only on the ground of disclosure of defence in departmental enquiry would be prejudicial to the applicant for defending the criminal case, the departmental enquiry cannot be stayed or quashed. The applicant has to face criminal prosecution as well as departmental enquiry and there is no bar for initiating the departmental enquiry on the similar facts. In view of the same, there is no merit in the Original Application and is liable to be dismissed.

4. We have heard at length the arguments advanced by Shri S.D. Joshi, learned Advocate for the applicant on one hand and Shri M.P. Gude, learned Presenting Officer representing the respondents on other hand.

5. Perusal of the rival pleadings and submissions would show that charge sheet No. 77/2015 dated 01.08.2015 (Annexure 'A-1') bearing Special Case No. 15/2015 is filed

against the applicant under Section 7, 13 (1) (d) read with 13 (2) of Prevention of Corruption Act, 1988 in view of trap laid on the applicant on 11.02.2025 on the instance of one Shri Shaikh Rahemat Shaikh Nabisaab, R/o Haidarbagu No.1, Degloor Naka, Nanded, whereby the applicant said to have accepted bribe of an amount of Rs. 1,000/- from the complainant. The applicant came to be suspended in view of registration of crime against him and in contemplation of departmental enquiry by order dated 21.02.2015. Thereafter, departmental enquiry is initiated against him by serving memorandum of charge sheet dated 16.12.2015 (Annexure 'A-2') upon the applicant. Basis of the said memorandum of charges appears to be trap laid on the applicant on 10.02.2015. Witnesses cited in the departmental enquiry also appear to be the witnesses in criminal prosecution case.

6. Learned Advocate for the applicant in view of the above said facts submitted that though the Original Application is filed challenging the initiation of departmental enquiry, till adjudication of the criminal prosecution, he submitted that as per the principles laid down by the Hon'ble Apex Court, departmental enquiry initiated on the facts of the criminal prosecution case is not barred, but the Courts have to take

into consideration while considering challenge to the departmental enquiry during pendency of the criminal prosecution as to whether by disclosing his defence in departmental enquiry prejudice is likely to be caused to the delinquent while facing the criminal prosecution. He further submitted that the Original Application can be disposed of by following the principles laid down by the Hon'ble Apex Court in the case of **Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. Reported in 1999 (3) SCC 679** and more particularly in the case of **Stanzen Toyotetsu India P. Ltd. Vs. Girish V. and Others reported in 2014 (3) SCC 636** which are referred to and followed in the decision of the Hon'ble Bombay High Court, Bench at Aurangabad in W.P.No. 4758/2014 in the matter of **Surendrasingh Govindsingh Rajput Vs. Maharashtra State Electricity & Anr. and 3 other W.P. Nos. 4652/2014, 6079/2014, 2403/2015** by judgment and order dated 23.09.2015. Learned P.O. for the respondents in that regard submitted that appropriate order may be passed. Record shows that by order dated 20.04.2016 departmental enquiry initiated against the applicant was stayed till filing of affidavit in reply.

7. In the case of **Surendrasingh Govindsingh Rajput Vs. Maharashtra State Electricity & Anr.** (cited supra), the charges in the criminal prosecution case and departmental enquiry were same and departmental enquiry was sought to be stayed. The said Writ Petitions were disposed of as follows by making observations in paragraph Nos. 22 to 26 as under:-

*“22. It is necessary to state here that this Court, in all these matters, has granted interim relief in favour the petitioners thereby staying the ongoing disciplinary proceedings against the petitioners.*

*23. In the case of **Capt. M. Paul Anthony (supra)**, while dealing with the similar question, the Apex Court in para 22 has drawn conclusions which are deducible from various decisions, as follows:-*

*“22. ....*

- (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, the administration may get rid of him at the earliest.”*

24. *It therefore, appears from the above discussion that the pendency of criminal proceeding is not a bar to continue to disciplinary proceedings in ordinary circumstances and it is only in exceptional circumstances when the charges in both the proceedings are founded on the same set of facts and evidence and the charges in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and facts. Considering all petitions, it appears that the incident in question giving rise to criminal trial and the disciplinary proceeding is one and the same. It also appears that the charges in criminal case against the petitioners are of grave nature involving complicated questions of law and facts. Some of the important witnesses are common. The accusation is also same and some additional charges in the disciplinary proceedings are dependent upon the main charge similar to that of criminal case. The point that is to be*

