

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4758 OF 2014

Surendrasingh Govindsingh Rajput,
Age : 48 years, Occ: Service as
Junior Engineer in MSEDCL -
Presently posted to work at
Kasarshirsi, Unit Office,
Ta. Nilanga, Dist. Latur.

... Petitioner

Versus

1. Maharashtra State Electricity
Distribution Company Ltd. (MSEDCL),
having its office at 'Prakashgad',
6th Floor, Station Road, Bandra (East),
Mumbai 400 051,
Through its Managing Director.

2. The Regional Executive Director -II,
MSEDCL Office, Building No. 2,
Flat No. 1 and 2, Officer's Colony,
Ganesh Khind Road,
Pune – 411 016.

... Respondents

.....
Advocate for petitioner : Mr. Ajay S. Deshpande
Advocate for respondent No. 1 : Mr. S. M. Godsay
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WITH
WRIT PETITION NO. 4652 OF 2014

Shri Chandrakant Damodar Sapakale,
Age : 55 years, Occ : Service as
Sr. Clerk – (IJDC) in the office of E.E.,
MSEDCL, Div. Office, Tapi Nagar,
Chopde Building, Bhusawal,
Dist. Jalgaon, R/o Choulgule Plots,
Shanti Peth, Near Maroti Mandir,
Jalgaon 425 001.

... Petitioner

Versus

1. Maharashtra State Electricity
Distribution Company Ltd. (MSEDCL),
having its office at 'Prakashgad',

-2-

6th Floor, Station Road, Bandra (East),
Mumbai 400 051,
Through its Managing Director.

2. The Regional Executive Director -II,
MSEDCL Office, Building No. 2,
Flat No. 1 and 2, Officer's Colony,
Ganesh Khind Road,
Pune – 411 016. ... Respondents

.....
Advocate for petitioner : Mr. Ajay S. Deshpande
Advocate for respondent No. 1 : Mr. S. M. Godsay
.....

WITH
WRIT PETITION NO. 6079 OF 2014

Shyam Bahadursingh s/o Omkarsingh
Age : 49 years, Occ. Service,
R/o :R.P.F. Barak, Bhusawal,
Tq. Bhusawal, Dist. Jalgaon. ... Petitioner

Versus

1. Union of India,
Through Secretary
Ministry of Railway,
(Railway Board),
New Delhi.
2. The General Manager,
Central Railway,
Mumbai.
3. The Disciplinary Authority of
Divisional Protection Force,
Bhusawal, Tq. Bhusawal,
Dist. Jalgaon.
4. The Enquiry Officer,
(Police Inspector)
Mr. U. K. Lanziwar,
Bhusawal, Tq. Bhusawal,
Dist. Jalgaon. ... Respondents

.....
Advocate for petitioner : Mr. Swapnil S. Patil
Advocate for respondents: Mr. Ruturaj Patil
Advocate for respondent No.2 : Mr. D. V. Soman

WITH
WRIT PETITION NO. 6347 OF 2014

1. Sanjiv s/o Baburao Handore
Age : 45 years, Occu : Service.
2. Amit Budhan Shah Fakir
Age : 59 years, Occu : Service.

Both R/o. Chalisgaon Railway Station,
Chalisgaon, Dist. Jalgaon.

... Petitioners

Versus

1. Union of India,
Through Secretary
Ministry of Railway,
(Railway Board),
New Delhi.
2. The General Manager,
Central Railway,
Mumbai.
3. The Disciplinary Authority of
Divisional Protection Force,
Bhusawal, Tq. Bhusawal,
Dist. Jalgaon.
4. The Enquiry Officer,
(Police Inspector)
Bhusawal, Tq. Bhusawal,
Dist. Jalgaon.

... Respondents

.....
Advocate for petitioners : Mr. Paresh B Patil
ASG for respondents : Mr. S. B. Deshpande
Advocate for respondent No. 2 : Mr. D. V. Soman
.....

WITH
WRIT PETITION NO. 6708 OF 2014

Manish Kumar s/o Motilal Nayak
Age : 37 years, Occu. Service,
R/o : Police Inspector,
R.P.F. Barak, Bhusawal,
Tq. Bhusawal, Dist. Jalgaon.

... Petitioner

Versus

1. Union of India,
Through Secretary
Ministry of Railway,
(Railway Board),
New Delhi.
2. The General Manager,
Central Railway,
Mumbai.
3. The Disciplinary Authority of
Divisional Protection Force,
Bhusawal, Tq. Bhusawal,
Dist. Jalgaon.
4. The Enquiry Officer/
Assistant Security Commissioner,
Mr. A. K. Swami,
Railway Protection Force,
Manmad @ Bhusawal,
Tq. Bhusawal, Dist. Jalgaon.
5. The Assistant Security Commissioner
R.P.F. Bhusawal, Tq. Bhusawal,
Dist. Jalgaon.

... Respondents

.....

Advocate for petitioner : Mr. Swapnil S. Patil
ASG for respondents : Mr. S. B. Deshpande
Advocate for respondent No. 2 : D. V. Soman

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WITH

WRIT PETITION NO. 8686 OF 2014

Amitkumar s/o Sristinarayan Jha
Age : 36 years, Occu. Service,
R/o : Vishnu Nagar, Nanded,
Tq. & Dist. Nanded.

