

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No.12828 OF 2015

Mr.Subhash Jina Kamble	...Petitioner
Vs.	
Dena Bank	...Respondent

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Ms.A.P.Madhuri, for the Petitioner.
 Mr.Sudhir Talsania, Senior Advocate with Mr.Sagar Sheth with
 Ms.Radha Ved i/b. Sanjay Udeshi & Co., for the Respondent.

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**CORAM : ANOOP V. MOHTA &
 A.A.SAYED, JJ.**

DATED : 5 APRIL 2016

ORAL JUDGMENT: (Per Anoop V.Mohta, J.)

Rule. Returnable forthwith. Heard finally by consent of parties.

2. The Petitioner invoked the jurisdiction of Article 226 of the Constitution of India by filing the present Writ Petition on 3 December 2015 thereby praying to stay the departmental inquiry initiated by the Respondent, pending the criminal case before the Addl.Chief Metropolitan Magistrate Court, Kurla Court vide CC-629/PW/12 and before the Addl.Chief Metropolitan Magistrate Court, Dadar - also on the foundation that the Petitioner is about to retire on 31 May 2016.

3. The Petitioner's case can be crystallized as per the synopsis as under:

The Petitioner was working as a cashier at Govandi branch of the Respondent-Bank. On 4 January 2013, it was inter alia reported that the Petitioner collected cash from single lock and double lock from the safe and brought to cash cabin but did not make entries in Double Lock Register mentioning how many bundles or cash was withdrawn from Double Lock Safe and also failed to take signatures of officers. Then the Petitioner himself reported shortage of cash to the extent of Rs.13,48,100/- from the safe/locker at Govandi branch of the Respondent-Bank.

4. A suspension order dated 5 January 2013 was issued against the Petitioner for the above misconduct. An FIR was lodged on 22 January 2013 with Govandi Police Station regarding shortage of cash at Govandi Branch of Respondent. The Petitioner was arrested by the Govandi Police on 4 February 2013 on the charge of committing an offence under section 409 and section 34 of Indian Penal Code, 1860. The Petitioner moved for a Bail Application before the Sessions Court, Mumbai, which was rejected by the Court. Thereafter, the bail was granted to the Petitioner by this Court vide order dated 16 April 2013. The Police also filed FIR in C.C.No.629/13 before the 11th Addl.Chief Metropolitan Magistrate Court, Kurla. The Petitioner

was, thereafter, given a show cause notice bearing reference No.MSZO-AGM:DA:21:2013 dated 22 November 2013 for negligence in performance of his duty as an officer of the Bank. The Petitioner filed Reply dated 4 December 2013 denying the charges and allegations made. On 26 December 2013, vide a memorandum, the Disciplinary Authority revoked the suspension of the Petitioner - posted him at Matunga branch.

5. Since the Reply of the Petitioner to the show cause notice was not satisfactory, a charge sheet dated 2 January 2014 was issued, which enumerated the misconducts of the Petitioner. On 10 March 2014, a memorandum was issued by the Disciplinary Authority appointing Mr.A.G.Zade as presiding officer and Mr.S.S.More as Inquiry officer. Mr.S.S.More, after being appointed as an Inquiry Officer issued a letter dated 11 April 2014 to the Petitioner intimating the date of commencement of inquiry proceedings. The detailed enquiry was conducted following the due process of law and the Petitioner was given adequate chance to represent himself before the inquiry officer. The Petitioner had fully participated in the inquiry and was represented by the representative of his choice. Representations were made by both the parties and the witnesses have also been examined during the course of enquiry. On 4th September, 2014 the defense representative of the Petitioner filed his written arguments with the

Disciplinary Authority. The inquiry officer concluded the inquiry and submitted his findings to the disciplinary authority vide letter dated 16th November, 2015 and the copy of the findings of the inquiry officer was given to the Petitioner.

6. Pursuant to the receipt of findings given by inquiry officer, the Petitioner filed his written submissions dated 17th December, 2015 with the Disciplinary Authority. The Disciplinary Authority, after the analyzing the submissions of the Petitioner, vide Memorandum dated 19th December 2015 issued a show cause notice on punishment. The memorandum also provided the details of the personal hearing granted to Petitioner against the memorandum issued by the Disciplinary Authority. The Petitioner vide letter dated 23rd December, 2015 informed the Disciplinary Authority regarding filling of this writ petition and seeking an adjournment to make submissions at personal hearing. Personal hearing was held on 7th January 2016. The Petitioner has made his representation before the Disciplinary Authority.

7. Following judgments are relevant for consideration as cited, read and referred by the Counsel in support of their rival contentions. These judgments are as under:

(i) **Stanzan Toyoetsu India Pvt. Ltd. v/s Girish V & Ors.**¹

¹ (2014) 3 SCC pg. 636.

