Before S.S. Nijjar & Nirmal Yadav, JJ.

UNION OF INDIA AND OTHERS—*Petitioner*

versus

SARVESH KAUSHAL—*Respondent*

C.W.P. No. 15169/CAT of 2002

29th July, 2005

Constitution of India, 1950—Art. 226—Vigilance Manual, Vol. I-Chapter 3, Paragraphs 1.8, 3.10, 3.10(i), 3.11(ii)—Allegations of dereliction of duty against an Officer of FCI—Initiation of departmental proceedings against him—Same matter also pending before Central Vigilance Commission for investigation—Para 1.8 provides that once a case has been referred to and taken up by the CBI for investigation, further investigation should be left to them and a parallel investigation by the department shall be avoided—Para 3.18 provides that there is no legal bar to initiation of disciplinary action under the rule applicable to the public servant where criminal prosecution is already pending—Neither there is a criminal prosecution nor an acquittal after a completed trial—CBI conducting preliminary investigation/inquiry—Further action by the department would have to be taken on the completion of the investigation by the CBI on the basis of their report—Paragraphs 3.10, 3.11(i) & 3.11(ii) also provide that the Deaprtment is not free to hold parallel or repetitive inquiries into the same matter—Show cause notice issued to petitioner clearly contrary to the provisions of the Manual—Whether the Tribunal has jurisdiction to entertain the OA on the ground that the departmental proceedings initiated against the officer are contrary to the provisions of Vigilance Manual-Held, yes-Petition liable to be dismissed.

Held, the Para 1.8 of Chapter 3 of the Vigilance Manual, Vol. I clearly provides that once a case has been referred to and taken up by the CBI for investigation, further investigation should be left to them and a parallel investigation by the Administrative Ministry/ Department, Organization should be avoided. Further action by the Department, should be taken on the completion of investigation by the CBI on the basis of their report. The directions issued by the Tribunal are in consonance with the aforesaid provison of the Vigilance Manual.

(Para 6)

Further held, that the matter having entrusted to the CBI, there was no justification for re-opening the matter departmentally as well. The Tribunal has not committed any error of jurisdiction in quashing the show cause notice issued to the respondent. We also do not accept the submission that the instructions contained in the Vigilance Manual are not bidning. The Tribunal has correctly held that in view of para 1.8 the department could not have issued the show cause notice.

(Para 7)

Further held, that Para 3.18 of the Manual has no application to the facts of the present case. This provides that there is no legal bar to initiation of disciplinary action under the rule applicable to the public servant where criminal prosecution is already pending. In the present case, there is no question of any criminal proceeding which is pending against respondent. Only a preliminary investigation is being conducted by the CBI. Criminal proceeding is said to be pending when a charge is framed by the criminal Court. The aforesaid stage comes only after the investigation is completed and the report is submitted to the Court for its consideration as to whether there is sufficient material *prima facie* to prosecute the accused.

(Para 10)

Further held, that the Tribunal would have the jurisdiction to entertain O.A. where the show cause notice is shown to be patently, without jurisdiction. The show cause notice had been issued to respondent in total contravention of the provisions of the Vigilance Manual. This apart, the Tribunal has not granted the final relief to respondent. The department will be at liberty to take departmental action against the respondent in case it is found that thre is not sufficient evidence to prosecute him for any criminal offence on the conclusion of the investigation by the CBI.

(Para 15)

Satpal Jain, Sr. Advocate with Vijay Chaudhary, Advocate *for the petitioners.*

Rajive Atma Ram, Sr. Advocate with H.S. Sethi, Advocate, *for the respondent.*

JUDGMENT

S.S. NIJJAR, J (ORAL)

(1) We have heard the learned counsel for the parties and perused the paper-book.

