

* HON'BLE SRI JUSTICE R.KANTHA RAO

+ Writ Petition No.19637 of 2015

% 19-11-2015

Kota Joji

... Petitioner

Vs.

\$ The Railway Protection Force (RPF),
Rep. by its Sr. Div. Security Commissioner (SCR),
Vijayawada, Krishna district;
and 2 others

... Respondents

! Counsel for the Petitioner: Sri S.R. Sanku

Counsel for Respondents : Smt. Pushpinder Kaur,
Standing Counsel.

< Gist:

> Head Note:

? Cases referred:

1. 1969 (1) S.C.R. 134
2. AIR 1960 SC 806(1)
3. (1996) 6 SCC 417

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

Writ Petition No.19637 of 2015

Between

Kota Joji

... Petitioner

and

The Railway Protection Force (RPF),
Rep. by its Senior Divisional
Security Commissioner (SCR),
Vijayawada, Krishna district;
and 2 others

... Respondents

DATE OF JUDGMENT PRONOUNCED: 19-11-2015

- | | | |
|---|---|--------|
| 1 | Whether Reporters of Local newspapers
may be allowed to see the Judgment? | Yes/No |
| 2 | Whether the copies of judgment may be
marked to Law Reports/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment? | Yes/No |

HON'BLE SRI JUSTICE R.KANTHA RAO

Writ Petition No.19637 of 2015

Order:

The petitioner, Inspector in respondent No.1-Railway Protection Force (RPF), was trapped by the Central Bureau of Investigation (CBI) on 15-02-2015 and a case was booked against him on the ground that he demanded and accepted the bribe from a hawker for allowing him to sell eatables in the trains unauthorisedly. In this connection, the CBI, Visakhapatnam registered a case against the petitioner in R.C.No.1(A)/15 under Section 7 of the Prevention of Corruption Act, 1988.

He was arrested on 15-02-2015 and was released on bail on 10-3-2015. He was placed under suspension by the Department with effect from 18-02-2015.

The 1st respondent-RPF issued a charge-sheet dated 25-6-2015 against the petitioner under Rule 153 of the Railway Protection Force Rules, 1987 (the RPF Rules, for short) framing Articles of Charge viz., (1) He demanded an amount of Rs.6,000/- as illegal gratification from Chitekala Gopi to allow him to continue unauthorised hawking (of selling of boiled palli) in trains, (2) By making such demand, he misused his official position for his personal gain which constitutes serious misconduct which is unbecoming of a Railway servant and that he also failed to maintain integrity and tarnished the image of the Force in the eyes of public.

2. It is submitted by the petitioner that the charges in the criminal case and in the disciplinary proceedings are identical emanating from the very same incident, the 1st respondent is hurriedly proceeding with the departmental enquiry without waiting the outcome of the criminal proceedings, even though the departmental proceedings must await the outcome of the criminal proceedings as mandated by the RPF Rules. According to the petitioner, the departmental proceedings must proceed only after passing of the orders of conviction by the trial court, otherwise his defence in the criminal case in relation to a grave charge gets prejudiced.

The grievance of the petitioner is that ignoring the procedure contemplated under the RPF Rules, the department is proceeding with the departmental enquiry. Therefore, he filed the present writ petition under Article 226 of the Constitution of India for a *mandamus* declaring the initiation of departmental proceedings pending criminal case as illegal, violative of Rule 162 of the RPF Rules and to consequently set aside the departmental proceedings. He sought an interim prayer to stay all further proceedings in the departmental enquiry till the outcome of the criminal case.

3. The 1st respondent-RPF filed counter affidavit contending, *inter alia*, as follows:

(a) The charge-sheet issued to the petitioner in the

departmental proceedings and in criminal case is distinct and different. The contention of the petitioner that the departmental proceedings and criminal case cannot go parallel is misconceived since the petitioner has been issued a charge-sheet by the Department under Rule 153 of the RPF Rules for his misconduct being the member of the Railway Protection Force (RPF). The charges were framed by the 1st respondent-Disciplinary Authority basing on the report received from the CBI, Visakhapatnam along with the letter dated 16-4-2015. The petitioner is charged for serious misconduct of unbecoming of a Railway servant, failure to maintain integrity, misusing his official position for personal gain and for tarnishing the image of the Force.