... Petitioner

Versus

1. Union of India,
Through Secretary, Ministry of Railway,
(Railway Board), New Delhi.

2. The Disciplinary Authority &
Divisional Security Commissioner,
South Central Railway,
R. P. F. Nanded.

3. The Enquiry Officer/
Assistant Security Commissioner,
Mr. W. S. Vijayarangam
Railway Protection Force,
South Central Railway,
Nanded.

... Respondents

.....

Advocate for petitioner : Mr. Swapnil S. Patil
ASG for respondents : Mr. S. B. Deshpande

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WITH

WRIT PETITION NO. 10415 OF 2014

Madhukar S/o Shrirangrao Jadhav
Age : 56 years, Occupation Service,
R/o Anushtup, 22, Saipark,
Mhada Col, N-7, Cidco,
Aurangabad.

... Petitioner

Versus

1. The Union of India,
Through its Principal Secretary,
Ministry of Communication and
Information Technology,
New Delhi.

2. The Director General,
Department of Telecommunication
1112, Sanchar Bhavan,
New Delhi – 110 001.

3. The Chief General Manager Telecom,
Bharat Sanchar Nigam Limited,
Gujarat Circle, C. G. Road,
Ahmedabad – 380006.

... Respondents

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Advocate for petitioner : Mr. Swapnil Joshi Patnurkar
i/b J. P. Legal Associates
ASG for respondents : Mr. S. B. Deshpande
Advocate for respondent No. 3 : Mr. Alok Sharma

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WITH
WRIT PETITION NO. 9394 OF 2014

Laximikant s/o Vaijinath Mane
Age 53 years, Occu: Service
R/o 'Yedai' building
Bhanu Nagar, Osmanabad
Tq. & Dist. Osmanabad.

... Petitioner

Versus

1. The Maharashtra State Seeds Corporation Ltd, Mahabeej Bhavan
Krishi Nagar, Akola – 444 104
2. The Managing Director,
Maharashtra State Seeds Corporation Ltd. Akola.

... Respondents

.....
Advocate for petitioner : Mr. S. B. Choudhari
Advocate for respondent No. 2 : Mrs. Anjali Dube Bajpai
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WITH
WRIT PETITION NO. 11061 OF 2014

Laxmikant s/o Lalasaheb Galande
Age 33 years, Occupation - Service,
R/o. Flat No. 5, "A-1" Building,
Chandragupta Nagari, Dargaha Road,
Aurangabad.

... Petitioner

Versus

1. Maharashtra State Electricity Distribution Company Ltd., (MSEDCL)
Through it's Superintending Engineer
i.e. the Competent Authority,
Rural Circle, Vidyut Bhavan,
Old Power House Compound,
Dr. Ambedkar Road, Mill Corner,
Aurangabad.
2. The Enquiry Officer
i.e. the Executive Engineer,
Maharashtra State Electricity Distribution Company Ltd., (MSEDCL),

Operation & Maintenance, Rural Division,
Aurangabad.

Plot No. J-13, MIDC Chikalthana,
Opp. Garware Stadium, Aurangabad.

... Respondents

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Advocate for petitioner : Mr. S. J. Salunke
Advocate for respondent No. 1 : Mr. U. S. Malte

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WITH

WRIT PETITION NO. 11215 OF 2014

Bhimrao Jyotiba Khandare,
Age : 57 years, Occ : Service as
Technician in Narsi Namdeo Section,
Sub-Division, Hingoli in MSEDCL
R/o Sheela-Nanda Niwas,
Pensionpura, Hingoli.

... Petitioner

Versus

1. Maharashtra State Electricity
Distribution Company Ltd. (MSEDCL)
Having its office at 'Prakashgad',
6th Floor, Station Road, Bandra (East),
Mumbai 400 051.
Through its Managing Director.

2. The Regional Executive Director – II,
MSEDCL Office, Building No. 2,
Flat No. 1 & 2, Officer's Colony,
Ganesh Khind Road,
Pune – 411 016.

... Respondents

.....

Advocate for petitioner : Mr. Ajay S. Deshpande
Advocate for respondent No. 1 : Mr. A. M. Gaikwad

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WITH

WRIT PETITION NO. 11219 OF 2014

Kirtichandra Bhalchandra Kale,
Age : 45 years, Occ : Service at Asstt. Engineer,
MSEDCL – Presently under suspension,
C/o Shri A. P. Tare,
Ramkrishna Nagar, Akola Road,
R/o Hingoli, Dist. Hingoli.

... Petitioner

Versus

1. Maharashtra State Electricity
Distribution Company Ltd. (MSEDCL)
Having its office at 'Prakashgad',
6th Floor, Station Road, Bandra (East),
Mumbai 400 051.
Through its Managing Director.
2. The Regional Executive Director – II,
MSEDCL Office, Building No. 2, Flat No. 1 & 2,
Officer's Colony, Ganesh Khind Road,
Pune 411 016. ... Respondents

.....
Advocate for petitioner : Mr. Ajay S. Deshpande
Advocate for respondent No. 1 : Mr. A. M. Gaikwad
.....