(2) Respondent No. 1 Shri Sarvesh Kaushal, an IAS Officer (hereinafter referred to as "Kaushal") was served Memorandum No. C-123015/4/98-AVU, dated 30th June, 2000 (Annexure P-1) alleging that he failed to maintain absolute integrity and devotion to duty, while posted and functioning as Senior Regional Manager, FCI, Punjab Chandigarh during 6th September, 1993 to 30th April, 1998. It was alleged that he did not take adequate steps to ensure compliance of certain instructions issued by the Managing Director, FCI on 4th August, 1994 which permitted storage of paddy in the premises of the Millers in Punjab. By not enforcing the instructions, he had jeopardised the interest of FCI. In view of the alarming situation and misappropriation of paddy, on a large scale in Bhatinda District of Punjab region, there was an urgent need to take of preventive measures, including conducting physical verification of FCI paddy to ensure that similar malpractices are curbed. Kaushal is alleged to have worked more like a Post Office only issuing instructions from the Regional Office without ascertaining compliance thereon. Therefore, it is alleged that he has failed to exercise due care and caution in the exercise of supervisory control and is, therefore, guilty of dereliction of duty. he was directed to explain his position on the points raised in the Memorandum (Annexure P-1), within 15 days from the receipt of the Memorandum. It was received by Kaushal on 11th July, 2000. He submitted an application dated 16th July, 2000 before the Ministry of Consumer Affairs asking for permission to inspect the official record with regard to the points raised in the Memorandum so that he is in a position to furnish the explanation within the stipulated time period. This communication was not responded to by the concerned Ministry. He submitted reminder on 26th July, 2000. Ultimately, he received a communication dated 28th August, 2000. He was informed that "it may not be necessary for the applicant to inspect official record at this stage". He was informed that he will be given full opportunity to inspect the listed documents during the course of enquiry, if instituted. He was directed to furnish

explanation within 10 days of the receipt of this letter which was received by him on 3rd August, 2000. It appears that the petitioner had started an independent investigation, even though the same matter was pending investigation/preliminary enquiry by the Central Vigilance Commission. This action was challenged by Kaushal by filing OA No. 632-CH of 2000 before the Central Administrative Tribunal, Punjab, Chandigarh (hereinafter referred to as "the Tribunal"). On notice having been issued, the respondents appeared and filed a written statement. It was pleaded that the issuance of the Memorandum was only a preliminary enquiry/deliberation preceding the issuance of a formal charge-sheet, only the reaction of the officer had been asked for. It was also stated that it was not necessary at that stage to supply any documents to the Officer. It was also stated that the Original Application is premature. It was stated that it has been settled by the Supreme Court in a number of judgments that at the preliminary stage, the enquiry proceedings cannot be challenged in a court of law. By its order dated 4th July, 2001, the Tribunal has disposed of the Original Application with a direction to the authorities to re-consider the matter in the light of the provisions of para 1.8 of the Vigilance Manual and in the light of the observations made in the order. Further, it has been directed that till a decision in that behalf is taken, no action be initiated against the applicant on the strength of the Memorandum. Aggrieved against the aforesaid order, the petitioner moved for review of the same. The review application was filed on 23rd May, 2002. A preliminary objection was taken on behalf of Kaushal that the review Application is time barred as there was a delay of 282 days in filing the same, after the expiry of the maximum period of time of 30 days from the date of the receipt of a copy of the order sought to be reviewed. In support of the preliminary objection, the learned counsel appearing for Kaushal had relied on a judgment of the Supreme Court in the case of **K. Ajit Babu** *versus* **Union of India (1).** It was submitted that there has been no discovery of new and important matter enabling the petitioner to file the review petition. After taking notice of the various provisions of Administrative Tribunal Act and the law laid down by the Supreme Court, the Review petition was also dismissed.

(1) (1997) (6) S.C.C. 473

(3) Mr. Satpal Jain, learned Sr. Counsel appearing for the petitioners, has vehemently argued that the Tribunal has committed a grave error in entertaining the O.A. Only a preliminary investigation is being conducted against the delinquent officer. The Tribunal had no jurisdiction to foreclose the entire investigation during the pendency of the investigation which is to be conducted by the Central Vigilance Commission, Learned Sr. counsel submits that the decision rendered by the Tribunal is contrary to the well settled propositions of law *viz.* (1) Departmental proceedings can be continued even after the acquittal of an official by the trial court and (2) The Tribunal has no jurisdiction to quash the show-cause notice, even before a reply is submitted by the officer whose explanation is sought. Learned Sr. Counsel also submits that the Tribunal has wrongly relied on paragraph 1.8 of Chapter 3 of the Vigilance Manual, Vol. I. The provision is not a complete bar on holding of a preliminary departmental enquiry. In fact provision is made in paragraph 3.18 which permits initiation of disciplinary action. In support of the submissions, learned Sr. Counsel has relied on a number of judgments of the Supreme Court as well as the High Court.

(4) Mr. Rajive Atma Ram, learned Sr. Counsel appearing for the respondents has submitted with equal amount of vehemence that the petitioners did not raise any plea with regard to the applicability of paragraph 3.18 of the Vigilance Manual before the Tribunal. Therefore, the plea now raised by the petitioners that the order of the Tribunal is liable to be set aside as it does not take into consideration the aforesaid provision, is totally baseless. In fact, the aforesaid plea was not even taken by the petitioners in the review petition. It was only during the course of arguments that the learned Sr. Counsel appearing for the petitioners made the submissions with regard to paragraph 3.18 of the Vigilance Manual, Learned Sr. Counsel appearing for the respondents submits that even otherwise, paragraph 3.18 has to be read alongwith paragraphs 3.10, 3.11 (i) and 3.11(ii) of the Vigilance Manual. A reading of the above paragraphs would show that the department is not free to hold a parallel or repetitive inquiries into the same matter. Learned Sr. Counsel further submits that the Tribunal has rightly come to the conclusion that the department had earlier enquired into the same allegations. On the basis of the enquiry, the competent authority had written to Kaushal specifically stating that "Investigation relating to certain issues,

including misappropriation of non-milling of FCI paddy in 1994-95 has since been closed with the order of the competent authority," Learned Sr. counsel submits that the Officer is unnecessarily being harassed and the writ petition deserves to be dismissed.

(4–A) We have considered the submissions made by the learned Sr. Counsel appearing for both the parties. Before we consider the respective submissions of the learned Sr. Counrel, it may be appropriate to reproduce here the various provisions of the Vigilance Manual as under :—

"1.8 Once a case has been referred to and taken up by the CBI for investigation, further investigation should be left to them and a parallel investigation by the Administrative Ministry, Organisation should be avoided. Further action by the Department should be taken on the completion of investigation by the C.B.I. on the basis of their report.

2.3 During the course of preliminary inquiry, the public servant concerned may be given an opportunity to say what he may have to say about the allegations against him to find out if he is in a position to give any satisfactory information or explanation. In the absence of such an explanation, the public servant concerned is likely to be proceeded against unjustifiably. It is only proper, therefore, that the investigation officer tries to obtain the suspect officers' version of "facts" and why an enquiry should not be held. There is no question of making available to him any documents at this stage.

3.10 If on completion of investigation, the CBI come to the conclusion that sufficient evidence is forth-coming for launching a criminal prosecution, then the final report of investigation in such cases shall be forwarded to the Central Vigilance Commission if sanction to prosecution is required under any law to be issued in the name of the President. In other cases, the report will be forwarded to the authority competent to sanction prosecution. The report will be accompanied by the draft sanction order in the prescribed form (*see* Chapter VII), and will give the rank and designation of the authority competent to dismiss the

delinquent officer from service and the law or rules under which that authority is competent to do so. Further action to be taken on such reports is described in Chapter VII.

3.10(i)The allegations are of a nature serious enough to justify regular departmental action being against the public servant concerned. The final report in such cases will be accompanied by (a) draft articles of charge prepared in the prescribed form (*see* Chapter X), (b) a statement of imputations in support of each charge, and (c) lists of documents and witnesses relied upon to prove the charges and imputations.

3.11(ii)While sufficient proof is not available to justify prosecution or regular departmental action, there is a reasonable suspicion about the honesty or integrity of the Government servant concerned, the final report in such cases will seek to bring to the notice of the disciplinary authority the nature of irregularity or negligence for such administrative action as may be considered feasible or appropriate."

(5) After considering the aforesaid provisions, the Tribunal has come to the conclusion that since a preliminary investigation had already commenced by the CBI, a parallel investigation within department was not permissible. It has also been observed that the administrative Ministry would always be at liberty to bring any additonal material to the notice of the CBI. The position would have been entirely different if the case had not been registered by the CBI. In such circumstances, paragraph 2.3 would have become applicable. Once the CBI is ceased of the matter in terms of para 1.8 of the Vigilance Manual, the department has to stay its hands in conducting preliminary investigation. We are unable to accept the submission of Mr. S.P. Jain, learned Sr. Counsel that the Tribunal has committed a grave error in entertaining the O.A. We are also unable to accept the submission of the learned Sr. Counsel that the Tribunal has foreclosed any further investigation by the department. We also do not find any merit in the submission of the learned Sr. Counsel that the Tribunal had no Jurisdiction to quash the show-cause notice even before a reply is submitted by the Officer whose explanation has been sought. We are also of the considered opinion that the submission of

Mr. S.P. Jain based on paragraph 3.18 of the Vigilance Manual is not well-founded. The directions which have been issued by the Tribunal were as follows :—