The contention of the petitioner that as per Rule 162 of the RPF Rules, the respondents could not have initiated departmental proceedings while criminal proceedings are pending is incorrect and is the result of misinterpretation of the Rule.

(b) According to the respondents, Rule 162 of the RPF Rules postulates that where an enrolled member of the Force is convicted or acquitted can be taken only after the criminal case has reached its logical end and the person so involved has been either convicted or acquitted, for the concerned authority to record and pass an appropriate order on that. However, the Rule does not bar the Disciplinary Authority from initiating departmental

action against the enrolled members of the Force when they are facing criminal charges which are identical to the charges levelled in the departmental proceedings.

(c) Contending as above, the respondents sought to dismiss the writ petition.

4. I have heard Sri S.R. Sanku, learned counsel appearing for the petitioner and Smt. Pushpinder Kaur, learned Standing Counsel for RPF-respondents 1 to 3.

5. The short question requires determination in the present case is that when a criminal case is pending against an employee in respect of the charges identical to those in the departmental enquiry, whether the departmental enquiry shall wait till the outcome of the criminal case.

6. Quite often misconduct under the disciplinary rules of an employee may also amount to a criminal offence in respect of which, the employee can as well be tried for the criminal offence. The contention that the disciplinary proceedings should wait the outcome of the result of the criminal case is based on the ground that if the employee discloses his defence in the departmental proceedings, it would cause prejudice to him in the criminal trial. The same is the argument advanced in the present case on behalf of the petitioner.

7. In this context, it is to be borne in mind in the first

place that there is no prohibition or bar for initiating criminal proceedings and departmental proceedings simultaneously. However, in some of the judgments, the apex Court has laid down that if the case is of grave nature or involves questions of fact or law which are not simple, it would be advisable to the employer to await the decision of the trial court in the criminal case so that the defence of the employee in the criminal case may not be prejudiced. Therefore, the real question to be determined in the instant case is as to whether it would be proper to defer the disciplinary proceedings till the disposal of the criminal case by the trial court. As there is no specific bar for initiating criminal proceedings as well as the departmental enquiry simultaneously, the Court has to examine the facts and circumstances of each case whenever an employee seeks an order granting stay of the departmental proceedings. In **Janq Bahadur Singh v. Baij Nath Tiwari**^[1], the apex Court observed that it is neither possible nor advisable to evolve a hard and fast, strait-jacket formula valid for all cases and of general application without regard to the particularities of the individual situation.

8. Rule 162 of the RPF Rules only deals with the procedure to be followed in case of conviction by a criminal court. The Rule does not contain any bar as to initiation of and continuance of departmental enquiry while

the criminal charges are pending against a delinquent employee. Moreover, the Rule also enables the department to initiate departmental proceedings after an objective consideration of all the facts and circumstances where the accused was discharged or acquitted on benefit of doubt. Nothing in the RPF Rules contains a bar against initiation of departmental proceedings and their continuance whenever there is a criminal case pending against the petitioner in respect of the very same charges.

9. Even though the respondents contended in the present case that the charges in the criminal case and the departmental enquiry are entirely different, the said contention cannot be accepted because both the charges are in respect of the very same misconduct of demanding illegal gratification and accepting the same from a hawker for allowing him to sell the eatables (boiled groundnuts) unauthorisedly in the trains.

10. Reliance is placed by the learned counsel appearing for the petitioner on **Delhi Cloth and General Mills Ltd. v. Kushal Bhan**^[2], wherein the Supreme Court held as follows:

“3. It is true that very often employers stay enquiries pending the decision of the criminal trial courts and that is fair; but we cannot say that principles of natural justice require that an employer must wait for the decision at least of the criminal trial court before taking action against an employee. In **Shri Bimal Kanta Mukherjee**

v. Messrs. Newsman's Printing Works, 1956 Lab AC 188, this was the view taken by the Labour Appellate Tribunal. We may, however, add that if the case is of a grave nature or involves questions of fact or law, which are not simple, it would be advisable for the employer to await the decision of the trial court, so that the defence of the employee in the criminal case may not be prejudiced. The present, however, is a case of a very simple nature and so the employer cannot be blamed for the course adopted by him. In the circumstances, there was in our opinion no failure of natural justice in this case and if the respondent did not choose to take part in the enquiry no fault can be found with that enquiry.
..."

