

Court No. - 6

Case :- WRIT - A No. - 10951 of 2024

Petitioner :- Manoj Kumar Rai

Respondent :- Union Of India Thru. General Manager N.R. Railway
Baroda House New Delhi And 2 Others

Counsel for Petitioner :- Utkarsh Kumar,Shireesh Kumar

Counsel for Respondent :- A.S.G.I.

Hon'ble Alok Mathur,J.

1. Heard Sri Shireesh Kumar, learned counsel for petitioner as well as Sri Vinay Tripathi, Advocate who has put in appearance on behalf of respondents.
2. By means of present writ petition the petitioner has assailed the illegality and validity of the order dated 14.06.2024 passed by the Senior Divisional Security Commissioner, Northern Railway, Railway Protection Force, New Delhi thereby placing the petitioner under suspension in contemplation of disciplinary proceedings and recording that his acts have been found to be under the category of moral misconduct and prima facie there are sufficient evidence to justify the departmental proceedings therefore he empowered under Rule No. 133 of RPF Rules 1987 the petitioner has been placed under suspension w.e.f. 13.06.2024.
3. It has been submitted by learned counsel for petitioner that the petitioner is working on the post of Assistant Sub-Inspector since 21.11.2021 and on 13.06.2024 a raid was conducted by the Central Bureau of Investigation and the petitioner was arrested on the allegations of attempt to receive illegal gratification on 13.06.2024. It has further been stated that a first information report was lodged bearing number 0062024A0016 at Police Station CBI, ACB by one Akash Yadav, Proprietor of M/S Vishal Traders alleging that he has purchased 28 metric tons of scrap from the Railways and out of which 24 metric ton had been lifted by him but with regard to the said removal of the goods the petitioner had demanded Rs. 1000/- per Truck additionally Rs. 150/- per Ton and Rs. 300 was to be distributed to the duty staff.
4. Apart from other allegations, as the complainant therein could not pay the said amount to the petitioner as illegal gratification, he was threatened by the petitioner and accordingly on a complaint made by him

the first information report was lodged. One of the grounds urged by learned counsel for petitioner in assailing the impugned order of suspension is that for the same act which is subject matter of disciplinary proceedings is also being investigated in the criminal case and accordingly both the cases being identical, the disciplinary proceedings ought to be stayed and consequently the order of suspension has to be stayed.

5. He submits that the law in this regard has been clarified by Hon'ble the Supreme Court in numerous cases specially in the case of **Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and another (1999) 3 SCC 679**, and in the case of **State Bank of India Vs. R.B. Sharma, 2004 (7) SCC 27**. He further submits that in case the petitioner is forced to disclose his defence in the disciplinary proceedings, it shall adversely effect his defence in the criminal trial and on this ground he assailed the initiation of disciplinary proceedings against him.

6. Learned Standing Counsel has opposed the writ petition. He submits that the charges against the petitioner who is a member of disciplinary force of the Railway Protection Force are extremely serious. He has stated that according to the first information report, there are allegations on the petitioner seeking illegal gratification from the complainant for being permitted to lift the scrap iron which was purchased by him in an auction conducted by the Railways. He submits that such an allegation pertaining to the member of the uniform service is an extremely serious allegation and accordingly in order to investigate the said offence and misconduct committed by the petitioner, the competent authority has taken a decision to initiate disciplinary proceedings and for which purposes the petitioner has been placed under suspension by means of impugned order dated 14.06.2024.

7. He further submits that it is not that merely because the act involves investigation into the criminal charges, the disciplinary proceedings cannot be interfered with but the judgment in the case of **Capt. M. Paul Anthony (Supra)**, the Supreme Court has clearly held that the criminal trial as well as the disciplinary proceedings can go simultaneously and Clause (ii) of the said judgment in para 22, it has been said that *"it is only when there are complicated questions of fact and law involved then the disciplinary proceedings would be stayed till outcome of the criminal*

trial." He further submits that in the present case there are no complicated question of fact and law are involved inasmuch as the charge is levelled only for accepting illegal gratification for which evidence will have to be produced by the complainant and there is no other material even stated in the first information report which may indicate that any complicated question of fact and law are involved.

