

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2017

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

And

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.A.No.1114 of 2017

And C.M.P.No.15542 of 2017

S.Subramanian ... Appellant/Petitioner

Vs.

1.The Commandant
Office of the DIGP
Group Center,
CRPF, Chennai - 600 065.

2.The Deputy Inspector General,
Group Center,
CRPF, Chennai - 600 065.

3.The Inspector of Police,
Sulur Police Station,
Coimbatore District,
Tamil Nadu.

... Respondents/Respondents

Prayer:

Appeal filed under Clause 15 of the Letters Patent seeking to set aside the order of the Learned Judge passed in W.P.No.22697 of 2017 dated 24.08.2017.

Prayer in WP.No.22697/2017

Petitions filed under Article 226 of the consitution of India, to issue a writ of mandamus, forbearing the 1st and 2nd respondent from proceedings with the departmental proceedings in order No.P.VIII.1/2017-EC-2-GC AVD dt 13.6.2017 pending disposal of the criminal case against the petitioner in Crime No.990/2016 on the file of the Learned Judicial Magistrate No. VII Coimbatore District

For Appellant : Mr.L.P.Maurya

J U D G M E N T

(Judgment of the Court was delivered by M.DHANDAPANI,J.)

This writ appeal is directed against the order of the learned Single Judge made in W.P.No.22697 of 2017 filed by the appellant/ writ petitioner seeking Mandamus, forbearing the respondents 1 and 2 from proceeding with the departmental proceedings in order No.P.VIII.1/2017-EC-2-GC AVD, dated 13-06-2017 pending disposal of the criminal case against the petitioner in Crime No.990 of 2016 on the file of the learned Judicial Magistrate No.VII, Coimbatore District.

2.Heard the arguments of the learned counsel appearing for the appellant and also perused the materials available on record.

3.For the sake of convenience, in this judgment, the parties are referred according to the ranks in the writ petition.

4.The brief facts necessary for disposal of the writ appeal are as follows: The petitioner is working as Constable in CRPF, Avadi. The allegation against the petitioner is that a criminal case was registered

in Crime No.990 of 2016 and it is pending on the file of the learned Judicial Magistrate No.VII, Coimbatore District. The said criminal case is under investigation. However, the charge sheet has not been filed. Initially the law enforcing agency registered a criminal case for the offence under Section 102 of Cr.P.C. Thereafter, the said offence was altered on 29.02.2016, into offence under Sections 120(b), 399 I.P.C. read with 25 (1B) (a), 25 (3) (i) of the Indian Arms Act, 1959. Subsequently, he was arrested and thereafter, the petitioner approached this Court for grant of bail under Section 439 of Cr.P.C. in CrI.O.P.No.2959 of 2017 and this Court granted bail to the petitioner on 15.02.2017. Immediately, after the registration of crime against the petitioner, the second respondent placed the petitioner under suspension on 07.01.2017. Thereafter, the first respondent sent a letter dated 22.02.2017 to the petitioner and directed him to report duty, failing which disciplinary action would be initiated. On receipt of the above said letter, the petitioner sent an explanation on 02.03.2017. Thereafter, the first respondent issued a charge memo on 13.06.2017. After the charge memo, the petitioner filed a written statement on 05.07.2017.

5.The memorandum of charges issued by the first respondent in proceeding No.P.VIII.1/2017-EC-2-GC AVD dated 13.06.2017 are as follows:

"ARTICLE-I

"That the said No.850829186 CT/GD S.Subramanian(u/s) of this GC, CRPF, Avadi while functioning as Constable (GD) in this GC committed an act of misconduct in his capacity as a member of the force punishable under section 11(1) of the CRPF Act, 1949 in that he failed to deposit the TX/RX 1/5 Watt I-Com set Sl.No.8488 with battery to OCD/2 Signal Bn before proceeding on leave i.e. 17/12/2016 and kept the same with him at his own till 28/12/2016 thereby acted in a manner unbecoming of a member of the Force which is prejudicial to good order and discipline of the Force.

ARTICLE-II

That the said No.850829186 CT/GD S.Subramanian (u/s) of this GC, CRPF, Avadi while functioning as Constable (GD) in this GC committed an act of misconduct in his capacity as a member of the force punishable under section 11(1) of the CRPF Act, 1949 in that he failed to inform the department about his arrest on 29/12/2016 by state police at Sullur thereby acted in a manner unbecoming of a member of the Force which is prejudicial to good order and discipline of the Force.