> "19. It was not disputed during the course of hearing that the CBI is already seized of the matter and has registered a preliminary inquiry on the same subject against the applicant and investigation by the CBI is in progress and no final decision has been arrived at by the CBI, the specialized agency, as yet. Once that is so, it was expected of the Administrative Ministry to bring to the notice of the CBI additional material or information which may have come to its notice so as to enable the CBI to arrive at a correct conclusion and also to look into such additional information or material that is made available by the Administrative Ministry. If the matter had not been registered by the CBI and was not under investigation, the position might have been entirely different and the Administrative Ministry may have perhaps been justified to have a preliminary investigation and to charge-sheet the official thereafter and the protection of para 2.3 of the Vigilance Manual relied upon by the respondents may have been fully applicable, but the face of the provision contained in para 1.8 of the Vigilance Manual it cannot be said that when a matter has been referred to the CBI which is investigating the matter, the Administrative Ministry can also independently investigate that very matter. It will in that situation be in the nature of a double jeopardy. However, to us it appears that the provisions made in para 1.8 of the Vigilance Manual in wholesome and perhaps has been incorporated in public interest and to shun arbitrariness in administrative action. Para 2.3 of the Vigilance Manual when read in that context does not conflict with the provision contained in para 1.8 thereof. It, however, is still open to the Administrative Ministry to collect the material at its own level and pass the information or the material collected to the CBI. In this case, as already seen, the CBI is already seized of the matter and once that is so the Administrative Ministry ought to have awaited the result of the investigation carried out by it and if required processed with the matter thereafter in accordance with law, if permissible.

20. Without going into the allegations of *mala fide* and the validity or otherwise of the show cause notice and having regard to the allegation that the CBI has already initiated inquiry into the matter and investigation is going and the competent authority had already closed the matter after investigation, which allegations have not specifically been denied, we dispose of the OA and the Misc. Application with a direction to the respondent-authorities to reconsider the matter in the light of the provision of para 1.8 of the Vigilance Manual and in the light of the observations made in the earlier part of this order in that behalf. Till a decision in that behalf is taken, no action may be initiated against the applicant on the strength of the Memorandum, Annexure A-1.

OA and MA stand disposed of in the above terms but in the facts and circumstances of the case, there will be no order as to costs."

(6) In our opinion, the aforesaid directions are perfectly in consonance with the provisions of the Vigilance Manual. Chapter III of the aforesaid Manual deals with preliminary enquiry/investigation. Section 1 of the Chapter deals with agency for conducting enquiries. Para 1.1 provides that as soon as a decision has been taken to have a inquiry made into the allegations contained in a complaint, it will be necessary to decide whether the allegations should be inquired into departmentally or whether a police investigation is necessary. Para 1.8 clearly provides that once a case has been referred to and taken up by the CBI for investigation, further investigation should be left to them and a paralledl investigation by the Administrative Mnistry/ Department, Organisation should be avoided. Further action by the Department, should be taken on the completion of investigation by the CBI on the basis of their report. We are of the considered opinion that the directions issued by the Tribunal are in consonance with the aforesaid provision of the Vigilance Manual. Section 2 of Chapter III of the aforesaid Manual deals with preliminary enquiry by departmental agencies. Para 2.1 provides as under :—

"2.1 After it has been decided that the allegations contained in a complaint should be looked into deprtmentally, the Vigilance Officer should proceed to make a preliminary enquiry to determine whether *prima facie* there is some substance in them."

(7) Para 2.2 deals with a method of conducting preliminary inquiry by the Vigilance Officer. Para 2.3 is only a further step to the proceedings within the department. It can have no reference to the enquiry which is to be conducted by the CBI. Section 3 of Chapter III of the aforesaid Manual deals with investigation by the CBI. Para 3.1 provides that unless there are any special reasons to the contrary, cases which are to be investigated by the Central Bureau of Investigation should be handed over to them at the earliest stage. This is particular desirable to do so to safeguard against the possibility of the suspect public servant tampering with or destroying incriminating evidence against him. From the aforesaid it becomes apparent that there is a clear delineation of the investigations to be conducted through the CBI and those to be conducted departmentally. The decision with regard to the one or the other mode has to be taken at the initial stage. In the present case, the matter having been entrusted to the CBI, there was no justification for reopening the matter departmentally as well. In our opinion, the Tribunal has not committed any error of jurisdiction in quashing the show-cause notice issued to Kaushal. We also do not accept the submission that the instructions contained in the aforesaid Manual are not binding. We are of the opinion that the Tribunal has correctly held that in view of para 1.8, the department could not have issued the show-cause notice. The Tribunal has rightly relied on the judgment of the Supreme Court in the case of **Virender S. Hooda and others** *versus* **State of Haryana and another (2).** In the aforesaid case, the Supreme Court has categorically held as follows :—

> "4. This view taken by the High Court that the administrative instructions cannot be enforced by the appellant and that vacancies became available after the initiation of the process of recruitment would be looking at the matter from a narrow and wrong angle. When a policy has been declared by the State as to the manner of filling up the post and that policy is declared in terms of rules and instructions issued to the Public Service Commission from time to time and so long as these instructions are not contrary to the rules, the respondents ought to follow the same."

