

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28/11/2017

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MRS.JUSTICE R.SURESH KUMAR

Writ Appeal No.1559 of 2017

S. Suresh Kumar ..Appellant/Petitioner

Vs

1. The Union of India
rep. By its Secretary to Government
Ministry of Home Affairs
New Delhi.
2. The Director General
Central Industrial Security Force
CGO Complex
Lodhi Road
New Delhi 110 003.
3. The Deputy Inspector General
Central Industrial Security Force
South Zone
Head Quarters
Rajaji Bhawan
Besant Nagar
Chennai 600 090.
4. The Group Commandant
Central Industrial Security Force
Group Head Quarters
Rajaji Bhawan
Besant Nagar
Chennai 600 090.
5. The Deputy Commandant
Central Industrial Security Force Unit
Salem Steel Plant
Salem District 636 013. ..Respondents/Respondent

Appeal filed under Clause 15 of the Letters Patent Act, against the order passed in W.P.No.10003 of 2015, dated 15/9/2017. Writ petition filed under Article 226 of the constitution of India, to issue a writ of certiorarified Mandamus, to call for the records relating to the Memorandum NO. V- 15014/CISF/S.K./ SSP/ U.R/ 36/2015/08 dated 2.1.2015 issued by the 5th respondent under Rule 36 of the CISF Rules and quash the same and to direct the respondents to wait for

the order of the Criminal Case pending before the Judicial Magistrate Court NO.III Erode in CC No. of 2015 (FIR No.291 of 2014)

For appellant ... Mr.M.Md. Ibrahim Ali
For respondents ... Dr.D.Simon

J U D G M E N T

(Judgment of the Court was made by S.MANIKUMAR, J)

Material on record discloses that, on 18/6/2014, Deputy Commandant, Central Industrial Security Force Unit, Salem Steel Plant, Salem District, has issued a charge memorandum, dated 2/1/2015, to the appellant, Head Constable, DCPO.

2. Article of Charge, framed against No.9730900019, HC/DCPO S.Suresh Kumar of CISF Unit, SSP Salem, under Rule 36 of the CISF Rules, reads as follows:-

CISF No.973090019 HC/DCPO S. Suresh Kumar of CISF Unit, SSP Salem, who proceeded to CRPF/RAF Camp at Coimbatore by Govt. Vehicle (Jeep Bolero) Regd. No.TN30 AC 6184, along with Shri.O.P.Sharma, Asstt. Commandant/Fire, CISF Unit SSP Salem, while returning from Coimbatore, on 22/8/2014, at about 18.45 hours, hit the rear side of a car (Maruti 800 CC) Regd. No.TN02D-5571, on the National Highway (NH-47) near Attaiyampalayam, Erode Dist (TN) causing injuries to 05 persons travelling in the said car and subsequently, one lady namely Smt.Rajalakshmi, 57 years, succumbed to her injuries at KMCH Hospital on 23/8/2014 at about 23.40 hours. The above act on the part of No.973090019 HC/DCPO S. Suresh Kumar of CISF Unit SSP Salem amounts to gross negligence and dereliction of duty. Hence the charge.

3. Statement of Imputations of Misconduct or misbehaviour, in support of the Article of charge, framed against No.973090019, HC/DCPO S.Suresh Kumar of CISF Unit SSP Salem, reads as follows:-

On 22/8/2014, at about 07.00 hours, No.973090019 HC/DCPO S.Sureshkumar of CISF Unit SSP Salem was detailed to proceed to CRPF/RAF camp at Coimbatore by Govt Vehicle, (Jeep Bolero) Regd No.TN30AC 6184, along with Shri.O.P.Sharma, Asstt.Commandant/Fire, CISF Unit SSP Salem in connection with Annual

Medical Examination (AME) of above said AC/Fire. After completion of AME, while returning from Coimbatore to Salem, at about 18.45 hours, the Government vehicle driven by hC/DCPO S. Suresh Kumar, hit the rear side of a car (Maruti 800 CC) Regd.No.TN02D-5571 on the National Highway (NH 47) near Attaiyampalayam, Erode Dist (TN) causing injuries to 05 persons travelling in the car (Maruti 900 CC) and also damaged both the vehicles, Out of 05 persons injured, one lady namely Smt. Rajalakshmi, 57 years, w/o. Gurusamy who was admitted to KMCH hospital on 23/8/2014 at 00.26 hours succumbed to her injuries on 23/8/2014 at about 23.40 hours. In this connection, an FIR has been lodged by Chitode Police against HC/DCPO S.Suresh Kumar vide No.291/2014 under Section 279, 304 (A) IPC. The above act on the part of No.973090019 HC/DCPO S. Suresh Kumar of CISF Unit SSP Salem amounts to gross negligence and dereliction of duty.