ARTICLE-III

That the said No.850829186 CT/GD S.Subramanian (u/s) of this GC, CRPF, Avadi while functioning as Constable (GD) in this GC committed an act of misconduct in his capacity as a member of the force punishable under section 11(1) of the CRPF Act, 1949 in that he was in possession pistol unauthorisedly at Coimbatore on 23/12/2016 thereby acted in a manner unbecoming of a member of the Force which is prejudicial to good order and discipline of the force.

ARTICLE-IV

That the said No.850829186 CT/GD S.Subramanian (u/s) of this GC, CRPF, Avadi while functioning as Constable (GD) in this GC committed an act of misconduct in his capacity as a member of the force punishable under section 11(1) of the CRPF Act, 1949 in that despite direction from the competent authority to report this Group Centre after release from Jail on bail on 17/02/2017 he failed to comply with orders and reported on 15/03/2017 after remained absent for 25 days without any valid

reason which is prejudicial to good order and discipline of the Force."

6.The learned counsel appearing for the petitioner would submit that the documentary evidence and witnesses to be produced before the departmental proceedings and the criminal case are one and the same. The department has already commenced the enquiry proceedings and on three hearings, chief examination of the witnesses,

is over. Now the petitioner has to begin the cross examination of the witnesses. Under the circumstances, examination of defence witnesses and cross examination of witnesses will have direct impact in the criminal case. If the petitioner is forced to cross examine the witnesses, and disclose the defence in the departmental proceedings, it will definitely affect the criminal case. He prayed to defer the departmental proceedings till the criminal case is over. According to the learned counsel, arguments made before the learned Single Judge were not taken into consideration and the learned Single Judge dismissed the writ petition which is not sustainable.

7.In support of his contention, the learned counsel appearing for the petitioner also relied upon the decision of the Hon'ble Supreme Court reported in (2016) 9 SCC 491 (State Bank of India and Others Vs. Neelam Nag and Another), the relevant portion of which reads as follows:

"8.This decision was challenged by the appellants by way of Writ Appeal No.80 of 2010 before the Division Bench. The Division Bench affirmed the view taken by the learned Single Judge and negatived the stand taken by the appellant in her favour. The Division Bench held that Respondent 1 may suffer disadvantage and prejudice if she was compelled to disclose her defence in the departmental proceedings, which is likely to be used in the criminal case pending against her. The Division Bench, however, modified the operative order passed by the learned Single Judge by passing following directions:

"Therefore, we dispose of this appeal by upholding the order of the learned Single Judge with the following directions:

(i) The ACJM, Durg is directed to conclude the trial which is pending since 2006 on day to day basis, in which we have been informed that one witness has already been examined.

(ii) The writ appellants would be free to proceed further in the disciplinary proceedings as soon as the case from the prosecution side is closed."

(emphasis supplied)"

8. On a perusal of the above decision of the Apex Court it could be seen that a direction was issued to the Judicial Magistrate to conclude the trial on day to day basis. Thereafter, the department to proceed further in the disciplinary proceedings. In the present case on hand, till date the law enforcing agency has not filed any charge sheet before the competent court. However, departmental proceedings is in progress. It is posted for cross examination of the prosecution witnesses, by the petitioner. Hence, the decision cited supra is not applicable to the present case on hand.

9. The learned counsel appearing for the petitioner would further submit that the departmental proceedings and the criminal case, are based on the identical or similar set of facts and the charge against the petitioner in the criminal case is grave in nature. By compelling the petitioner to cross examine the witnesses, in the departmental enquiry during the pendency of criminal case, great prejudice would be caused and the departmental enquiry was conducted even when the charge sheet has not yet been filed in the criminal case.

10. In support of his contention, the learned counsel appearing for the petitioner relied on the decision of the Calcutta High Court reported in (2014) 1 Cal LT 609 (Sri. Balai Kumar Sanfui Vs. The State of West Bengal and Others), the relevant portion of which reads as follows:

"19. In our opinion grave prejudice would be caused to the petitioner if the departmental enquiry is allowed to proceed. This is because the petitioner would be compelled to disclose in the enquiry his defence which he would be entitled to raise at the criminal trial. His defence at the criminal trial would be greatly hampered considering the complexity of the charges. Most of the witnesses are to be examined in both the proceedings are the same. If these witnesses are subjected to cross-examination at the departmental enquiry they would be well-prepared for the cross-examination at the criminal trial. In our opinion, it would be both desirable and proper to stay the departmental enquiry considering the facts and circumstances in the present case. The

charge-sheet has been submitted in the trial Court in the case regarding bribery. There is no explanation why the charge-sheet in respect of the disproportionate assets has not been submitted before the Criminal Court. Although both the FIRs were lodged consecutively, it is difficult to fathom why the State has not ensured that the second charge-sheet is submitted expeditiously before the Criminal Court. We are conscious of the fact that criminal trials can be prolonged endlessly. However, in the present case, the ends of justice would be met by passing the following order:

(a) The Departmental enquiry which is proceeding against the petitioner shall be stayed for a period of one year.