(2) J.T. 1999 (5) S.C. 621

(8) It is not longer possible to argue that administrative orders cannot confer any rights or impose any duties. The proposition of law was settled by the Supreme Court in the case of **Union of India** *versus* **K.P. Joseph and others (3).** In paragraph 10, the Supreme Court has observed as under :—

> "10. In **Union of India** *versus* **M/s Indo-Afghan Agencies Ltd. (1968) 2 SCR 366 at p. 377** this Court, in considering the nature of the Import Trade Policy said :—
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> > "Granting that it is executive in character, this Court has held that Courts have the power in appropriate cases to compel performance of the obligations imposed by the Schemes upon the departmental authorities."
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> To say that an administrative order can never confer any right would be too wide a proposition. There are administrative orders which confer rights and impose duties. It is because an administrative order can abridge or take away rights and we have imported the principle of natural justice of *audi alteram* partem into this area. A very perceptive writer has written :—
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> > "Let us take one of Mr. Harrison's instances, a regulation from the British War Officer that no recruit shall be enlisted who is not five feet six inches high. Suppose a recruiting officer musters in a man who is five feet five inches only in height, and pays him the King's shilling : afterwards the officer is sued by the Government for being short in his accounts; among other items he claims to be allowed the shilling paid to the undersized recruit. The Court has to consider and supply this regulation and, whatever its effect may be, that effect will be given to it by the Court exactly as effect will be given to a statute providing that murderers shall be hanged, or that last wills will have two witnesses." (John Chipman Gray on "The Nature and Sources of Law")".

(3) 1973 (1) S.L.R. 910

(9) The aforesaid observations leave no manner of doubt that the department is bound by the instructions contained in the Vigilance Manual so long as they are not contradictory to any superior legislation such as departmental rules framed under Proviso to Article 309 of the Constitution of India, statutes promulgated by the Legislature and the provisions of the Constitution. No material has been placed on record to show that the instructions contained in para 1.8 of the aforesaid Manual are contrary to any statutory provisions or departmental rules. In fact, the plea of the petitioners is merely that they have the power to conduct a parallel investigation by virtue of para 3.18 of the aforesaid Manual. Para 3.18 of the Manual provides as under :—

> "3.18 There is no legal bar to the initiation of disciplinary action under the rules applicable to the delinquent public servant where criminal prosecution is already pending, and generally there should be no apprehension of the outcome of the one affecting the other, because the ingredients of misconduct/delinquency in criminal prosecutions and departmental proceedings as well as the quantum of proof required in both cases are not identical. In criminal cases, the proof required for conviction has to be beyond reasonable doubt, whereas in departmental proceedings proof based on preponderance of probability is sufficient for holding the charges to have been proved. What might, however, affect the outcome of the subsequent proceedings may be the contradictions which the witnesses may make in their depositions in the said proceedings. It would, therefore, be necessary that all relevant matters be considered in each individual case while taking a decision on whether or not to start simultaneous departmental action."

(10) In our opinion, the aforesaid provision has no application to the facts of the present case. This provides that there is no legal bar to initiation of disciplinary action under the rule applicable to the public servant where criminal prosecution is already pending. In the present case, there is no question of any criminal proceeding which is pending against Kaushal. Only a preliminary investigation is being conducted by the C.B.I. Criminal proceeding is said to be pending when a charge is framed by the criminal court. The aforesaid stage

comes only after the investigation is completed and the report is submitted to the Court for its consideration as to whether there is sufficient material *prima facie* to prosecute the accused. Even otherwise, the submission with regard to para 3.18 have rightly been rejected by the Tribunal as the matter was not raised in the O.A. This point was raised for the first time when the review application was argued. It was not even pleaded in the review application. In our view, the Tribunal has rightly rejected the submissions with regard to para 3.18. However, Mr. S.P. Jain, learned Sr. Counsel submits that the review application was filed on the basis that the Tribunal has wrongly relied on a letter dated 1st November,1996 which had been written by one P.K. Mathur, Managing (Vigilance), to Kaushal in which it was mentioned as follows :—

