

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO. 9509 OF 2016

Sharad s/o Manga Tayade
age 58 years, occ. retired
r/o Mangalam Cooperative society
Plot No. 1 and 2,
near Bramhagiri Society,
Jail Road,
Nashik

.. PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary
P.W.D. Department, Mantralaya,
Mumbai.

2. The Superintending Engineer,
Public Works Circle
Nanded

3.	D.A. Wankhede	}	
	The Regional Divisional	}	
	Inquiry Officer, 2nd Floor,	}	Deleted vide order dt.
	Central Administrative Building,	}	05.10.2016
	Aurangabad.	}	

.. RESPONDENTS

Mr. A.N. Kakade, advocate for petitioner.
Mr. S.S. Dande, AGP for the State.

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**CORAM : R.M. BORDE &
K.K. SONAWANE, JJ.
DATE : 5th OCTOBER, 2016.**

ORAL JUDGMENT : (PER R. M. BORDE, J.)

1. Rule. Rule made returnable forthwith.

2. Heard finally with the consent of learned counsel for the respective parties.

3. Leave to delete name of respondent no. 3.

4. Petitioner is facing prosecution for commission of offence under section 7, 13(1)(d) r/w section 13(2) of Prevention of Corruption Act, 1988, in Special Case No. 7/15 before the Special Court, Nanded. Petitioner was working as Executive Engineer in Public Works Department, Zilla Parishad, Nanded and has retired on attaining age of super annuation on 31.05.2015. Zilla Parishad has initiated departmental enquiry against petitioner and charge-sheet has already been served. Petitioner tendered reply to the charges and the departmental proceeding is at the stage of recording of evidence of witnesses to be presented on behalf of the department. Petitioner claims that since the trial in special case has not yet commenced and that he has not disclosed his defence, continuance of departmental proceeding is likely to cause prejudice to him since he may have to disclose his defence in the departmental proceeding. Petitioner contends that he may face prejudice in special case if departmental proceedings are permitted to continue. It is desirable to direct stay to the departmental proceeding until completion of the trial in special case pending before the Special Court, Nanded.

5. There is no hard and fast rule in respect of issuance of directions for stay of departmental proceeding during continuance of the criminal trial. In the matter of A.P. SRTC V. Mohd. Yousuf Miya reported in **(1997) 2 SCC 699**, the Supreme Court has declared that the purpose underlying departmental proceedings is distinctly different from the purpose behind prosecution of

offenders for commission of offences by them. While criminal prosecution for an offence is launched for violation of a duty that the offender owes to the society, departmental enquiry is aimed at maintaining discipline and efficiency in service. The difference in the standard of proof and the application of the rules of evidence to one and inapplicability to the other was also explained and highlighted only to explain that conceptually the two operate in different spheres and are intended to serve distinctly different purposes. In the matter of Stanzen Toyotetsu India Private Limited Vs. Girish V. and others reported in **(2014) 3 SCC 636**, the Supreme Court has observed thus :

10. The relatively recent decision of this court in *Karnataka SRTC v. M.G. Vittal Rao*, is a timely reminder of the principles that are applicable in such situation succinctly summed up in the following words :

“(i) There is no legal bar for both the proceedings to go on simultaneously.

(ii) 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.

(iii) 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.

(iv) 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.”

11. We may also refer to the decision of this

Court in Capt. M. Paul anthony V. Bharat Gold Mines Ltd., where this Court reviewed the case law on the subject to identify the following broad principles for application in the facts and circumstances of a given case : (SCC p. 691, para 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, 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 t the earliest.”

12. In Hindustan Petroleum Corpn. Ltd. v. Sarvesh Berry the respondent was charged with possessing assets disproportionate to his known sources of income. The question was whether disciplinary proceedings should remain stayed pending a criminal charge being examined by the competent criminal court. Allowing the appeal of the employer Corporation this Court held :
(SCC p. 475, para 8)

“8..... So, a crime is an act of commission in

violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of a grave nature involving complicated questions of fact and law.... Under these circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances.” (emphasis supplied)

15. To the same effect is the decision of this Court in *State of Rajasthan v. B.K. Meena*, 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 : (B.K. Meena case, SCC pp. 422-23, paras 14-15)

“14.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 rules can be enunciated in that behalf. The only ground suggested in the above decisions as constituting 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 emphasise 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.

15.....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.)

In the matter of Babulal Verma Vs. Union of India and another reported in 2008 ALL M.R. 556, the Division Bench of this court has observed that there is no uniform principle that wherever a departmental enquiry and the criminal trial is based on somewhat similar facts, the departmental enquiry should essentially be stayed till conclusion of the criminal trial. Mere similarity of facts per se is not a ground for staying any of the two proceedings. In the case before the Court, the petitioner therein was served with the charge-sheet in December 2002 in respect of article of charges relating to the period of 1999. Despite objection to the departmental proceedings it had reached at a mature stage and was about

to conclude. In the circumstances, the Court deemed it appropriate not to stay the departmental proceedings. The Court has, however, observed that whenever prejudice is likely to be caused in the criminal proceeding and looking to the seriousness of charges, appropriate direction can be issued to stay the departmental proceedings. In the instant matter, as has been recorded above, evidence has not yet been recorded in the departmental proceeding and the criminal trial is also at the stage of framing of charges. In the circumstances, the ends of justice would meet by directing criminal Court to complete the trial of the Special Case expeditiously. We, therefore, direct the Special Judge, Nanded, to conclude Special Case No. 7/15 as expeditiously as possible, preferably within a period of six months from today. We are issuing such direction since the petitioner is a retired employee and is facing criminal charges as well as departmental proceedings. Departmental proceedings initiated by respondents shall stand stayed till decision in Special Case No. 7/2015. Rule is accordingly made absolute. No costs.

(K. K. SONAWANE)
JUDGE

(R. M. BORDE)
JUDGE

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