(b) The charge-sheet in the second case with respect to the disproportionate assets shall be submitted as expeditiously as possible before the Criminal Court.

(c) If the criminal trials are not completed within one year the parties would have the liberty to move this Court for appropriate orders."

11. He also relied on the decision of the Calcutta High Court reported in (2014) 133 AIC 697 (Sri Firoz Ahmed Vs. Union of India and Others), the relevant portion of which reads as follows:

"18. Let me now examine the other aspect of prejudice. To drive home the charge in the disciplinary proceedings, the prosecution seeks to examine 4 (four) witnesses who are also listed as witnesses before the criminal court. Question that necessarily arises on facts and in the circumstances is, what is the test to be applied for ascertaining whether the petitioner would be prejudiced if the disciplinary proceedings against him are not stayed. I am of the humble view that the test is this. In the event the petitioner is compelled to participate and produce evidence in his defence in the departmental enquiry to contest the departmental proceedings, his defence in the criminal proceedings which would normally constitute the basis for the line and object of cross-examination of the prosecution witnesses

would already be known to such witnesses and it is not unlikely that they would be in a position to fashion or design their statements accordingly to suit the prosecution case. Cross-examination of the witnesses by the accused, which is a very valuable right, would in such situation be reduced to a mere formality and justice rendered a casualty. It is fundamental principle of criminal jurisprudence in our country that an accused in a criminal trial is presumed to be innocent, unless the charge against him is proved beyond reasonable doubt, and that the burden of proving the guilt of the accused is on the prosecution. There can be no doubt that a criminal trial, having regard to the clogs in the system, cannot keep pace with a departmental enquiry which can be expedited within a short time. If the line of defence of the petitioner is disclosed in course of the departmental enquiry, thereby giving the prosecution a distinct advantage in its pursuit to prove the guilt of the petitioner at the criminal trial, it ought not to be countenanced. Based on application of this test for considering the desirability of staying the departmental enquiry, there can be no two opinions that there is a real danger of the petitioner's defence being disclosed. He is certainly entitled to stay of the departmental enquiry. Should the petitioner be acquitted by the criminal court, the respondents would be free to proceed with the departmental enquiry to take the disciplinary proceedings to its logical conclusion."

12. In both the decisions cited supra, complicated issues were involved and the criminal Court has to decide and determine complicated question of law. On the facts and circumstances of those cases, the learned Judges issued a direction and granted stay of the departmental proceedings for a period of one year. If the criminal trials are not completed within one year, the parties would have the liberty to move the Court for appropriate orders. In the present case

on hand, there is no complicated question of law involved. Hence, both the decisions cited supra are not applicable to the present case on hand. We cannot issue any direction to the law

enforcing agency to file a charge sheet as directed in the decisions cited supra, as it will amount to interference in the investigation of the law enforcing agency, in filing the charge sheet under Section 173 of Cr.P.C.

13.As the disciplinary authority is going to decide the matter, We refrain ourselves to discuss the factual aspects.

14.Now the only issue before this Court is whether the pendency of the criminal case by itself is sufficient to defer the departmental proceedings till the criminal case is over?

15.On perusal of the above charge memo, the charge against the petitioner is serious in nature and the writ petitioner being a Constable, working in the disciplined uniform service is expected to act as per the minimum standard of discipline.

16.The charges in the departmental proceedings and criminal case may be one and the same, and the witnesses and other documents may also be the same. However, the requirement and the standard of proof in the criminal court is that the prosecution has to prove their case beyond reasonable doubt. However, the requirement in the departmental proceedings is only preponderance of probabilities.

17.In the present case, till date, charge sheet has not been filed before the criminal court and it is only in FIR stage. If the request of the petitioner is accepted, then the departmental proceedings may not conclude in appropriate time.

18.The legal position relates to whether departmental proceedings and the criminal case can go simultaneously. The difference between the departmental proceedings and the criminal proceedings was elaborately discussed by the Hon'ble Apex Court in various cases.