(ii) **Baljinder Pal Kaur v/s State of Punjab & Ors.**²

(iii) **State of Maharashtra v/s. Raju Vishwanath Bhushanwar**³

(iv) **Dev Prakash Tewari v/s. Uttar Pradesh Co-operative**

Institutional Service Board, Lucknow and ors⁴

The Petitioner has relied upon the judgment of the Supreme Court in **Capt.M.Paul Anthony vs. Bharat Gold Mines Ltd.**⁵

8. Learned Senior Counsel appearing for the Respondent resisted the case in all respect by distinguishing the judgment cited by the Petitioner (**Capt.M.Paul Anthony**) (supra) and also placed on record the judgments (supra) in support of his submissions, basically on the background that the Respondent has already completed the departmental inquiry and the same is pending for final hearing/disciplinary order. The Show Cause Notice is now also given to the Petitioner based upon the Inquiry Report informing why future action should not be initiated against the Petitioner.

9. It is a settled position in law that both the Departmental Enquiry and Criminal Complaint can proceed together; and that even if a delinquent is acquitted in criminal proceedings, the Disciplinary Authority can take its

² (2016) 1 SCC pg. 671

³ 2015 SCC OnLine Bom 6536

⁴ (2014) 7 SCC 260

⁵ MANU/SC/0225/1999

own course and punish the guilty as per the terms and regulations. **[Stanzan Toyoetsu India Pvt. Ltd. (supra)]**. Learned Counsel submitted that even after acquittal in the criminal trial, the employer can proceed departmentally as standard of proof in criminal trial and departmental proceedings are different. **[Baljinder Pal Kaur (supra)]**. These Judgments have taken notice of earlier Supreme Court Judgments also.

10. The Petitioner has actively participated in the Departmental Inquiry before the Inquiry Officer and was represented by the Defence Representative of his choice. The departmental proceedings are completed and therefore there is no question of the defense of the Petitioner in criminal trial being prejudiced. The charges under the Departmental Inquiry and under the Criminal Complaint though are inter-connected but shall no way affect the outcome of each other in every matter. The Petitioner retires on 31st May, 2016 after which Disciplinary Authority cannot take any against him even after finding him guilty under the Departmental Inquiry is additional factor against the Petitioner. **[Dev Prakash Tewari v/s. Uttar Pradesh Co-operative Institutional Service Board, Lucknow and ors.(supra)]**

11. In the present case, admittedly departmental inquiry was conducted after giving full opportunity to the Petitioner. The Petitioner participated without any objection pending the criminal proceedings so referred above. The law is well settled that the criminal proceedings as well as departmental inquiry can run simultaneously. Having once acted upon the same, now at this stage merely because main criminal proceeding is pending (out of two criminal proceedings, in other proceeding on different issue he was acquitted) that itself in our opinion cannot be the reason to stay the further course of action, after completion of departmental inquiry, particularly when he has already led evidence and disclosed his case and defence and basically before the Department. A criminal proceedings, even if pending, should not be a reason in view of the above settled position in the present facts and circumstances.

12. It is settled that such disciplinary proceedings should not be stayed to this extent that the Department would not be in a position to pass any final order based upon the completed inquiry, once the Petitioner retires. Admittedly, the Petitioner is about to retire on 31 May 2016. Though the matter was filed on 3 December 2015, we have not granted stay of the departmental proceedings, except that the final order would not be passed as recorded through a statement.

13. Having once noted the fact and circumstances so recorded above and also the fact that the Petitioner has actually participated in the departmental inquiry and the departmental proceedings are complete, there is no question of defence of the Petitioner of criminal charge being prejudiced. The Department as per the law can take own stand and pass appropriate order as per the Regulations. Charges under the departmental inquiry and the criminal complaint will not affect the outcome of each other. The criminal proceedings, even if are pending, need to proceed in accordance with law. The departmental inquiry and action even if completed before the date of retirement, the Petitioner has a departmental remedy available. The Department, therefore, needs to consider the case of the Petitioner in accordance with law.

14. In the circumstances where the Petitioner is admittedly retiring on 31 May 2016 and in view of the judgments so cited, it is necessary for the Department to pass order and/or take action based upon the completed inquiry prior to his retirement. We see no reason to stay further the departmental inquiry now and the action based upon it, at this stage, as contended by the Counsel appearing for the Petitioner, for the reason so recorded above. This is also for the reason that once the Petitioner is retired, it will be difficult for the Respondent/Department to pass final order based

upon the concluded inquiry. There is force in the submission that in the absence of any other contrary Rules and Regulations, the Department should not be held responsible for their lapses on the ground based upon the disciplinary inquiry, that they failed to pass the final order/action before the Petitioner's retirement. This peculiarity and being the relevant factor, apart from the reasons so recorded, based upon the judgments so cited, we are inclined to dismiss the present Petition.

15. The Petition is accordingly dismissed. The statement made by the learned Counsel for the Respondent stands vacated. No costs.

(A.A. SAYED, J.)

(ANOOP V. MOHTA J.)