WITH
WRIT PETITION NO. 2431 OF 2015

Keshav Subhash Gosavi,
Age : 34 years, Occ : Service as Sub-Engineer,
MSEDCL – Presently under suspension,
R/o Plot No. 35, C/o Sitaram Kathar,
New Vishal Nagar,
Garkheda, Aurangabad. ... Petitioner

Versus

1. Maharashtra State Electricity
Distribution Company Ltd. (MSEDCL)
Having its office at 'Prakashgad',
6th Floor, Station Road, Bandra (East),
Mumbai 400 051.
Through its Managing Director.
2. The Regional Executive Director – III
AND Competent Authority,
MSEDCL, having its office at Nagpur,
Vidyut Bhavan, Ground Floor,
Katol Road, Nagpur – 440 013. ... Respondents

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Advocate for petitioner : Mr. Ajay S. Deshpande
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WITH
WRIT PETITION NO. 2403 OF 2015

Suhas Dattatray Varude,
Age : 36 years, Occ : Service as
Junior Engineer/Assistant Engineer,
MSEDCL – Presently under suspension,
R/o N-4, A-6, CIDCO, Near Kamgar Chowk,
Aurangabad.

... Petitioner

Versus

1. Maharashtra State Electricity
Distribution Company Ltd. (MSEDCL)
Having its office at 'Prakashgad',
6th Floor, Station Road, Bandra (East),
Mumbai 400 051.
Through its Managing Director.

2. The Regional Executive Director – III
AND Competent Authority,
MSEDCL, having its office at Nagpur,
Vidyut Bhavan, Ground Floor,
Katol Road, Nagpur – 440 013.

... Respondents

.....
Advocate for petitioner : Mr. Ajay Deshpande
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**CORAM : S. V. GANGAPURWALA AND
V. K. JADHAV, JJ.**

**Date of Reserving
the Judgment : 17.07.2015**

**Date of pronouncing
the Judgment : 23.09.2015**

JUDGMENT (PER V. K. JADHAV, J.):

1. Rule. Rule returnable forthwith. With the consent of the parties,
heard finally at admission stage. All these petitions are based on the

same set of facts and involved common question of law, as such are dealt together.

2. The petitioners in all these petitions are the employees of the respondents. In these petitions, the petitioners are prosecuted for charges under the Prevention of Corruption Act wherein the matters are pending before the Sessions Court. At some time, the employer has initiated departmental enquiry against these petitioners.

3. We have heard Mr. A. S. Deshpande, Mr. Swapnil S. Patil, Mr. Swapnil Joshi and Mr. Paresh Patil for respective petitioners. According to the learned counsel for the petitioners, the charges in the criminal prosecution and the departmental enquiry are same. In such a case, pending the criminal prosecution, departmental enquiry is required to be stayed. According to the learned counsel, if the departmental enquiry is proceeded pending the criminal prosecution, then the same would be detrimental and prejudicial to their interest in the criminal prosecution inasmuch as they would be compelled to disclose their defence. The learned counsel further submits that the only second charge about the maligning of image is fully dependent upon the first charge. In case the first charge itself is not proved, there would be no question of any finding on the second charge. The other charges would be dependent upon the charge no. 1. In case the charge no. 1 is not proved, the other charges necessarily will have to be answered in the

negative to buttress their submissions that pending criminal prosecution, departmental enquiry cannot proceed. The learned counsel for the petitioners have relied on the judgment of the Apex Court in the case of ***Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. reported in 1999 (3) SCC 679***, and ***G. M Tank Vs. State of Gujrat and others reported in 2006 (5) SCC 446*** and ***Indian Overseas Bank, Anna Salai and Anr. vs. P. Ganesan and Others reported in 2008 AIR (SC) 553***.

4. Mr. Soman, Mr. Godsay, Mr. Sharma and Mr. Deshpande, the learned ASG and the counsel for the Union of India have canvassed their submissions. According to them, there cannot be a blanket Rule that pending criminal prosecution, the departmental enquiry is required to be stayed. The burden of proof in criminal prosecution and departmental enquiry is different. Even if the criminal prosecution is pending, departmental enquiry can still proceed. The charges are also framed with regard to demeaning the image of the institution by their acts. The same is not subject matter of criminal prosecution. The learned counsel further submits that various factors are relevant. It is not the case of involvement of complicated questions of law and fact. The learned counsel relies on the judgment of the Apex Court in the case of ***Stanzen Toyotetsu India P. Ltd. Vs. Girish V. and Others reported in 2014 (3) SCC 636***, so also, the judgment of the Division Bench of this Court delivered in Writ Petition No. 9123 of 2014 dated

10.10.2014, so also, the judgment of the Division Bench of this Court in the case of ***Shrikant Jain Narmada Parsad Jain Vs. Secretary, Ministry of Coal and Others reported in 2009 (2) Bom.C.R. 174*** and another judgment of the Division Bench of this Court in the case of ***Deepak Narayan Joshi Vs. Hindustan Organic Chemicals Limited and Others reported in 2013 (3) All.M.R. 727***. The judgment of the Apex Court in the case of ***Noida Entrepreneurs Association Vs. NOIDA and Others, reported in 2007 (10) SCC 385*** and the judgment of the Division Bench of this Court in ***Babulal Verma Vs. Union of India and another reported in 2008 (2) All M.R. 556***.

5. We have considered the submissions canvassed by the learned counsel for the respective parties, so also, have gone through the judgments of the Apex Court and this Court relied upon by them.