19.It is useful to refer few judgments of Hon'ble Apex Court hereunder:

(i) The principles underlined in Capt M. Paul Anthony v. Bharat Gold Mines Ltd. and another, reported in 1999 (3) SCC 679, at Paragraph 22, are extracted hereunder:

"(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."

13. Whether the disciplinary proceedings should be kept in abeyance. Legal position has been made clear by the Hon'ble Supreme Court in the decision reported in 2004 (7) Supreme Court Cases 27 [State Bank of India and others v. R.B.Sharma]. In paragraph 8, the Supreme Court held as follows:-

"8. The purpose of departmental enquiry and of prosecution are two different and distinct aspects. Criminal prosecution is launched for an offence for violation of a duty the offender owes to the society, or for breach of which law has provided that the offender shall make satisfaction to the public. So 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 grave nature involving complicated questions of fact and law. Offence generally implies infringement of public duty, as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Indian Evidence Act, 1872 (in short "the Evidence Act"). Converse is the case of departmental enquiry. The enquiry in a departmental proceeding relates to conduct or breach of duty of the delinquent officer, to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. 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."

(ii) The above said principle has been reiterated in a subsequent decision reported in 2005 (10) Supreme Court Cases 471 (Hindustan Petroleum Corporation Ltd., and others v. Sarvesh Berry).

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(iii) In 2007 (5) CTC 632 (Indian Overseas Bank, Anna Salai and Another Vs. P.Ganesan and Others), the Hon'ble Supreme Court, having regard to the legal position that there is no need for automatic stay in the departmental proceedings, has observed that the discretionary Writ jurisdiction under Article 226 of

the Constitution of India should be exercised, keeping in view of the conduct of the parties, stage of the criminal case and whether it would expose the defence of the delinquent, if he is constrained to acquiesce himself to the departmental enquiry, pending disposal of the trial before the Court of competent jurisdiction. Relevant portion is as follows:

"26. Furthermore the discretionary writ jurisdiction under Article 226 of the Constitution of India should be exercised keeping in view the conduct of the parties. Respondents made a representation that in the event the order of suspension is revoked, they would cooperate with the Enquiry Officer. They kept on filing applications for extension of time which were allowed. They took benefit thereof. Without, however filing show cause, they moved the High Court. Furthermore before the Enquiry Officer also, as noticed hereinbefore, although they had appointed the defence counsel, did not cross-examine the witnesses examined on behalf of the Management. A large number of witnesses had already been examined on behalf of the appellants. The disciplinary proceedings, as we have noticed hereinbefore, have proceeded to a great extent. In such a situation we are of the firm view that the discretionary jurisdiction should not have been exercised in favour of Respondents 1 to 4 by the High Court."

(iv) In the decision reported in (2007) 10 SCC 385 (Noida Entrepreneurs Association Vs. Noida and others), the Hon'ble Supreme Court has held as follows:

"16. The standard of proof required in departmental proceedings is not the same as required to prove a criminal charge and even if there is an acquittal in the criminal proceedings the same does not bar departmental proceedings. That being so,

the order of the State Government deciding not to continue the departmental proceedings is clearly untenable and is quashed. The departmental proceedings shall continue."

20. Since the petitioner is in the uniformed disciplined service, the authority is expected to perform his duty as per the Rules. When the petitioner is alleged to have committed

misconduct, the respondents have no other choice except to proceed with the departmental enquiry and they need not wait for the decision of the criminal court. The department need not wait for the decision of the law enforcing agency.

21.Furthermore, discretionary jurisdiction under Article 226 of the Constitution of India should be exercised cautiously. In the present case on hand, already department witnesses have been examined. It is for the petitioner to cross examine the witnesses. At this stage, if the department has to defer the departmental proceedings, till the criminal prosecution is over, then it will adversely affect the administrative functioning of the disciplined force.

22.Further, in view of the categorical decision held by the Hon'ble Supreme Court, we do not find any error or need to interfere with the order dated 24.08.2017 passed in W.P.No.22697 of 2017. Accordingly, the writ appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is also closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Commandant
Office of the DIGP
Group Center, CRPF, Chennai - 600 065.

2.The Deputy Inspector General,
Group Center, CRPF, Chennai - 600 065.

3.The Inspector of Police,
Sulur Police Station,
Coimbatore District, Tamil Nadu.

+1 CC to Mr.L.P.Maurya Advocate Sr.No.66198

W.A.No.1114 of 2017
And
C.M.P.No.15542 of 2017

KP(24.10.2017)