8. I have heard the rival of learned counsel for parties and perused the record. Reliance is placed upon a judgment of the Apex Court in Capt. M. Paul Anthony vs. Bharat Coal Mines Ltd. reported in AIR 1999 SC 1416 as well as **State Bank of India and others vs. R. B. Sharma reported in (2004) 7 SCC 27**. Reliance is also placed upon a decision of this Court in **Dhirendra Kumar Tiwari vs. State of U.P. and others being Writ Petition No.2705 of 2012, decided on 16.1.2002**, in which following observations have been made:-

"After the respective arguments have been advanced, the judgment of Hon'ble Apex Court in the case of Capt. M. Paul Anthony vs. Bharat Coal Mines Ltd. AIR, 1999 SC 1416 is being looked into. In the aforementioned judgment the Hon'ble Apex Court after taking into account various earlier judgments has held that departmental proceedings and proceedings in criminal case can proceed simultaneously, as there is no bar in their being conducted simultaneously, though separately. It has been further held that if the departmental proceedings and criminal case are based on similar set of facts and charges in criminal case against delinquent employees is of grave nature which involves complicated questions of fact and law, it would be desirable to stay the departmental proceedings till conclusion of criminal case. Whether complicated questions of fact and law are involved or not will depend upon the nature of the offence, and the case lodged against the employee on the basis of evidence and material collected during the investigation or as reflected in the charge sheet, and these facts are not to be considered in isolation but due regard has to be given to the fact that departmental proceedings cannot be unduly delayed. Thus, if complicated questions of fact and law are involved, and departmental proceedings and criminal case are based on identical and similar set of facts, only then it is desirable to stay the departmental proceedings, but the said facts are not to be considered in isolation. Paragraph 22 of the judgment being relevant is being quoted below:

"22. The conclusions which are deducible from the various decisions of this Court referred to above are:

(i) Departmental proceedings and proceedings in 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 charge in criminal case against delinquent employees 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 criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and complicated questions of fact and law are involved in that case will depend upon the nature of the offence, the nature of case launched against the employee on the basis of evidence and material collected against him during the 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 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 pendency of 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, administration may get rid of him at the earliest."

9. The judgment in the case of Capt. M. Paul Anthony vs. Bharat Coal Mines Ltd. (supra) has been followed in the case of **State Bank of India and others Versus R.B. Sharma 2004 (7) S.C.C. 27**. Relevant paragraphs 7,8 and 11 are being quoted below:-

"7. It is a fairly well settled position in law that on basic principles proceedings in criminal case and departmental proceedings can go on simultaneously, except where departmental proceedings and criminal case are based on the same set of fact and the evidence in both the proceedings is common.

8. The purpose of departmental enquiry and of prosecution are two different and distinct aspects. Criminal prosecution is launched for an offence for violation of a duty the offender owes to the society, or for breach of which law has provided that the offender shall make satisfaction to the public . So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated question of fact and law. Offense generally implies infringement of

public duty, as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Indian Evidence Act, 1872 (in short " the Evidence Act"). Converse is the case of departmental enquiry. The inquiry in a departmental proceeding relates to conduct or breach of duty of the delinquent officer, to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. Under these circumstances, 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. It is always question of fact to be considered in each case depending on its own facts and circumstances.

11. There can be no straitjacket formula as to in which case the departmental proceedings are to be stayed. There may be cases where the trial of the case gets prolonged by the dilatory method adopted by the delinquent official. He cannot be permitted to, on one hand, prolong criminal case and at the same time contend that the departmental proceedings should be stayed on the ground that the criminal case is pending."