6. Taking stock of all the aforesaid judgments, it is manifest that there is no bar for proceeding with the departmental enquiry pending criminal prosecution, but, if both are based on identical facts and evidence, the question would arise about proceeding with the departmental enquiry pending the criminal prosecution. In all these cases, the petitioners are prosecuted for offence punishable under the provisions of Prevention of Corruption Act. The matters are pending with the Sessions Court and in all these petitions the charge sheet is also filed in the said criminal cases. The departmental enquiry is also

initiated, of which, the main charge is about the charge which is framed in the criminal case and the other charges are dependent on the said charge. The question would be about the stay of the criminal prosecution. The Apex Court, in the case of Stanzen (referred supra), taking stock of the various judgments, has observed in paragraph nos. 12 and 13 as under:

“12. 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 leveled 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. In Paul Anthony (supra) 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. To the same effect is the decision of this Court in State of Rajasthan v. B.K.Meena 1996(6) SCC 417, where this Court reiterated that there was no legal bar for both proceedings to go on simultaneously unless there is a likelihood of the employee suffering prejudice in the criminal trial. What is significant is

that the likelihood of prejudice itself is hedged by providing that not only should the charge be grave but even the case must involve complicated questions of law and fact. Stay of proceedings at any rate cannot and should not be a matter of course. The following passage is in this regard apposite:

“there is no legal bar for both proceedings to go on simultaneously and then say that in certain situations, it may not be 'desirable', 'advisable' or 'appropriate' to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. The staying of disciplinary proceedings, is a matter to be determined having regard to the facts and circumstances of a given case and that no hard and fast rules can enunciated in that behalf. The only ground suggested in the above questions as constitution a valid ground for staying the disciplinary proceedings is that the defence of the employee in the criminal case may not be prejudiced. This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law. In our respectful opinion, it means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, 'advisability', 'desirability' or 'propriety', as the case may be, has to be determined in each case taking into consideration all the facts and circumstances of the case. While it is not possible to enumerate the various factors, for and against the stay of disciplinary proceedings, we found it necessary to emphasize some of the important considerations in view of the fact that very often the disciplinary proceedings are being stayed for long periods pending criminal proceedings. Stay of disciplinary proceedings cannot be,

and should not be, a matter of course. All the relevant factors, for and against, should be weighed and a decision taken keeping in view the various principles laid down in the decisions referred to above. ... Indeed, in such cases, it is all the more in the interest of the charged officer that the proceedings are expeditiously concluded. Delay in such cases really works against him.” (emphasis supplied)

13. *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 defense 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 on-going 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.”*

7. The principles that have been culled out are that while

considering the aspect about stay of legal proceedings or not, the gravity of the charge is required to be considered. If the criminal charge against the employee is grave and continuance of the disciplinary proceedings is likely to prejudice adversely the criminal Court, then stay to the disciplinary proceedings may be an advisable course. The gravity of the charge should also be accompanied with determination of question as to whether the said charge involves complicated questions of fact and law. The said principle has been deduced by the Apex Court and consistently followed.

8. In light of that, it will have to be examined as to the charge that the petitioners are facing criminal prosecution. The charge sheet is already a matter of record wherein the petitioners are prosecuted under the provisions of Prevention of Corruption Act. The Evidence and witnesses to be examined in the criminal prosecution and the departmental enquiry may be the same. The gravity of the offence and the nature of the evidence that is to be lead, will have to be considered.

(I) WRIT PETITION NO. 4758 OF 2014

9. The petitioner in this writ petition is working as a Junior Engineer under the respondents in the unit office at Kasar Shirshi, Tq. Nilanga, District Latur. The A.C.B. laid a trap accusing the petitioner to have demanded an amount of Rs.15,000/- from one Kiran Holkunde for issuing

an estimate for new Transformer for the existing connection. The said complainant Mr. Holkunde claimed to have already paid an amount of Rs.10,000/- even before approaching the A.C.B. and the alleged demand is of residual amount of Rs.5000/- by the petitioner through another person. On the basis of these allegations, a trap was arranged by the ACB authorities. The petitioner came to be charge sheeted for the offences punishable under Sections 7, 13 (1) (d) r.w. 13(2) of Prevention of Corruption Act 1988, vide crime No. 3026 of 2012. At some time, the employer has initiated departmental enquiry against the petitioner. In all the petitions, the charges in the criminal prosecution and the departmental enquiry and the witnesses, if any, are shown below in the tabular form, as follows:-

Charges in criminal prosecution	Charges in departmental enquiry
<i>Sections 7, 13 (1) (d) r.w. 13(2) of the Prevention of Corruption Act, 1988.</i>	<i>i) To act dishonestly with the company (Sr. No.14 in Schedule "C" of M.S.E.D.C.L. Service Regulation 2005)</i> <i>ii) To commit such act which amounts disloyalty with the Company. (Sr. No.15 in Schedule "C" of M.S.E.D.C.L. Service Regulation 2005)</i> <i>iii) To demand bribe from the proposed customer and to accept it. (Sr. No.21 and as per the note below Sr. No. 86(4) in schedule "C" of M.S.E.D.C.L. Service Regulation 2005)</i> <i>iv) To malign the image of the company in public. (As per note below Sr. No. 86(4) of M.S.E.D.C.L. Service Regulation, 2005)</i>

In this case, it appears that, during enquiry, the management's representative narrated the incident on the basis of record which has been

predominantly prepared by the ACB authorities. From the enquiry report, we do not find that the witnesses have been examined by the department. Charge Nos. 3 and 4 levelled under the departmental enquiry ultimately shown to have been proved on the basis of the said record prepared by ACB authorities.

