NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 3441 of 2015

1. Sanjay Kumar Jha S/o Shri Shiv Nandan Jha, Aged About 45 Years Inspector/ Executive (u/s), C I S F, 3rd Reserved Battalion, Bhilai, District Durg (Chhattisgarh)

---- Petitioner

Versus

1. Union Of India Through The Secretary Ministry Of Home Affairs, North Block, Central Secretariat, New Delhi 110001

2. Senior Commandant Central Industrial Security Force 3rd Reserve Battalion, Bhilai, District Durg (Chhattisgarh)

3. Assistant Commandant/ Fire & Enquiry Officer, Central Industrial Security Force 3rd Reserve Battalion, Bhilai, District Durg (Chhattisgarh)

---- Respondent

For Petitioner	Shri Arvind Dubey, Advocate
For Respondent/UOI	Shri N.K. Vyas, Asstt. Solicitor General

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

22/09/2015

1. Petitioner has preferred this writ petition under Article 226 of the Constitution of India seeking a direction to the respondents to stay the departmental enquiry against him vide charge sheet dated 28-5-2015 (Annexure – P/1) till the

final outcome of the criminal case bearing RC No.2172015A0001.

2. Petitioner is an Inspector/Executive in the Central Industrial Security Force (CISF). At the relevant time he was on deputation with the Central Bureau of Investigation, Delhi (CBI). He has been served with a charge sheet on 28-5-2015 containing the following charge :

> CISF No.954370011 Insp/Exe (U/S) Sanjay Kumar Jha of CISF 3rd Res. Bn. Bhilai, while on deputation with CBI BS & FC Delhi, was prematurely repatriated to CISF w.e.f. 11.03.2015 by the CBI authorities. In the investigation of criminal case registered against Shri B. Sambi Reddy, Banking Officer (working in CBI on a secondment basis) vide FIR No.2172015A0001 dated 04.01.2015 U/S 7 of PC Act, 1988 in CBI AC-II Branch New Delhi, for demanding and accepting bribe from Shri Kanwar Virender Singh, Inspector/Exe (U/S) Sanjay Kumar Jha was also found involved with Shri B. Sambi Reddy in the said offence. Insp/Exe (U/S) Sanjay Kumar Jha was arrested under the charge of criminal conspiracy and abuse of his official position, as public servant by CBI on 04.01.2015 and sent to judicial custody. The above act on the part of Insp/Exe (U/S) Sanjay Kumar Jha amounts to gross misconduct, indiscipline, an act of tarnishing the image of the Force which is unbecoming of a members of the disciplined Force. Hence the Charge.

3. It would appear that the petitioner along with one B. Sambi Reddy was involved in demanding and accepting bribe from

one Kanwar Virender Singh for which an FIR bearing RC-2172015A0001/ACU.V has been registered and a charge sheet has also been filed before the Special Judge, CBI, Karkardooma, Delhi vide Annexure – P/2.

4. As per the facts available in the record, an offence under Section 120-B read with Section 420 of the Indian Penal Code and Section 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988 was registered on 27-2-2013 on complaint received from the Regional Manager, Dena Bank, Panchkula alleging misuse and diversion of funds by HRM Exports Pvt. Ltd. to the tune of Rs.29.94 crores defrauding the Dena Bank of the said amount. The case was entrusted for investigation to the petitioner.

5. In the said investigation, it was found that K.V. Singh, Regional Manager of Dena Bank is also involved in the crime, therefore, regular departmental enquiry was also initiated against him. Said K.V. Singh was called by the petitioner during investigation of the criminal case. During this part of the investigation, the petitioner along with one B. Sambi Reddy demanded illegal gratification in order to prevent action or arrest against him in the pending investigation. B. Sambi Reddy and the petitioner demanded

Rs.25.00 lacs, which was later on settled at Rs.10.00 lacs. Record reveals that the CBI has procured evidence in form of tape rocorder/telephonic conversation between the petitioner and B. Sambi Reedy wherein payment of the bribe amount also figures.

6. It is argued that there being complex questions of facts and law, the departmental enquiry should not proceed during pendency of the criminal case.

7. It is settled law that proof of criminal charges depends upon prosecution producing proof beyond reasonable doubt relating to culpability of accused, while in departmental proceedings standard of proof is one of the preponderance of probabilities. Such being the principle it is held in series of cases that simultaneous conduct of departmental enquiry and criminal proceedings are permissible.

8. In **Stanzen Toyotetsu India Private Limited v. Girish V. and others**[1], the Supreme Court, after referring to its earlier decisions in the matters of **A.P. SRTC v. Mohd. Yousuf Miya**[2], **Karnataka SRTC v. M.G. Vittal Rao**[3], **M. Paul Anthony v. Bharat Gold Mines Ltd**[4] and **Hindustan**

1 (2014) 3 SCC 636
2 (1997) 2 SCC 699
3 (2012) 1 SCC 442
4 (1999) 3 SCC 679

Petroleum Corpn. Ltd. v. Sarvesh Berry[5], 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.
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> 14. In Paul Anthony this Court went a step further to hold that departmental proceedings can be resumed and proceeded even when they may have been stayed earlier in cases where the criminal trial does not make any headway.
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> 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

5 (2005) 10 SCC 471

> 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.

9. In the case at hand, the petitioner has relied on the order passed by this Court in **Atul Dubey v. Municipal Corporation, Bilaspur**[6]. In the said matter, this Court has referred to the judgment of the Supreme Court in **Avinash Sadashiv Bhosale (Dead) through LRs v. Union of India and Others**[7].

10. In **Avinash Sadashiv Bhosale** (supra), the following principles have been laid down by the Supreme Court :

> 54. This Court recently reiterated the legal principle that departmental proceedings can be conducted simultaneously to the criminal trial in Karnataka SRTC v. M.G.Vittal Rao. In this case, making reference to almost all the previous precedents, this Court has reiterated the legal position as follows:-
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> 54.1 There is no legal bar for both proceedings to go on simultaneously.

6 WP No.2327 of 1999 (decided on 17-11-2014)
7 (2012) 13 SCC 142

> 54.2 The only valid ground for claiming that the disciplinary proceedings may be stayed would be to ensure that the defence of the employee in the criminal case may not be prejudiced. But even such grounds would be available only in cases involving complex questions of facts and law.
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> 54.3 Such defence ought not to be permitted to unnecessarily delay the departmental proceedings. The interest of the delinquent officer as well as the employer clearly lies in a prompt conclusion of the disciplinary proceedings.
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> 54.4 Departmental proceedings can go on simultaneously to the criminal trial, except where both the proceedings are based on the same set of facts and the evidence in both the proceedings is common.
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> 54.5 In our opinion, the principles culled out by this Court would be a complete answer to all the submissions made by Mr. Jain.

11. It is, thus, settled that there is no legal bar for continuation of simultaneous proceeding of departmental enquiry and criminal trial unless it involves complex questions of facts and law.

12. In the case at hand, the question is only about petitioner's involvement with B. Sambi Reddy in demanding & accepting the bribe. The matter does not involve such complex questions of law and fact which would permit stay of the departmental proceeding till conclusion of the trial. As earlier

stated, the manner of proof in both the cases are different.

13. For the foregoing, this Court does not find any substance in the matter. Accordingly, the writ petition is dismissed.

Sd/-

Judge

Prashant Kumar Mishra

Gowri