10. Principles laid down above are clear and categorical that there is no bar in simultaneous separate proceeding of criminal case as well as departmental proceeding. Further if departmental proceedings and criminal case are based on similar set of facts and charges in criminal case against delinquent employee is of grave nature which involves complicated question of fact and law, it would be desirable to stay the departmental proceedings till conclusion of criminal case. Whether complicated question of fact and law are involved or not will depend upon the nature of the offence, and the case lodged against the employee on the basis of evidence and material collected during the investigation or as reflected in the charge sheet. Thus it is clear that departmental proceeding can proceed, as there is no bar and only when nature of charge in criminal case are grave and complicated question of fact and law are involved, then departmental proceedings can be stayed and further also in contingency when departmental enquiry would seriously prejudice delinquent in his defence at the trial, and even these facts cannot be considered in isolation to stay departmental proceeding but due regard will have to be given to the fact that departmental proceedings cannot be unduly delayed.

11. Considering the fact of the present case, the charge-sheet has been given to the petitioner on 25.09.2024 where in the first charge pertains to

violation of Rule 146.1, 146.4 and 146.7 Clause (ii) &(iii)), which are as under:-

"146.1 - All members of the Force, irrespective of their ranks, shall submit themselves to the requirement of the following code of behaviour, both on and off duty. It shall be incumbent upon all members of the Force to respect the code of behaviour and maintain an attitude of complete discipline and obedience to it. Any breach of these provisions on the part of any member of the Force shall constitute misconduct and shall be punishable under the Railway Servants (Discipline and Appeal) Rules, 1968 as applied to superior officers or, as the case may be, under Section 9 or section 17.

146. 4 -Discreditable conduct :

No member of the Force shall act in any manner prejudicial to discipline or conduct himself in such a manner which is reasonably likely to bring discredit to the reputation of the Force.

146.7 - Corrupt or improper practice :

No member of the Force Shall -

(ii) place himself under a pecuniary obligation to any person in such a manner as might affect the proper discharge of his duties as such member;

(iii) improperly use or attempt so to use, his position as such member for his personal gain. "

12. While the second charge pertains to have maligning the reputation of the Railway Protection Force which is a misconduct under 146.4 of the Rules and similarly the third charge also pertaining to violation of Rule 146.1 and 146.4 of the Rules.

13. Considering the aforesaid charges, it is clear that none of the charges require proof of complicity of the petitioner for the allegation as levelled in the first information report. Merely in this regard to the acceptance of the illegal gratification, he has been charged for misconduct under Rule 146.1, 146.4 and 146.7 Clause (ii) & (iii)). While the second charge pertains to the maligning the reputation of the police force. Undoubtedly, maligning the reputation of the police force is not a criminal charge nor is the subject matter of criminal investigation and accordingly it cannot be said that all the charges in the charge-sheet are similar or identical to the charges which may be levelled by the competent court during the course of trial.

14. Even in the case of Capt. M. Paul Anthony (Supra) in paragraph No. 22(i), it has unequivocally been held that the departmental proceedings

and proceedings in the criminal trial can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

14. The only exception carved is subsequently in para 22 (ii) where only where the criminal case and the departmental proceedings are based on identical and similar circumstances 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.

15. Undoubtedly, the petitioner has rushed to this Court by filing present writ petition on mere lodging of the first information report against him. No charges have been framed by the competent court nor have been demonstrated before this Court. Accordingly, it cannot be said that charge for which the petitioner is being tried in the criminal court is identical to the charge which is levelled by him during the departmental proceedings.

16. Apart from the above, looking into the allegations made in the first information report, this Court satisfied that it is not a fit case for interference and it could not be demonstrated that there are complicated question of fact and law involved in the said case. Accordingly, considering the aforesaid facts and circumstances of the case and the observations made above, this Court does not find it is a fit case for interference at this stage, the writ petition is bereft of merits and is accordingly, dismissed.

17. However, it is open for the petitioner to approach appropriate authority as and when the charges are framed by the criminal court and in case the charges are identical to the disciplinary proceedings and that such a departmental proceeding is pending, he may move an appropriate application before disciplinary authority for stay of the departmental proceedings in light of the observation made by Hon'ble Supreme Court in the case of **Capt. M. Paul Anthony (Supra)** in para 22(ii).

(Alok Mathur, J.)

Order Date :- 28.11.2024

Ravi/