(emphasis supplied)

Thus, even the judgment relied on by the learned counsel appearing for the petitioner in **Kushal Bhan** (2 *supra*) does not lay down any abstract principle that the departmental enquiry should wait the outcome of the criminal case.

11. Further, in **STATE OF RAJASTHAN v.**

SHRI B.K. MEENA^[3], the Supreme Court relying on the judgment referred to by the learned counsel appearing for the petitioner in **Kushal Bhan** (2 *supra*) and several other earlier judgments of the Supreme Court, expounded the law on the subject in the following terms:

"It would be evident from the above decisions that each of them starts with the indisputable proposition that 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, it is emphasised, is a matter to

be determined having regard to the facts and circumstances of a given case and that no hard and fast rule can be enunciated in that behalf. That the defence of the employee in the criminal case may not be prejudiced means that not only the charges must be grave but that the case must involve complicated questions of law and fact.

The ground indicated in D.C.M. and Tata Oil Mills is also not invariable rule. It is only a factor which will go into the scales while judging the advisability or desirability of staying the disciplinary proceedings. One of the contending consideration is that the disciplinary enquiry cannot be and should not be delayed unduly. So far as criminal cases are concerned, it is well-known that they drag on endlessly where high officials or persons holding high public offices involved. They get bogged down on one or the other ground. They hardly ever reach a prompt conclusion. That is the reality inspite of repeated advice and admonitions from this Court and the High Courts. If a criminal case is unduly delayed that may itself be a good ground for going ahead with the disciplinary enquiry even where the disciplinary proceedings are held over at an earlier stage.

The interests of administration and good government demand that these proceedings are concluded expeditiously. It must be remembered that interests of administration demand that the undesirable elements are thrown out and any charge of misdemeanour is enquired into promptly. The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. The interest of the delinquent officer also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges, his honour should be vindicated at the earliest possible moment and if he is guilty, he should be dealt with promptly according to law.

... ..”

Therefore, for exercising judicial discretion to stay the departmental enquiry till the pronouncement of the judgment of the criminal case by the trial court, the Court

must not only be satisfied as to the fact that the charges are grave in nature but also be of the opinion that the case involves complicated questions of law and fact.

12. Another important factor which also is to be kept in mind is that the standard of proof required in a criminal case is altogether different from that of the standard of proof in a departmental enquiry. In the former it is proof beyond reasonable doubt and in the latter it is the preponderance of probability. In certain cases, even though the delinquent employee is acquitted by the criminal case by giving him the benefit of doubt or for want of sufficient evidence, the department can still initiate departmental proceedings against him upon thorough examination of the facts and circumstances of the case.

13. In the instant case, the imputation against the petitioner is that he demanded illegal gratification of Rs.6,000/- from a hawker and accepted the same for the purpose of allowing him to sell the boiled groundnuts in the trains unauthorisedly. Merely because the charge is under Section 7 of the Prevention of Corruption Act, it cannot be said that it is grave in nature. In the considered view of this Court, the charge is very simple. The criminal case pending against the petitioner does not involve any complicated questions of law and fact. Considerable length of time would be taken by the trial court to render its verdict in the criminal case. Having

regard to the facts and circumstances of the case and also the nature of the charges, this Court is of the considered view that the staying of departmental proceedings till the judgment of the trial court in the criminal case against the petitioner is quite unwarranted. It would be neither in the interests of the department nor in the interests of the petitioner himself. Therefore, this Court is not inclined to grant the prayer in the present writ petition.

14. For the foregoing reasons, the writ petition is dismissed. The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

R.KANTHA RAO, J.

19th November, 2015.

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Note:-

L.R. Copy to be marked.

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HON'BLE SRI JUSTICE R.KANTHA RAO

Writ Petition No.19637 of 2015

19th November, 2015.
(Ak)

[\[1\]](#) 1969 (1) S.C.R. 134

[\[2\]](#) AIR 1960 SC 806(1)

[\[3\]](#) (1996) 6 SCC 417