

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO.2422 OF 2014

...
 Mr.Sanjaya Dikshit ...Petitioner

v/s.

1. State Bank of India, Corporate Centre,
 State Bank Bhavan, Madame Cama Road,
 Mumbai-21

2. Managing Director & Group Executive
 (National Banking) SBI
 Mumbai-21

...Respondents

...
 Mr.Arshad Shaikh with Mr.Netaji Gawade i/b M/s.Sanjay Udeshi & Co. for
 the Petitioner.

Mr.Atul Damale, Sr.Advocate i/b Mr.Rupesh R.Lanjekar for the Respondents.

...

**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 has filed this Petition thereby praying for stay of departmental proceedings initiated by Respondent-Bank pending the Criminal Case No.38 of 2011 before the Special Judge, Anti-corruption (Central), CBI, Cases, Lucknow.

3. The basis events are as under:-

The Petitioner was employed with Respondent No.1 and presently occupies the post of Dy.General Manager at Guwahati. In the year 2009 the Petitioner was heading the Kanpur Main Branch in Kanpur. In July 2009, it came to notice of the Bank that an alleged fraud was carried out, known as Kite Flying Operations, in clearing, which resulted into an alleged loss of Rs.44.15 crores. The Respondent decided to proceed departmentally against several officers including the Petitioner in this connection towards imposition of major penalties. Accordingly, the Petitioner was placed under suspension on 5 August 2009.

4. On 20 August 2009, the Respondent lodged an FIR with CBI, BS & FC, New Delhi. On 25 March 2011, the CBI submitted its Final Report/Charge Sheet containing 6 charges against the Petitioner in the Court of Special Judge, Anti-Corruption(Central) CBI, Lucknow. On 31 August 2011, the Petitioner's suspension was revoked. In the months of July/August 2013, a departmental inquiry in respect of the charges levelled against the Petitioner was proceeded with and by letter dated 3 August 2013, the Inquiry Officer's Report dated 10 July 2013 was forwarded to the Petitioner calling upon him to submit his written submission. On 12 September 2013, the Petitioner submitted his defence against the Inquiry Report.

5. Reliance is placed by the learned Counsel appearing for the Petitioner on the following judgments:

- (i) Capt.Paul Anthony v/s. Bharat Gold Mines Ltd.¹
- (ii) Kuheshwar Dubey v/s. Bharat Cooking Coal Ltd.²
- (iii) Yoginath Bagade v/s. State of Maharashtra & Anr.³
- (iv) Stanzen Toyotetsu India Pvt.Ltd. v/s. Girish V. & ors.⁴
- (v) Punjab National Bank v/s. Kunj Bihari Misra⁵

6. Learned Counsel appearing for the Respondent has relied upon the same judgments and contended that this is not the case where at this stage any relief can be granted when admittedly a departmental inquiry has reached the stage of finality. The Petitioner had participated in the departmental inquiry, as the Respondent has given full opportunity to him and all the defences were already disclosed.

7. Learned Counsel appearing for the Petitioner has also placed on record the comparison of the charges of departmental inquiry and the contents of charge sheet in the criminal proceedings. The submission is, therefore, that the disciplinary proceedings need to be stayed, as there are complicated questions of facts involved and based upon the same set of facts, the criminal proceedings would be hampered.

1 1999(3) SCC 679
2 AIR 1988 SC 2118
3 AIR 1999 SC 3734
4 2014 (3) SCC 636
5 AIR 1998 SC 2713

8. 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 own course and punish the guilty as per the terms and regulations. [Stanzan Toyoetsu India Pvt. Ltd. (supra)]. 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 v/s State of Punjab & Ors.⁶] These Judgments have taken notice of earlier Supreme Court Judgments also.

9. The proposition of law so declared in other Judgments need no discussion, as we have to deal this matter on the facts and circumstances.

10. We have gone through the submissions and documents so placed on record. The Petitioner has already adduced evidence in the said proceedings by filing necessary documents and producing witnesses and the departmental inquiry is already concluded on 3 May 2013, Inquiry Officer has submitted his Report to the Disciplinary Authority on 10 July 2013 and even on 27 August 2014 the Disciplinary Authority granted an opportunity to the Petitioner as per the provisions before passing of the final order. Therefore, the departmental inquiry has already concluded in the present

⁶ (2016) 1 SCC pg. 671

case. Considering the above fact, though the Petitioner has filed the Petition in the year 2014, this Court on 14 July 2014 not stayed the disciplinary proceedings except ordering that the Petitioner should be given two weeks' notice if the Department wants to take action based upon the departmental inquiry. On 26 August 2014, this Court further directed the Respondent not to take final decision in respect of the departmental inquiry till the next date. The effect of this is that this Court never stayed the disciplinary proceedings and the inquiry. The Petitioner also accordingly participated in the said proceedings.

11. Learned Counsel for the Respondent has also pointed out distinguishing features of the charges so levelled and submitted that in the present case the Petitioner would not suffer any prejudice even if the Department passes final order in the matter. The criminal proceedings so initiated will take its own course and the criminal Court will pass order in accordance with law. The Department even otherwise based upon the charges so levelled is permitted to proceed with the inquiry as the same is permissible in law. Having once reached to this stage, it is in the interest of the Department that the final order be passed based upon the concluded departmental inquiry. The same is also subject to the further departmental Appeal and/or Revision.

12. After considering the position of law as well as the facts so stated, we are of the view that in the present facts and circumstances and as the stage of inquiry is already over, the submission of stated prejudice, even so stated cannot prevail. The Petitioner has already participated in the proceedings before the Department and as this Court has never granted stay of these proceedings and as an inquiry is already completed, we see no reason now to stay the further departmental action so prayed.

13. We are also of the view after noting law that the purpose of departmental inquiry and the criminal proceedings as are two different situations and as there is no legal bar to hold and continue disciplinary proceedings simultaneously with criminal trial and for the reasons so recorded above, the departmental inquiry would not really prejudice the Petitioner in the criminal trial in the present case. Therefore, the judgments even so cited by the learned Counsel appearing for the Petitioner are distinguishable. We are of the view that the facts and circumstances of the case and the judgments so cited itself supports the situation that such departmental proceedings need not be stayed.

14. Resultantly, the Petition fails and is dismissed. The stay/statement even if any, granted earlier stands vacated. However further proceeding be continued in accordance with law. No costs.

(A.A. SAYED, J.)

(ANOOP V. MOHTA J.)