4. After examining the witnesses, consideration of documents, by a detailed discussion and analysis of the above, the Deputy Commandant, CISF, Enquiry Officer, held that the article of charge, as proved. At that stage, contending inter alia that the criminal case filed in C.C.No.291 of 2014, under Sections 279 and 337 of the Indian Penal Code (FIR No.291/2014, on the file of the learned Judicial Magistrate No.3, Erode), is pending and that therefore, there should not be any simultaneous proceedings, viz., departmental as well as criminal case, writ Petition No.10003/2015, has been filed for a writ of certiorarified mandamus, to quash the charge memo, dated 2/1/2015, issued by the Deputy Commandant, Central Industrial Security Force Unit.

5. Adverting to the facts, submissions of the learned counsel and after considering a catena of decisions, writ Court, vide order in W.P.No.10003 of 2015, dated 15/9/2017, dismissed the same. Being aggrieved, instant Writ Appeal is filed.

6. During the course of hearing, Mr.M.Md.Ibrahim Ali, learned counsel for the appellant submitted that trial in C.C.No.291 of 2014, on the file of the learned Judicial Magistrate No.3, Erode), has already concluded. Submission is placed on record.

7. Heard the learned counsel for the appellant.

8. Before adverting to the above submission, this Court deems it fit to consider the decisions taken note of by the writ Court for rejecting the prayer sought for. Paragraph NOS.13 to 22 are extracted hereunder:-

"13. In the case of Sri Bhagwan Ram vs. The State of Jharkand, State of Bihar and others(2017), it is well-settled that a domestic enquiry and a criminal trial can proceed simultaneously and the decision in the criminal case would not materially affect the outcome of the domestic enquiry. The nature of both the proceedings and the test applied to reach a final conclusion in the matter, are entirely different.

14. In the case of Dr.Bharathi Pandey-Deputy General Manager Vs. Union of India [Special Civil Application No.15602 of 2013], the Apex Court held that it is clear that the departmental inquiry proceedings in every case need not be stayed till the criminal proceedings against the petitioner are concluded. It may be done in case of grave nature involving complicated questions of facts and law. The advisability and desirability has to be determined considering facts of each case.

15. In the case of Ajith Kumar Das vs. Union of India and Others[W.P.(C) NO.4036 of 2017], the Court held that the departmental enquiry is to maintain discipline in 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 guideline as inflexible rules in which the departmental proceeding may or may not be stayed pending trial in criminal case against the delinquent officer. There would be no bar to proceed simultaneously with the departmental proceeding and trial of a criminal case unless the charge in a criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public as distinguished from mere private right punishable under criminal law, when trial for criminal offence is conducted it should be in accordance with the proof of offence as per the evidence defined under the provisions of the evidence act. Converse in the case of departmental enquiry in a departmental proceeding relates to conduct of breach of duty of the delinquent officer who punish him for his misconduct defined under the relevant statute/rule or law that strict

standard of rule or applicability of Evidence Act stands excluded in a settled legal position.

16. In the case of Avinash Sadashiv Bhosale vs. Union of India[(2012) 13 SCC 142], the Court held that there is no legal bar for both proceedings to go on simultaneously. 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 question of fact and law. 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.

17. The Supreme Court in the case of Karnataka State Road Transport Corporation vs. M.G.Vittal Rao[(2012) 1 SCC 442] gave a timely reminder of the principles that are applicable in such situations succinctly summed up in the following words:

"(i) There is no legal bar for both 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".

18. In the case of NOIDA Entrepreneur Association vs. NOIDA and the others[JT 2001 (2) SC 620], the Court held that the standard of proof and nature of evidence in the departmental inquiry is not the same as in criminal case. The purpose of departmental

enquiry and of prosecution is two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty the offended 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.