(II) WRIT PETITION NO. 4652 OF 2014

10. The petitioner is working as Upper Division Clerk under the respondents, in the office of Executive Engineer, MSEDCL Division Office, Tapi Nagar, Bhusawal, District Jalgaon. The ACB laid a trap accusing the petitioner to have demanded an amount of Rs.12,000/- towards passing of bill of one of the contractors. The said trap was conducted on 6.9.2013. Consequent to the said trap, crime No. 3044 of 2013 came to be registered against the petitioner for the offences punishable under Sections 7, 13 (1) (d) r.w. 13 (2) of the Prevention of Corruption Act. The petitioner was also subjected to departmental enquiry by the employer.

Charges in criminal prosecution	Charges in departmental enquiry
<i>Sections 7, 13 (1) (d) r.w. 13(2) of the Prevention of Corruption Act, 1988.</i>	<i>i) To act dishonestly with the company (Sr. No.14 in Schedule "C" of M.S.E.D.C.L. Service Regulation 2005)</i> <i>ii) To commit such act which amounts disloyalty with the Company. (Sr. No.15 in Schedule "C" of M.S.E.D.C.L. Service Regulation 2005)</i> <i>iii) To demand bribe from the proposed customer and to accept it. (Sr. No.21 and as per the note below Sr. No. 86(4) in schedule "C" of M.S.E.D.C.L. Service Regulation 2005)</i> <i>iv) To malign the image of the company in public. (As per note</i>

	<i>below Sr. No. 86(4) of M.S.E.D.C.L. Service Regulation, 2005).</i>
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Consequent to initiation of departmental enquiry, the petitioner came to be suspended and an Enquiry Officer was also appointed in due course. It appears from the record that the Enquiry Officer was directed by the respondent authorities to conduct enquiry at the earliest and submit a report. The petitioner is also communicated to that effect vide letter dated 26.3.2014.

(III) WRIT PETITION NO. 6079 OF 2014.

11. The petitioner is serving as Police Sub Inspector in Railway Protection Force at Chalisgaon under the control of the respondents. On the basis of complaint of one Ashpaq Khan, a crime came to be registered by CBI, ACB, Mumbai for the offences punishable under Sections 7, 12, 13 (2) r.w. 13 (1) (d) of the Prevention of Corruption Act and under Section 120-B of I.P.C. It is alleged in the complaint that the present petitioner has demanded a bribe of Rs.1000/- p.m. for allowing the complainant to carry out a business of selling tea in the outstation train at Chalisgaon Railway Station. Respondent No.3, in view of the said crime registered against the petitioner, also initiated departmental enquiry against the petitioner. The charge sheet was not submitted by the Investigating Officer till filing of the writ petition. However, departmental enquiry as stated above, was initiated against the petitioner.

Charges in criminal prosecution	Charges in departmental enquiry
<i>Sections 7, 12, 13 (2) r.w. 13 (1) (d) of the prevention of Corruption Act and under Section 120-B of I.P.C.</i>	<i>i) Demand of bribe from complainant Ashpaq Khan and acceptance of the same.</i>
	<i>ii) The petitioner was caught red handed in the raid conducted by CBI, Mumbai, thereby maligned the</i>

	<i>image of the employer.</i> <i>iii) The other charges are based on the aforesaid main charges of demand and acceptance of bribe and a trap conducted by CBI Mumbai.</i>
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The documents submitted alongwith the charge sheet and served upon the petitioner are mostly of investigation carried out by the CBI and most of the witnesses are police witnesses. The complainant Ashpaq Khan is also one of the prime witnesses in the departmental enquiry.

(IV) WRIT PETITION NO. 6347 OF 2014

12. The petitioners are serving as Head Constables in Railway Protection Force at Chalisgaon under the control of the respondents. On the basis of complaint of one Ashpaq Khan, a crime came to be registered by CBI, ACB, Mumbai for the offences punishable under Sections 7, 12, 13 (2) r.w. 13 (1) (d) of the Prevention of Corruption Act and under Section 120-B of I.P.C. It is alleged in the complaint that petitioner No. 1 has demanded bribe of Rs.1000/- p.m. and petitioner No.2 has demanded a bribe of Rs.100/- p.m. for allowing the complainant to carry out a business of selling tea in the outstation train at Chalisgaon Railway Station. Respondent No.3, in view of the said crime registered against the petitioners, also initiated departmental enquiry against the petitioners. The charge sheet was not submitted by the Investigating Officer till filing of the writ petition. However, departmental enquiry as stated above, was initiated against the petitioners.

Charges in criminal prosecution	Charges in departmental enquiry
<i>Sections 7, 12, 13 (2) r.w. 13 (1) (d) of the Prevention of Corruption Act and under Section 120-B of I.P.C.</i>	<i>i) Demand of bribe from complainant Ashpaq Khan and acceptance of the same.</i> <i>ii) The petitioners were caught red</i>

	<i>handed in the raid conducted by the CBI, Mumbai and thereby maligned the image of the employer.</i> <i>iii) The other charges are based on the aforesaid main charges of demand and acceptance of bribe and a trap conducted by the CBI Mumbai.</i>
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The documents submitted alongwith the charge sheet and served on the petitioners are mostly of investigation carried out by the CBI and most of the witnesses are police witnesses. The complainant Ashpaq Khan is also one of the prime witnesses in the departmental enquiry.

