

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 3037 of 2015

S. K. Pati, S/o Shri Shankar Prasad Pati, Aged About 51 Years Presently Posted As Chief Manager (Mining), Bhatgaon Area, SECL Bhatgaon Area, District- Surajpur, R/o D-2, At Post Bhatgaon Colliery, P. S. - Bhatgaon, District - Surajpur (Chhattisgarh)

---- Petitioner

Versus

1. South Eastern Coalfields Limited Through Chairman- Cum- Managing Director, South Eastern Coalfields Limited, Seepat Road, P. S. - Sarkanda, District - Bilaspur (Chhattisgarh) 495006
2. Chairman-Cum-Managing Director (Disciplinary Authority), South Eastern Coalfields Limited, Through Chairman-Cum-Managing Director, South Eastern Coalfields Limited, Seepat Road, P. S. - Sarkanda, District- Bilaspur (Chhattisgarh) 495006
3. Uday Chhatterjee, Inquiring Authority, Inquiry Room, Vigilance Department, South Eastern Coalfields Limited Head Quarter, Seepat Road, P. S.- Sarkanda, District- Bilaspur (Chhattisgarh) 495006

---- Respondent

For Petitioner : Shri Chandresh Shrivastava, Advocate.
For Respondents : Shri VR Tiwari, Advocate appears on behalf of Shri Shailendra Shukla, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

Passed on: 07/09/2015

1. The petitioner has assailed the impugned memorandum dated 26.6.2015 (Annexure-P/1) by which the SECL has constituted an enquiry and appointed enquiry officer for holding departmental enquiry against the

petitioner on the charge sheet issued to him vide Annexure-P/2 on 30.4.2015. He has also prayed for quashment of the departmental enquiry and to direct respondent No.2 to withhold the departmental enquiry till decision of the Special Criminal Case No.1385/2015 pending before the Special Judge, CBI Cases, Raipur.

2. It is argued on behalf of the petitioner that departmental enquiry and the criminal case is based on same set of facts and allegation, therefore, departmental enquiry deserves to be quashed or at-least the same deserves to be withheld during the pendency of the criminal case.
3. It appears, the petitioner has allegedly demanded and accepted illegal gratification of Rs.3,600/- from complainant Krishna Prasad Yadav to expedite the payment of his contractual bills. While in the criminal case for offence under the Provision of Corruption Act, the petitioner would be tried for committing offence under the said Act and in the departmental enquiry, he has been charged with violation of Conduct, Discipline and Appeal Rules, 1978.
4. In **Secretary, Ministry of Defence and others Vs. Prabhash Chandra Mirdha** {(2012) 11 SCC 565}, the Supreme Court has held thus in para-12:-

“12. Thus, the law on the issue can be summarised to the effect that the charge-sheet cannot generally be a subject-matter of challenge as it does not adversely affect the rights of the delinquent unless it is established that the same has been issued by an

authority not competent to initiate the disciplinary proceedings. Neither the disciplinary proceedings nor the charge-sheet be quashed at an initial stage as it would be a premature stage to deal with the issues. Proceedings are not liable to be quashed on the grounds that proceedings had been initiated at a belated stage or could not be concluded in a reasonable period unless the delay creates prejudice to the delinquent employee. Gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings.”

5. In the matter of **Stanzen Toyotetsu India Private Limited vs. Girish V. and others**, (2014) 3 SCC 636, the Supreme Court, after referring to its earlier decisions in the matters of **A.P. SRTC v. Mohd. Yousuf Miya**¹, **Karnataka SRTC v. M.G. Vittal Rao**², **M. Paul Anthony v. Bharat Gold Mines Ltd**³ and **Hindustan Petroleum Corpn. Ltd. v. Sarvesh Berry**⁴, has held thus in para 13, 14 & 16 :

13. It is unnecessary to multiply decisions on the subject for the legal position as emerging from the above pronouncements and the earlier pronouncements of this Court in a large number of similar cases is well settled that disciplinary proceedings and proceedings in a criminal case can proceed simultaneously in the absence of any legal bar to such simultaneity. It is also evident that while seriousness of the charge levelled against the employees is a consideration, the same is not by itself sufficient unless the case also involves complicated questions of law and fact. Even when the charge is found to be serious and complicated questions of fact and law that arise for consideration, the court will have to keep in mind the fact that departmental proceedings cannot be suspended indefinitely or delayed unduly.

14. In *Paul Anthony (supra)* this Court went a step further to hold that departmental proceedings can be

1 (1997) 2 SCC 699

2 (2012) 1 SCC 442

3 (1999) 3 SCC 679

4 (2005) 10 SCC 471

resumed and proceeded even when they may have been stayed earlier in cases where the criminal trial does not make any headway.

16. Suffice it to say that while there is no legal bar to the holding of the disciplinary proceedings and the criminal trial simultaneously, stay of disciplinary proceedings may be an advisable course in cases where the criminal charge against the employee is grave and continuance of the disciplinary proceedings is likely to prejudice their defence before the criminal court. Gravity of the charge is, however, not by itself enough to determine the question unless the charge involves complicated question of law and fact. The court examining the question must also keep in mind that criminal trials get prolonged indefinitely especially where the number of accused arraigned for trial is large as is the case at hand and so are the number of witnesses cited by the prosecution. The court, therefore, has to draw a balance between the need for a fair trial to the accused on the one hand and the competing demand for an expeditious conclusion of the ongoing disciplinary proceedings on the other. An early conclusion of the disciplinary proceedings has itself been seen by this Court to be in the interest of the employees.”

6. In the case at hand, the matter is not so technical which would require initiation of departmental proceeding after the criminal case is over.
7. For the foregoing, the writ petition being devoid of any substance deserves to be and is hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)