> "Please refer to your D..O. Letter No. PA/SRM/Misc./96, dated 1st November, 1996 addressed to Executive Director (Vigilance), FCI, Hqrs., regarding results of various investigation initiated against you on the basis of anonymous/pseudonymous complaints, press reports, some representations received from Unions or from Zonal Office (North).
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> With regard to the above, I would like to inform you that the investigation relating in reference received in the Hqrs. With regard to down gradation of sound rice and its sale as sub-standard rice, purchase of wooden crates, posting and transfers of AH (Ocs') and purchase of wooden ballies, misappropriation of non-willing of FCI paddy in 1994-95, etc. have since been closed with the orders of the competent authority. The relevant files with regard to these cases which were seized by Vigilance Division of Hqrs. are being sent to R.O. through courier.
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> In so far as the files relating to the irregularities in the movement of foodgrains from Punjab and Haryana regions to J &K valley during the period March to June, 1995 are concerned, the same are still required with regard to the complaint against Shri P. Ram, former ZM (N). Since the relevant records may be required by the Ministry (CVC etc.) the same cannot be spared at the moment."

(11) On the basis of the aforesaid letter, the Tribunal had made certain observations in paragraph 20 of the judgment. It has been *inter alia,* observed by the Tribunal that the competent authority had already closed the matter after investigation, which allegations have not specifically been denied. We are of the considered opinion that the aforesaid observations of the Tribunal have been taken totally out of control. In view of the provisions contained in para 1.8 of the Vigilance Manual, further action by the department would have to be taken on the completion of the investigation by the C.B.I., on the basis of their report. Under para 3.11 (i) (ii) of the aforesaid Manual, the C.B.I. has the power to recommend that departmental action may be taken where allegations are of a serious nature, but evidence available is not sufficient for launching criminal prosecution. In case a departmental enquiry is launched against Kaushal on the completion of the CBI report, only at that stage, the evidenciary value of the aforesaid letter shall have to be seen. Merely because the aforesaid letter has been taken into consideration by the Tribunal would not render its decision, without jurisdiction or even arbitrary. The provisions contained in Paras 3.10, 3.11, 3.11(i) and (ii) are as under :—

> "3.10 If on completion of investigation, the C.B.I. come to the conclusion that suficient evidence is forth coming for launching a criminal prosecution, then the final report of investigation in such cases shall be forwarded to the Central Vigilance Commission if sanction to prosecution is required under any law to be issued in the name of the President. If other cases, the report will be forwarded to the authority competent to sanction prosecution. The report will be accompanied by the draft sanction order in the prescribed form (*see* Chapter VII), and will give the rank and designation of the authority competent to dismiss the delinquent officer from service and the law or rules under which that authority is competent to do so. Further action to be taken on such reports is described in Chapter VII.
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> 3.11 In other cases in which evidence available is not sufficient for laucning criminal prosecution, the C.B.I. may come to the conclusion that :
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> (i) The allegations are of a nature serious enough to justify regular departmental action being taken against the public servant concerned. The final report

in such cases will be accompanied by (a) draft articles of charge prepared in the prescribed form (*see* Chapter X), (b) a statement of imputations in support of each charge, and (c) lists of documents and witnesses relied upon to prove the charges and imputations ; or

(ii) While sufficient proof is not available to justify prosecution or regular departmental action, there is a reasonable suspicion about the honesty or integrity of the Government servant concerned, the final report in such cases will seek to bring to the notice of the disciplinary authority the nature of irregularity or negligence for such administrative action as may be considered feasible or appropriate."

(12) The aforesaid provisions make it abundantly clear that departmental proceedings have not been foreclosed merely because the issuance of show-cause notice has been quashed during the pendency of the preliminary investigation by the CBI. Mr. S.P. Jain, learned Sr. Counsel has cited a number of judgments in support of the proposition that departmental proceedings can be continued even after an employee has been acquitted by the Criminal Court. The aforesaid proposition is well-established in law. In the present case, at this stage, there is neither a prosecution nor an acquittal of Kaushal in criminal proceedings. Therefore, the judgments cited by the learned Sr. Counsel would, at this stage, not be relevant. In the case of **State of Karnataka** *versus* **T. Venkataramanappa (4)**, it had been held that the standard of proof required in a criminal prosecution is different from the standard required in departmental proceedings. In the case of **Bharat Cooking Coal Ltd.** *versus* **Bibhuti Kumar Singh and others, (5)** the employee had been discharged by the CBI on the ground of non-availability of sufficient evidence. The departmental inquiries were permitted to continue as the strict standard of proof as required in the criminal proceedings is not required in departmental proceedings. In the case of **State of Rajasthan** *versus* **Shri B.K. Meena and others, (6)** again it has been held