(V) WRIT PETITION NO. 6708 OF 2014

13. The petitioner is serving as Police Inspector in Railway Protection Force at Bhusawal under the control of the respondents. It is alleged in the complaint filed by one Sayad Samir Sayad Hasan that the petitioner has demanded gratification of Rs.25,000/- to Rs.30,000/- p.m. for allowing the complainant to carry illegal ticket booking business at Amravati. On the basis of the said complaint, after conducting pre-trap and verification and other formalities, the police authority caught the petitioner red handed while accepting bribe of Rs.10,000/-. Further investigation was carried out by the C.B.I. In view of criminal proceedings, departmental enquiry also came to be initiated against the petitioner by the employer by presenting charge sheet dated 18.6.2014. Even one witness has been examined in the said departmental enquiry. In the said crime, Investigation authority has not yet filed charge sheet. However, the respondent authorities proceeded with departmental enquiry against the petitioner under Section 7 of the Prevention of Corruption Act 1988.

Charges in criminal prosecution	Charges in departmental enquiry
<i>Section 7, 12, 13(2) r.w. 13(1) (d) of the Prevention of Corruption Act and Section 120-B of I.P.C.</i>	<i>i) Illegal demand of Rs.10,000/- by the petitioner from Sayad Samir Sayad Hasan, acceptance of the same and thus crime has been registered against petitioner for accepting bribe.</i> <i>ii) As a consequence of the trap he was caught raid handed by CBI, Nagpur, thereby, maligned the image of the employer.</i> <i>iii) By accepting bribe, the petitioner holding responsible post of police Inspector, allowed the outsider for booking of tickets at Amravati Railway station, which amounts to misconduct etc.</i>

(VI) WRIT PETITION NO. 8686 OF 2014.

14. The petitioner is serving as Police Inspector in Railway Protection Force at Nanded, South Central Railway under the control of the respondents. Initially, special case No. 14 of 2013 came to be registered before Special Judge, City Civil and Sessions Court at Mumbai, for the offences punishable under Sections 120-B, 409, 419, 466, 468, 471, 420 of I.P.C. and 13(2) r.w. 13 (1) (c) and (d) of the Prevention of Corruption Act against the staff members of the petitioner and subsequently supplementary charge sheet came to be submitted against the petitioner for the alleged offences, vide CBI Special case No. 8 of 2014.

Charges in criminal prosecution	Charges in departmental enquiry
<i>Sections 120-B, 409, 419, 466, 468, 471, 420 of I.P.C. and 13(2) r.w. 13 (1) (c) and (d) of the Prevention of Corruption Act.</i>	<i>i) The petitioner has entered into a conspiracy with other RPF officials posted at RPF, Kurla. The object of conspiracy was to cheat and commit other offences in the matter of alleged detention of members of public by abuse of their official</i>

	<i>position and collect from them cash amounts of Rs.500/- and more, under the garb of cash bail by getting executed fake bail bonds allegedly supplied by the supply depot of Railways.</i> <i>ii) The charge Nos. 2 to 4 are in respect of getting executed fake bail bonds and misappropriation of amount.</i> <i>iii) The last charge i.e. No. 5 is for registration of crime against the petitioner under various provisions of I.P.C. and Prevention of Corruption Act.</i>
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(VII) WRIT PETITION NO. 10415 OF 2014.

15. The petitioner is serving as Sub Divisional Engineer at Vapi, Gujarat. Earlier the petitioner was serving as Business Development Executive at Aurangabad under the control of respondent Nos. 2 and 3. The CBI and ACB, Pune lodged F.I.R. against B.S.N.L. authorities under sections 120-B and 420 of I.P.C. and under section 13(2) r.w. 13 (1) (d) of Prevention of Corruption Act. The petitioner, alongwith other accused persons, have been charge sheeted for having committed conspiracy and in furtherance of the said conspiracy, dishonestly cheated B.S.N.L. Aurangabad by using their official position. On completion of investigation, charge sheet came to be submitted against all the accused including the petitioner, which is registered as Special Case No. 22 of 2011 and is pending before the Special Judge, Aurangabad.

Charges in criminal prosecution	Charges in departmental enquiry
<i>Sections 120-B and 420 of I.P.C. and under section 13(2) r.w. 13 (1) (d) of the Prevention of Corruption Act.</i>	<i>i) Charge Nos. 1 and 2 – The petitioner, by using his official position, committed the act of gross misconduct and misbehavior and showed undue favour to B.S.N.L.</i>

	<i>franchise by processing the cases of sanctioning commission to him, without seeking prior approval, without creating liability, without submitting bills in stipulated time and without submitting supporting original documents.</i> <i>ii) Charge No. 3 and 4 are in respect of conspiracy in conversion of 20000 recharge vouchers and purported recovery of Rs.8,92,800/- against 900 recharge vouchers converted, respectively.</i>
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(VIII) WRIT PETITION NO. 9394 OF 2014

16. The petitioner is working as District Manager, Grade-II with Maharashtra State Seed Corporation Ltd. Akola. The officer of the Corporation has filed complaint bearing No. 71 of 2014 for the offences punishable under sections 409, 420, 465, 468, 471 r.w. 34 of I.P.C. with Osmanabad City police station against the petitioner and other accused persons alleging therein that the petitioner and others implemented bogus programme of seed plot of Jawar seeds and supplied bogus seeds to the Corporation and hence cheated the Corporation and thereby maligned the reputation of respondent Corporation. The respondent Managing Director initiated departmental enquiry against the petitioner alleging that the petitioner has violated the service conditions as laid down in Maharashtra State Seeds Corporation Employees Services Rules, 1995. On completion of investigation, charge sheet came to be submitted against all accused including the petitioner.

