

GOVERNMENT OF RAJASTHAN
Department of Personnel

No.F.2(157)/Karmik/Ka-3/97

Dated: August 08, 2001

1. All Principal Secretaries / Secretaries to Government
2. All Heads of Departments (including District Collectors)
3. All Special Secretaries / Deputy Secretaries to Govt.

C I R C U L A R

SUBJECT: Criminal proceedings and departmental enquiry
- whether both can go on simultaneously or the
departmental enquiry must be stayed.

With reference to the above-mentioned subject, your attention is invited to this Department's Circular of even No. dated April 10, 2001 whereby it had been clarified that in all those cases where investigation is being conducted by the Anti Corruption Bureau or proceedings are pending in any criminal Court on the basis of a Challan filed by the Anti Corruption Bureau, the Departments would be free to issue a charge sheet for departmental enquiry without waiting for the completion of the investigation by the Anti Corruption Bureau or final decision by the court in the criminal proceedings, as the case may be, but all further action on the charge sheet may remain suspended till such time as the Anti Corruption Bureau files a final report in the competent criminal Court or till the matter is finally decided by the concerned Court, as the case may be.

This matter has been re-examined in consultation with the Law Department in the light of the various judgments of the Hon'ble Supreme Court of India ¹. The issue as to whether criminal proceedings and departmental enquiry can go on simultaneously has been examined by the Hon'ble Supreme

Criminal proceedings and departmental enquiry - whether both can go on simultaneously or the departmental enquiry must be stayed

Court of India in several judgments and it has been clearly held by the Hon'ble Supreme Court of India that there is no legal bar for both proceedings to go on simultaneously. In fact, Hon'ble Supreme Court of India has observed that "**stay of disciplinary proceedings cannot be, and should not be, a matter of course**". The staying of disciplinary proceedings is a matter to be determined having regard to the facts and circumstances of a given case. While clearly stating that it is neither possible nor advisable to evolve any hard and fast rules valid for all cases and of general application without regard to the peculiarities of each individual case, the Hon'ble Supreme Court of India has made the following suggestions in its various judgments on this issue :-

1. A valid ground for staying the disciplinary proceedings is that the **defence of the employee in the criminal case should not be prejudiced**. Therefore, 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. However, after filing of reply /written statement to the charges, no question of prejudice arises
2. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charges in the criminal trial are of grave nature involving complicated questions of fact and law. Not only **the charges must be grave** but **the case must involve complicated questions of law and fact**.
3. Staying of disciplinary proceedings pending criminal proceedings **should not be a matter of course but a considered decision**. Even if stayed at one stage, the decision may require reconsideration if the criminal case gets unduly delayed.

Keeping in view the above-mentioned position, it is hereby clarified that the above-mentioned principles enunciated by the Supreme Court of India and all the relevant factors, for and against, should be properly weighed by the concerned authority in each specific case before taking a decision as to whether or not a departmental enquiry should be stayed. The final

decision in each case will have to be taken by the concerned competent authority.

These instructions are being issued in supersession of this Department's Circular of even No. dated April 10, 2001 and all other previous instructions on this subject. In case any departmental enquiry has been stayed in compliance of the instructions contained in this Department's Circular of even No. dated April 10, 2001, the same may be reviewed by the competent authority keeping in view the instructions contained in this Circular. Periodical monitoring of all departmental enquiries stayed by the competent authorities on this ground must be done.

These instructions may be brought to the notice of all concerned for ensuring compliance.



(Ashok Sampatram)
Secretary to Government

Cases referred :-

- (1) State of Rajasthan Vs. B.K. Meena (1996) 6 Supreme Court Cases 417
- (2) Depot Manager, A.P. State Road Transport Corporation Vs. Mohd. Yousuf Miya & Others (1997) 2 Supreme Court Cases 699
- (3) Dalabhai Bhimabhai Patel Vs. Deputy Commissioner of Police, Ahmedabad & Another 1992 (1) Services Law Reporter 551
- (4) Ravuru Babu Rao Vs. General Manager, Oriental Insurance Co Ltd, Madras 1997 (2) Services Law Reporter 275
- (5) M. Paul Anthony Vs. Bharat Gold Mines Limited (1999) 3 SCC 679.