(4) 1997 (1) S.C.T. 484
(5) 1995 (1) S.C.T. 20
(6) J.T. 1996 (8) S.C. 684

that there is no legal bar for both criminal prosecution and departmental proceedings to go on simultaneously. It has also been observed that it may not be 'deisrable', 'advisable' or 'appropriate' to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. It was also further observed that the staying of disciplinary proceedings 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. In the case of **Nelson Motis** *versus* **Union of India and another, (7)** the Supreme Court has reiterated that the nature and scope of a criminal case are very different from those of departmental proceedings and an order of acquittal cannot conclude the departmental proceedings. The Supreme Court notices that the Tribunal had pointed out that the acts which led to the initiation of departmental proceedings were exactly the same which were the subject matter of the criminal proceedings. In the case of **Jaipal** *versus* **State of Haryana and others,** a Division Bench of this Court has held that the standard of proof of prosecution to prove the guilt required in a criminal trial is beyond reasonable doubt. In departmental proceedings, the liability can made out on preponderance of probabilities. Therefore, a disciplinary enquiry should not be placed on the pedestal of a criminal trial. Therefore, the departmental proceedings could continue alongwith the criminal trial. In the case of **Desh Bandhu Pallan** *versus* **Oriental Bank of Commerce, (8)** a learned Single Judge of this Court has reiterated the law that the mere acquittal in a criminal charge on the same allegation is not sufficient to exonerate a delinquent employee from the same charge in departmental proceedings as well.

(13) As notice above, we are of the considered opinion that the propositions of law emerging from the aforesaid cases cited by Mr. S.P. Jain, learned Sr. Counsel are not applicable in the facts and circumstances of the present case. At present there is neither a criminal prosecution nor an acquittal after a completed trial. In our opinion, the reliance on these authorise by the petitioners was wholly misconceived. However, since the learned Sr. Counsel appearing for

(7) J.T. 1992 (5) S.C. 511
(8) 2002 (2) S.C.T. 551

the petitioners had insisted that each and every authority cited by him should be considered by this Court, we felt it our duty to make a reference to the aforesaid judgments.

(14) Mr. Jain, learned Sr. Counsel has also cited a number of authorities in support of the submissions that the Tribunal erred in law in entertaining the O.A. filed by Kaushal. According to the learned Sr. Counsel, it is not permissible for the Court to quash departmental proceedings at the initial stage itself. In the case of **Special Director and another** *versus* **Mohd. Ghulam Ghouse and another, (9),** the Supreme Court considered an order of *status quo* granted by the High Court of Bombay. In that case, respondent No. 1 was responsible for financial irregularities involving nearly Rs. 270 crores. Further allegations were that the documents have been forged and accounts have been manipulated. It was also the case of the appellant that in any event, respondent No. 1 was free to canvass all the points that were taken in the writ petition before the authority issuing the notice. Instead of doing that, he rushed to the High Court. The High Court not only entertained the writ petition, but also granted interim relief, which in fact amounted to allowing the writ petition even before it was heard on merits. It was alleged that there was clear violation of provisions of Foreign Exchange Regulation Act, 1973 (FERA) and Foreign Exchange Management Act, 1999 (FEMA). In these circumstances, the Supreme Court observed as follows :—

> "This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless, the High Court is satisfied that the show-cause notice was totally *non est* in the eye of law for absolute want of jurisdication of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and a matter of routine and the writ petitioner should

(9) AIR 2004 S.C. 1467

invariably be directed to respond to the show- cause notice and take all stands highlighted in the writ petition. (Emphasis supplied). Whether the show- cause notice was founded on any legal premises is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the Court. Further, when the Court passes an interim order, it should be careful to see that the statutory functionaries specially and specifically constituted for the purpose are not denuded of powers and authority to initially decide the matter and ensure that ultimate relief which may or may not be finally granted in the writ petition is accorded to the writ petitioner even at the threshold by the interim protection granted."