Charges in criminal prosecution	Charges in departmental enquiry
<i>Sections 409, 420, 465, 468, 471 r.w. 34 of I.P.C.</i>	<i>i) During the Kharip season 2013, there was admixture in Soybean seed of JS 335 and thereby damaged the reputation of the Corporation. The petitioner has</i>

	<i>violated Rules 24 and 38 (iv), (v) and (xxv) of the said Rules of 1995.</i> <i>ii) The petitioner has falsely shown implementation of seed plot of rabbi Jawar of Moti variety when the producer has no land in his name. The petitioner has violated Rules 24 and 38 (iv), (v) and (xxv) of the said Rules of 1995.</i> <i>iii) In the year 1993-94, the petitioner has cheated the Corporation by showing irregularity in distributing the seeds and thus he has violated Rule 38 (xi) of the said Rules of 1995.</i> <i>iv) The maximum service career of the petitioner is disputed. Conduct of the petitioner is also suspicious. Thus, he has violated Rule 38 (xxiii) of the said Rules of 1995.</i>
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(IX) WRIT PETITION NO. 11061 OF 2014

17. The petitioner is working as Junior Engineer in respondent No.1 company. A crime is registered against the petitioner with Shivoor Police Station being crime No. I-45 of 2013 for the offences punishable under Sections 381, 409 r.w. 34 of I.P.C. and section 136 of Indian Electricity Act. It is alleged in the complaint that 8 conductor drums are stolen and of which suspicion is raised against the petitioner and other employees of Shivoor sub-station. The petitioner was also subjected to departmental enquiry by the employer.

Charges in criminal prosecution	Charges in departmental enquiry
<i>Sections 381, 409 r.w. 34 of I.P.C. and section 136 of the Indian Electricity Act.</i>	<i>i) To cause damage to the company.</i> <i>ii) Dereliction and negligence in performing duty. Disobedience and</i>

	<i>improper supervision on the subordinate staff. Disobey the orders of superior. To commit misappropriation and theft. To malign the reputation of company in general public.</i>
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(X) WRIT PETITION NO. 11215 OF 2014

18. The petitioner is working as Technician under the respondents at Narsi Namdeo, Tq. and District Hingoli. On the complaint of Shaikh Mobin Shaikh Hamid, the ACB authorities laid a trap on 22.1.2012 and caught red handed the petitioner while accepting bribe amount of Rs.500/-. The ACB launched prosecution against the petitioner. F.I.R. No. 3001 of 2012 is registered against the petitioner, for the offences punishable under Sections 7, 13(1) (d) r.w. 13 (2) of the Prevention of Corruption Act, 1988. At some time, the employer has also initiated departmental enquiry.

Charges in criminal prosecution	Charges in departmental enquiry
<i>Sections 7, 13(1) (d) r.w. 13 (2) of the Prevention of Corruption Act, 1988.</i>	<i>i) To act dishonestly with the company</i> <i>ii) To commit such act which amounts to disloyalty with the Company.</i> <i>iii) To demand bribe from the proposed customer and to accept it.</i> <i>iv) To malign the image of the company in general public.</i>

(XI) WRIT PETITION NO. 11219 OF 2014

19. The petitioner is working as Assistant Engineer at Hingoli. On the complaint of Abdullah Pathan Mannan Khan, the ACB authorities laid a trap on 14.12.2013 and caught red handed the petitioner while accepting bribe of amount of Rs.1000/-. The ACB launched prosecution against the

petitioner. F.I.R. No. 3060 of 2012 is registered against the petitioner, for the offences punishable under Sections 7, 13(1) (d) r.w. 13 (2) of the Prevention of Corruption Act, 1988. At some time, the employer has also initiated departmental enquiry.

Charges in criminal prosecution	Charges in departmental enquiry
<i>Sections 7, 13(1) (d) r.w. 13 (2) of the Prevention of Corruption Act, 1988.</i>	<i>i) To act dishonestly with the company</i> <i>ii) To commit such act which amounts to disloyalty with the Company.</i> <i>iii) To demand and accept bribe from the proposed customer.</i> <i>iv) To malign the image of the company in general public.</i>

(XII) WRIT PETITION NO. 2431 OF 2015.

20. The petitioner is working as Sub-Engineer at Banoti under Soygaon Sub Division under Kannad Division in Aurangabad Rural Circle in Aurangabad Zone. On the complaint of one Waman Thamaji Lokhande, the ACB authorities laid a trap on 2.7.2013 and caught red handed the petitioner while accepting bribe of amount of Rs.8000/-. The ACB launched prosecution against the petitioner. F.I.R. No. 3013 of 2013 is registered against the petitioner, for the offence punishable under Section 7 of the Prevention of Corruption Act, 1988. At some time, the employer has also initiated departmental enquiry.

