

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

C.W.P. No.7253 of 2015

Date of Decision : 22.04.2015

ASI Mahavir Singh

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. S.N. Yadav, Advocate
for the petitioner.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J. (Oral)

This petition has been filed for restraining the respondents from continuing with the departmental enquiry during the pendency of the criminal trial against the petitioner in case FIR No.16 dated 20.05.2014 registered under Sections 7/13 of the Prevention of Corruption Act at Police Station SVB, Rohtak.

The petitioner was accused of having demanded a bribe of Rs.10,000/- when he was posted as an ASI in Police Post, Model Town, Rohtak. On that allegation the present departmental enquiry was lodged and a criminal case was also initiated against the petitioner. By this writ

petition the petitioner contends that during the pendency of the criminal case the pendency of the departmental enquiry should be stayed because otherwise the petitioner would be forced to disclose his defense in the departmental enquiry. The further allegation in the petition is that the complainant had subsequently given an affidavit absolving the petitioner of having taken the bribe. In these circumstances, I put it to the learned counsel whether his defense was based on the affidavit of the complainant, learned counsel has accepted the same. In view thereof, there is hardly any justification for claiming that the continuance of the disciplinary proceedings would prejudice the defense of the petitioner in the criminal trial because the verdict of both of them would depend upon the credibility of the complainant before the inquiry officer/criminal court.

Learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the matter of *Indian Overseas Bank, Anna Salai and Another vs. P. Ganesan and others*, reported as *2008(1) S.C.T. 37*, to contend that in that case their Lordships have allowed a similar plea.

In para Nos.18, 19, 20 & 21 of the aforesaid judgment the Hon'ble Supreme Court held as follows:-

“18. Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. And another : (1999) 3 SCC 679 also deserves to be noticed. This Court therein held that the departmental proceedings need not be stayed during pendency of the criminal case save and except for cogent reasons. The Court summarized its findings as under:-

(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.

19. The issue came up for consideration yet again in T. Srinivas (supra) where this Court while analyzing B.K. Meena (supra) and Capt. M. Paul Anthony (supra) held that :-

“From the above, it is clear that the advisability, desirability or propriety, as the case may be, in regard to a departmental enquiry has to be determined in each case taking into consideration all facts and circumstances of the case. This judgment also lays down that the stay of departmental proceedings cannot be and

should not be a matter of course.”

20. The High Court, unfortunately, although noticed some of the binding precedents of the Court failed to apply the law in its proper perspective. The High Court was not correct in its view in concluding that the stay of the departmental proceedings should be granted in the peculiar facts and circumstances of the case without analyzing and applying the principle of law evolved in the aforementioned decisions. It, therefore, misdirected itself in law. What was necessary to be noticed by the High Court was not only existence of identical facts and the evidence in the matter, it was also required to take into consideration the question as to whether the charges levelled against the delinquent officers, both in the criminal case as also the disciplinary proceedings, were same. Furthermore it was obligatory on the part of the High Court to arrive at a finding that the non stayed of the disciplinary proceedings shall not only prejudice the delinquent officers but the matter also the matter involves a complicated question of law.

21. The standard of proof in a disciplinary proceedings and that in a criminal trial is different. If there are additional charges against the delinquent officers including the charges of damaging the property belonging to the bank which was not the subject matter of allegations in a criminal case, the departmental proceedings should not have been stayed.”

The argument that the proceedings should be stayed in view of para No.18(ii) of the aforesaid judgment does not wash. A perusal of para Nos.19, 20 and 21 of the aforesaid judgment indicates that the stay of departmental proceedings is an exception. Further as noticed above there

are no complicated questions of law and fact in the present case.

In my opinion, the aforesaid judgment is a complete answer to the arguments of the learned counsel for the petitioner.

Petition stands dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

April 22, 2015

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**(AJAY TEWARI)
JUDGE**