*proved in the criminal trial as well as in the disciplinary proceeding is whether the petitioner has demanded the bribe and accepted the same from the complainant. In the event the petitioner is required to participate and produce evidence in defence in the disciplinary proceeding, his defence in criminal proceeding which would normally constitute the basis in line and object of cross examination of the prosecution witnesses would already be known to such witnesses. Needless to state that the accused in criminal trial is presumed to be an innocent unless the charge against him is proved beyond reasonable doubt. The burden of proving the guilt of the accused is on the prosecution. However, one of the considerations would be that the disciplinary enquiry cannot and should not be delayed unduly. If the criminal case is unduly delayed that may itself be a good ground for going ahead with the disciplinary enquiry. It would not be in the interest of the department that the delinquent of a serious misconduct should be continued in office indefinitely awaiting the result of the criminal proceedings.*

25. *In the circumstances and taking into consideration all aspects mentioned above and keeping in mind the principles laid down and the course adopted by the Apex Court in the cases of **Stanzen Toyotetsu India P. Ltd. Vs. Girish V. and Others and Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. (cited supra)**, we pass the following order:-*

ORDER

- I. *We direct the court dealing with the criminal charges against the petitioners to conclude the proceedings as expeditiously as possible, and preferably within a period of one year from the date of this order.*
- II. *The interim orders granting stay to the ongoing disciplinary proceedings in each of the case shall remain in force for a period of one year from the date of this order.*

- III. *In case the charge sheet is not filed or belatedly filed, the interim orders granting stay to the ongoing disciplinary proceedings in such case shall remain in force for a period of one year from the date of this order and the disciplinary proceedings initiated against the petitioners in those cases shall be resumed and concluded by the Enquiry Officer thereafter.*
- IV. *We hope and trust that the trial court will take effective steps to ensure that the witnesses are served, appeared and examined accordingly.*
- V. *The petitioners, who are accused in criminal case, shall cooperate with the trial court for early disposal of criminal proceedings.*
- VI. *In case, the trial is not completed within a period of one year from today, despite the steps which the trial court has been directed to take, the disciplinary proceedings, initiated against the petitioners, shall be resumed and concluded by the Enquiry Officer.*
- VII. *We make it clear that the interim orders staying ongoing disciplinary proceedings shall in that case stand vacated upon expiry of a period of one year from the date of this order.*
- VIII. *Registry may communicate this order to the concerned Courts, where the criminal prosecutions against the petitioners are pending.*

*26. Writ petitions are disposed of accordingly. Rule is made absolute in the above terms.*

8. In the case in hand, we have already observed that initiation of departmental enquiry is based on the facts in the charge sheet filed against the applicant in the criminal case. The criminal case is pending before the Special Judge, Nanded which was also the situation in the case of **Surendrasingh Govindsingh Rajput Vs. Maharashtra State Electricity & Anr. (cited supra)**. In view of the same, this Original Application also can be disposed by keeping in mind the principles laid down and course adopted by the Hon'ble Apex Court in the case of ***Stanzen Toyotetsu India P. Ltd. Vs. Girish V. and Others and Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. (cited supra)*** followed in the decision of the Hon'ble Bombay High Court, Bench at Aurangabad in the case of **Surendrasingh Govindsingh Rajput Vs. Maharashtra State Electricity & Anr.** (cited supra) as follows:-

### **ORDER**

The Original Application is disposed off in following terms:-

- (I) We direct the court dealing with the criminal charges against the applicant to conclude the proceedings as expeditiously as possible, and preferably within a

period of one year from the date of this order.

- (II) The interim order granting stay to the ongoing disciplinary proceedings in this case shall remain in force for a period of one year from the date of this order.
- (III) We hope and trust that the trial court will take effective steps to ensure that the witnesses are served, appeared and examined accordingly.
- (IV) The applicant, who is accused in criminal case, shall cooperate with the trial court for early disposal of criminal proceedings.
- (V) In case, the trial is not completed within a period of one year from today, despite the steps which the trial court has been directed to take, the disciplinary proceedings, initiated against the petitioners, shall be resumed and concluded by the Enquiry Officer.
- (VI) We make it clear that the interim order staying ongoing disciplinary proceedings shall in that case stand vacated upon expiry of a period of one year from the date of this order.
- (VII) Registry may communicate this order to the concerned Court, where the criminal prosecution against the applicant is pending.
- (VIII) There shall be no order as to costs.

**MEMBER (A)**

**MEMBER (J)**