

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 1897 of 2017**

- R.C. Mehar S/o Shri Dhuri Lal Mehar, Aged About 47 Years R/o H. No. 3118/3 Near Verma Kirana Store, Adarsh Nagar, Mowa, District Raipur (Chhattisgarh) Civil & Revenue District Raipur, Chhattisgarh.

---- Petitioner**Versus**

1. Food Corporation Of India Through Its Chairman, 16- 20 Barakhama Lane, Delhi.
2. Executive Director/ Disciplinary Authority, Food Corporation Of India, Vigilance Section First Floor, Rajendra Section, Dutta Pada Road, Borivali East, Mumbai, Maharashtra.
3. General Manager, F C I Vidhansabha Marg, District Raipur (Chhattisgarh).
4. Central Bureau Of India/ Anti Corruption Bureau, Through Superintendent Of Police, Bhilai, District Durg (Chhattisgarh).

---- Respondent

For Petitioner : Shri Rajeev Shrivastava & Shri Malay Shrivastava, Adv.
For Respondents 1 to 3 : Shri BP Gupta with Smt. Richa Jain, Advocates.
For Respondent No. 4 : Shri Pawan Kesharwani, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****27/04/2017**

1. The petitioner has prayed for a direction to the respondents to defer departmental enquiry initiated against him vide memorandum dated 13.6.2016 till conclusion of criminal proceeding arising out of Crime

No.RC124/2016A0005.

2. On 23rd April, 2015, the Food Corporation of India (FCI) has issued show cause notice to the petitioner, inter alia, alleging that while working as Manager (A/Cs), FCI, DO, Raipur during the period 2011-2012, he has committed misconduct and dereliction of duty inasmuch as he had failed to verify the authenticity of bills before release of the payments towards the bills submitted by M/s CGGMRM, who was appointed for providing service as RH H&T at FCI, Mahasamund. It is further alleged that it was very well known to the petitioner that there were separate RH H&T contractors with different rates for FCI, therefore, it was his responsibility to cross-verify the bills of contractors before release of payment and has thus made excess payment of Rs.2,75,60,204.2/- to M/s CGGMRM. On addition of accrued interest, total loss suffered by the FCI has been assessed in the show cause notice at Rs.3,82,01,710.2/-.
3. On 7.6.2016, the CBI has registered an offence against the petitioners and others for commission of offence under Section 120-B read with Sections 420, 467, 468, 471 and 477A of the IPC and under Section 13 (2) read with Section 13 (1)(d) of the PC Act, 1988.
4. In the departmental proceeding, the petitioner has been served substance of imputation of misconduct as the FCI has constituted departmental enquiry on 13th June, 2016.

5. Learned counsel for the petitioner would submit that since criminal case and the departmental enquiry are based on same set of allegations, if the petitioner is compelled to disclose his defence, it may affect him in the criminal trial, therefore, proceeding of the departmental enquiry deserves to be stayed or deferred till the trial initiated by the CBI against the petitioner and other accused persons is concluded.
6. The issue as to when criminal trial and departmental enquiry should not be allowed to continue simultaneously has been considered by the Supreme Court in catena of decisions.

7. In **Avinash Sadashiv Bhosale (dead) through LRs. Vs. Union of India and others**¹, the Supreme Court has observed thus:-

“54. This Court recently reiterated the legal principle that departmental proceedings can be conducted simultaneously to the criminal trial in *Karnataka SRTC Vs. M.G. Vittal Rao* {(2012) 1 SCC 442}. In this case, making reference to almost all the previous precedents, this Court has reiterated the legal position as follows:

54.1 There is no legal bar for both proceedings to go on simultaneously.

54.2 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.

¹ (2012) 13 SCC 142

54.3 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.

54.4 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.

54.5 In our opinion, the principles culled out by this Court would be a complete answer to all the submissions made by Mr. Jain.

55. In view of the aforesaid legal principles enunciated and reiterated by this Court, we cannot accept that because the appellant had been prosecuted, the departmental proceedings could not have been continued simultaneously. As pointed out by Mr. Dwivedi, the charges against the appellant in the criminal trial related to the commission of criminal offences under Sections 120-B, 420, 467, 468, 471 and 201 of the Penal Code. The proof of criminal charges depended upon prosecution producing proof beyond reasonable doubt relating to the culpability of the appellant along with other persons. In the departmental proceedings, the basic charge was that the appellant whilst posted as a Branch Manager of Washi Turbhe Branch, failed to discharge his duties with utmost integrity, honesty, devotion and diligence to

ensure and protect the interest of the Bank and acted in a manner unbecoming of a bank officer. The aforesaid charge clearly related to the manner in which the appellant performed the duties as the Manager of the branch of the Bank. It had nothing to do with any criminal liability attaching to such conduct.”

(Emphasis supplied)

8. For the foregoing, I am of the considered opinion that the petitioner has not been able to make out a case for interference.
9. In the result, the writ petition being bereft of any substance deserves to be and is hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve