

GOVERNMENT OF RAJASTHAN
Department of Personnel (A-3)

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

Dated: August 09, 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 charges can be identical in both the proceedings.

Vide this Department's Circular of even No. dated August 08, 2001 it has been clarified that there is no legal bar for both criminal proceedings and departmental enquiry to go on simultaneously and that in each case the final decision as to whether or not the departmental enquiry should be stayed will have to be taken by the concerned competent authority keeping in view the peculiarities of each individual case and the principles which have been laid down in this regard by the Hon'ble Supreme Court of India.

It is pertinent to point out here that often the allegations and charges in the departmental enquiry are identical to the charges in the criminal prosecution. Such a practice is not proper. Hon'ble Supreme Court of India has held that where the charges in the criminal prosecution and the departmental enquiry are identical and the accused is acquitted honourably and completely exonerated of the charges, normally it is not expedient to continue a departmental inquiry on the very

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same charges. However, if the charges in the departmental enquiry are different from the charges in the criminal prosecution, merely because the accused is acquitted by the competent Court, the power of the disciplinary authority to continue the departmental inquiry is not taken away nor its discretion in any way fettered.

Keeping in view the above-mentioned position, it is clarified that while the facts out of which the criminal prosecution and the departmental enquiry emanate may be the same, the allegations and charges in the departmental inquiry should not be identical to the charges in the criminal prosecution. Charges relating to offences like murder, rape, and other offences not connected with official duties in any manner which constitute substantive offences under the Prevention of Corruption Act, Indian Penal Code and other Acts such as an NDPS Act, Excise Act etc. cannot be proved in a departmental enquiry; such charges can be proved only in the competent Court. Therefore, such charges may not be included in the chargesheet issued in respect of the departmental enquiry.

The charges which are levelled against the government servant in the departmental enquiry must reflect a breach of conduct rules or statutory provisions of Service Rules or such other rules and administrative instructions, negligently or intentionally, so as to constitute misconduct or misdemeanour or conduct unbecoming of an Officer which may be penalised under the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958. This may be

illustrated by stating that in a case relating to assets disproportionate to known sources of income, a delinquent officer may finally be acquitted by the competent Court on having shown other sources of income for himself or other family members or by having acquired property by borrowing money etc. However, under the conduct rules, he is not permitted to derive income from other sources or borrow money or acquire property without permission / information to the competent authority. Similarly, in a "Trap" case when receiving money is proved, even then the delinquent officer may be acquitted by the competent Court

for want of proof of motive for such receipt. But in a departmental enquiry receiving unauthorised money may be sufficient to prove misconduct. From these illustrations it emerges that the framing of chargesheet and allegations in a departmental enquiry should be so translated as to reflect misconduct in breach of conduct rules or any other statutory provisions of rules. **The chargesheet should be framed by the disciplinary authority by application of his own mind and should not be a carbon copy of the chargesheet which is prepared by the Police Department / Anti Corruption Bureau.**

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



(Ashok Sampatram)
Secretary to Government