(15) A perusal of the emphasised portions of the aforesaid extract would show that the Tribunal would have the jurisdiction to entertain O.A. where the show-cause notice is shown to be patently, without jurisdiction. In earlier part of the judgment, we have already held that the show-cause notice had been issued to Kaushal in total contravention of the provisions of the Vigilance Manual. This apart, the Tribunal has not granted the final relief to Kaushal. The department will be at liberty to take departmental action against Kaushal in case it is found that there is not sufficient evidence to prosecute him for any criminal offence on the conclusion of the investigation by the C.B.I.

(16) In the case of **The Executive Engineer, Bihar State Housing Board** *versus* **Ramesh Kumar Singh and others, (10)** the appellant had issued a show-cause notice to the 1st respondent to show-cause as to why an order of eviction from the house in question be not passed against him as he was illegally and unauthorisedly living in the same. Instead of giving a reply to the show-cause notice, he filed a writ petition in the High Court. The High Court heard the parties and took the view that the 1st respondent

(10) J.T. 1995 (8) S.C. 331

is not a tenant of the Board and so the Board will have no jurisdiction to initiate proceedings either on its own motion or at the instance of the 4th respondent who was the allottee of the concerned quarter. It was observed by the High Court that the allottee may seek appropriate remedy by bringing a suit under the Bihar Buildings (Lease, Rent and Eviction) Control Act. In the result, the eviction proceedings were quashed. In such circumstances, the Supreme Court observed that the basic or fundamental fact in dispute is as to who was the owner of the quarter between the 1st respondent and the 4th respondent. In fact, the allottee had complained to the Board that the 1st respondent had forcibly entered the quarter. Since the premises belong to the Board, it was competent to initiate the proceedings under the Act. It was in such circumstances that the Supreme Court observed as under :—

> "10. We are concerned in this case, with the entertainment of the writ petition against a show cause notice issued by a competent statutory authority. It should be borne in mind that there is no attack against the vires of the statutory/ provisions governing the matter. No question of infringement of any fundamental right guaranteed by the Constitution is alleged or proved. It cannot be said that Ext. P-4 notice is *ex facie* a "nullity" or totally "without jurisdiction" in the traditional sense of that expression– that is to say that even the commencement or initiation of the proceedings, on the face of it and without anything more, is totally unauthorised. In such a case, for entertaining a Writ Petition under Article 226 of the Constitution of India against a show-cause notice, at that stage, it should be shown that the authority has no power or jurisdiction, to enter upon the enquiry in question. In all other cases, it is only appropriate that the party should avail of the alternate remedy and show cause against the same before the authority concerned and take up the objection regarding jurisdiction also, then. In the event of an adverse decision, it will certainly be open to him, to assail the same either in appeal or revision, as the case may be, or in appropriate cases, by invoking the jurisdiction under Article 226 of the Constitution of India."

(17) In our opinion, the observations of the Supreme Court would tend to support the view taken by the Tribunal in entertaining the OA on the ground that the show-cause notice could not have been issued in view of Para 1.8 of the Vigilance Manual.

(18) In the case of **Union of India and another** *versus* **Ashok Kacker, (11).** In this case, the Tribunal had entertained the OA and in fact quashed the charge-sheet only on the basis of the submission of the applicant that the matter had earlier been examined by the department and closed. It was, therefore, held by the Supreme Court that the employee will have full opportunity to the reply to the charge-sheet and rest of the points available to him. In the present case, the Tribunal has not quashed any charge-sheet. Preliminary investigation is pending with the CBI. A parallel preliminary investigation is sought to be conducted by the Department which is not permissible under Paragraph 1.8 of the Vigilance Manual. We have already held that the observations of the Tribunal in para 20 with regard to the letter dated 1st November, 1996 (Annexure P-7) cannot be treated as a final opinion on the evidenciary value of the aforesaid letter which will have to be seen at the appropriate stage in case departmental proceedings are initiated against Kaushal on the completion of CBI enquiry. In the case of **Union of India and others** *versus* **A.N. Saxena (12),** the Supreme Court has observed that the Tribunal should have been very careful before granting stay in a disciplinary proceeding at an interlocutory stage. These observations would not be applicable in the facts and circumstances of the present case as the issuance of the Memorandum which has been quashed by the Tribunal, was clearly contrary to the relevant provisions of the Vigilance Manual.

(19) Having examined the matter anxiously, we are of the considered opinion that the writ petition is wholly devoid of any merit. In view of the above, the writ petition is dismissed. No costs.

R.N.R.

(11) 1995 (7) S.L.R. 430
(12) 1992 (4) S.L.R. 11