Charges in criminal prosecution	Charges in departmental enquiry
<i>Section 7 of the Prevention of Corruption Act, 1988.</i>	<i>i) To deprive the company from getting the income.</i> <i>ii) To act dishonestly with the company</i>

	<i>iii) To commit such act which amounts to disloyalty with the Company.</i> <i>iv) To violate the Rules, Circulars or notices of the company.</i> <i>v) To demand and accept bribe from outside customers.</i> <i>vi) To malign the image of the company in general public.</i>
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(XIII) WRIT PETITION NO. 2403 OF 2015

21. The petitioner was working as Junior Engineer under Aurangabad Rural Division, Aurangabad. On the complaint of one Shaikh Tarbej Ahmed Sarvar Ahmed , the ACB authorities laid a trap on 18.12.2012 and caught red handed the petitioner while accepting bribe of amount of Rs.20,000/-. The ACB launched prosecution against the petitioner. F.I.R. No. 3047 of 2012 is registered against the petitioner, for the offences punishable under Sections 7, 13(1) (d) and 13(2) of the Prevention of Corruption Act, 1988. Subsequently, the employer has also initiated departmental enquiry against the petitioner.

Charges in criminal prosecution	Charges in departmental enquiry
<i>Sections 7, 13(1) (d) and 13(2) of the Prevention of Corruption Act, 1988.</i>	<i>i) To deprive the company from getting the income.</i> <i>ii) To act dishonestly with the company</i> <i>iii) To commit such act which amounts to disloyalty with the Company.</i> <i>iv) To violate the Rules, Circulars or notices of the company.</i> <i>v) To demand and accept bribe</i>

	<i>from outside customers.</i> <i>vi) To malign the image of the company in general public.</i>
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22. It is necessary to state here that this Court, in all these matters, has granted interim relief in favour the petitioners thereby staying the ongoing disciplinary proceedings against the petitioners.

23. In the case of **Capt. M. Paul Anthony (supra)**, while dealing with the similar question, the Apex Court in para 22 has drawn conclusions which are deducible from various decisions, as follows:-

“22.

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

24. It therefore, appears from the above discussion that the pendency of criminal proceeding is not a bar to continue to disciplinary proceedings in ordinary circumstances and it is only in exceptional circumstances when the charges in both the proceedings are founded on the same set of facts and evidence and the charges in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and facts. Considering all petitions, it appears that the incident in question giving rise to criminal trial and the disciplinary proceeding is one and the same. It also appears that the charges in criminal case against the petitioners are of grave nature involving complicated questions of law and facts. Some of the important witnesses are common. The accusation is also same and some additional charges in the disciplinary proceedings are dependent upon the main charge similar

to that of criminal case. The point that is to be proved in the criminal trial as well as in the disciplinary proceeding is whether the petitioner has demanded the bribe and accepted the same from the complainant. In the event the petitioner is required to participate and produce evidence in defence in the disciplinary proceeding, his defence in criminal proceeding which would normally constitute the basis in line and object of cross examination of the prosecution witnesses would already be known to such witnesses. Needless to state that the accused in criminal trial is presumed to be an innocent unless the charge against him is proved beyond reasonable doubt. The burden of proving the guilt of the accused is on the prosecution. However, one of the considerations would be that the disciplinary enquiry cannot and should not be delayed unduly. If the criminal case is unduly delayed that may itself be a good ground for going ahead with the disciplinary enquiry. It would not be in the interest of the department that the delinquent of a serious misconduct should be continued in office indefinitely awaiting the result of the criminal proceedings.

25. In the circumstances and taking into consideration all aspects mentioned above and keeping in mind the principles laid down and the course adopted by the Apex Court in the cases of ***Stanzen Toyotetsu India P. Ltd. Vs. Girish V. and Others*** and ***Capt. M. Paul***

Anthony vs. Bharat Gold Mines Ltd. (cited supra), we pass the following order:-

O R D E R

- I. We direct the court dealing with the criminal charges against the petitioners to conclude the proceedings as expeditiously as possible, and preferably within a period of one year from the date of this order.
- II. The interim orders granting stay to the ongoing disciplinary proceedings in each of the case shall remain in force for a period of one year from the date of this order.
- III. In case the charge sheet is not filed or belatedly filed, the interim orders granting stay to the ongoing disciplinary proceedings in such case shall remain in force for a period of one year from the date of this order and the disciplinary proceedings initiated against the petitioners in those cases shall be resumed and concluded by the Enquiry Officer thereafter.
- IV. We hope and trust that the trial court will take effective steps to ensure that the witnesses are served, appeared and examined accordingly.
- V. The petitioners, who are accused in criminal case, shall co-operate with the trial court for early disposal of criminal proceedings.
- VI. In case, the trial is not completed within a period of one year from today, despite the steps which the trial court has been directed to take, the disciplinary proceedings, initiated against

the petitioners, shall be resumed and concluded by the Enquiry Officer.

- VII. We make it clear that the interim orders staying ongoing disciplinary proceedings shall in that case stand vacated upon expiry of a period of one year from the date of this order.
- VIII. Registry may communicate this order to the concerned Courts, where the criminal prosecutions against the petitioners are pending.

26. Writ petitions are disposed of accordingly. Rule is made absolute in the above terms.

(V. K. JADHAV, J.)

(S. V. GANGAPURWALA, J.)

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