

**Departmental proceedings to be stayed if criminal proceeding is pending on same charges**

Held: In the present case, the question which arises is whether the department is entitled to proceed with the enquiry on the charges when a criminal proceeding is pending in respect of the same charges. There is no provision either in the Code of Criminal Procedure or in the CCS (CCA) Rules as to what should be done in case of parallel proceedings before the departmental disciplinary authority and the criminal courts. A recent decision in *Kusheshwar Dubey v. Bharat Coking Coal Ltd.*, (1988) 4 SCC 319, does not lay down a definite proposition of law. The Supreme Court has observed that it was not possible to settle law in a straight-jacket formula as judicial opinion appeared to be conflicting on the question as to whether the disciplinary action had to be stayed till the criminal case was over. It continued to observe that there could be no legal bar for simultaneous proceedings being taken, namely, criminal proceedings as well as departmental proceedings, but there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case.

Even though there is no provision in the CCS (CCA) Rules, when we analyse the scheme of the Code of Criminal Procedure and the scheme of the departmental proceedings under the rules, it appears that it would be better for all concerned to stay the departmental proceedings if the same matter is to be decided by the criminal court. For instance, if both are taking place and if the accused is exonerated in the departmental proceedings but found guilty by the criminal court that would lead to an incongruous situation and the department would be at a loss to know what is to be done. On the other side in a criminal proceeding the accused person can keep mute and silent till the end of the proceeding whereas in the departmental proceedings such an attitude would prove disastrous to him. He will have necessarily put forth his case in one form or other and thereby he will disclose his defence, which may prejudice him seriously in the criminal case. For these reasons this Tribunal has consistently held that when the charge is the same, the departmental Disciplinary Authority should wait till the decision of the criminal court.

*(R. Rajamathi v. Union of India, (1993) 23 ATC 131 (Madras), date of judgment 28-11-1991).*

*Same view has been taken in the following case where it has been held as follows:*

The principles enunciated in various decisions is that though there is no legal bar in continuing simultaneously the disciplinary as well as the criminal proceedings, however, the court should stay the disciplinary proceeding till the disposal of the criminal case in the following circumstances: -