19. In the case of State Bank of India & Ors. Versus R.B.Sharma, [AIR 2004 SC 4144], the Hon'ble Supreme Court reiterated observing that both proceedings can be held simultaneously. It held, "the purpose of departmental inquiry and of prosecution is to put a distinct aspect. Criminal prosecution is launched for an offence for violation of 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 a public duty. The departmental inquiry is to maintain discipline in the service and efficiency of public service."

20. In the case of Ajith Kumar Nag vs. General Manager(PJ), Indian Oil Corporation Ltd., Haldia[2005-7-SCC-764], the Honourable Apex Court considered the issue of validity of conducting departmental proceeding when the criminal case was pending against the official and held as follows:

Acquittal by a criminal court would not debar an employer from exercising power in accordance with Rules and Regulations in

force. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with service Rules. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond reasonable doubt', he cannot be convicted by a court of law. In departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of 'preponderance of probability'.

21. In the case of West Bokaro Colliery (Tisco Ltd.) vs. Ram Parvesh Singh (2008) 3 SCC 729, the Hon'ble Supreme Court has held in the case of that since standard of proof required in criminal case are beyond reasonable doubt and what is required in departmental inquiry is only of finding the guilt on the basis of preponderance of probability, there is no bar in continuing both simultaneously

22. In the case of S.A.Venkatraman vs. Union of India, AIR 1954, SC 375 it has been held by the Supreme Court that taking recourse to both, does not amount to double jeopardy.

1. In Stanzen Toyotetsu India Private Limited vs. Girish V. And Other (2014) 3 SCC 636. It was held that suffice it to say that while there is no legal bar to the holding of the disciplinary proceedings and the criminal trial simultaneously, stay of disciplinary proceedings may be advisable course in cases where the criminal charge against the employee is grave and continuance of the disciplinary proceedings is likely to plagiarize their defence before the criminal court.

2. The Supreme Court in State of Rajasthan vs. B.K.Meena and Others (1996) 6 SCC 417 held 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. Therefore, stay of disciplinary proceedings cannot be, and should not be, a matter of recourse.

3. It is also to note that acquittal in criminal proceedings on the same set of charges, per se, does not entitle the delinquent to claim immunity from disciplinary proceedings, as observed by the Supreme Court in the case of C.M.D.U.C.O. vs. P.C.Kakkar, AIR 2003 SC 1571. In the same way, departmental proceedings may be continued even after retirement of the employee. (U.P.S.S.Corp.Ltd. vs. K.S.Tandon, AIR 2008 SC 1235)."

9. When examination of witnesses in the criminal Court is already over, the question of exposure of defence in the trial, no longer exists.

10. Framing of charges by a criminal Court, is on the final report, under Section 173 of the Code of Criminal Procedure, and not on the basis of the statements during the Preliminary Enquiry. Witnesses in the criminal Court would be confronted with 161 statements, recorded by the Police. Enquiry Report is drawn on the basis of the departmental enquiry. On the facts and circumstances of the case, we find that no procedural irregularity has been pointed out and substantiated. Writ Court has extensively considered the principles of law laid down by the Hon'ble Supreme Court, in the matter, as to whether departmental proceeding should be stayed, pending criminal case.

11. Though Mr.M.Md.Ibrahim Ali, learned counsel for the appellant submitted that the respondents be restrained, at least by a month's time, till the verdict in C.C.No.291 of 2014, on the file of the learned Judicial Magistrate No.3, Erode), is delivered, in the light of the decisions quoted, we are not inclined to accept the said contention. Departmental proceeding, is to arrive at a conclusion as to whether the Government servant/employee has committed any misconduct and prosecution is initiated, to arrive at a conclusion by the Court of competent jurisdiction, to punish him under the penal laws. Both are conceptually different. Decision to prosecute, for the offences alleged to have been committed, under the penal laws and simultaneously, to proceed against him for the misconduct, under the departmental rules are different and both operate in a different sphere. Misconduct is different from offence. The test before the Criminal Court is proof beyond reasonable doubt and the standard of proof in the departmental proceedings for misconduct, is preponderance of probability. Both are not different.

12. On the facts and circumstances and in the light of the decisions of the Hon'ble Supreme Court, we are of the view that there is no merit, in the contention to direct the respondents to keep the departmental proceedings in abeyance.

13. In view of the above discussion and decisions, Writ Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

mvs.

To

1. The Secretary to Government
Union of India
Ministry of Home Affairs
New Delhi.
2. The Director General
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5. The Deputy Commandant
Central Industrial Security Force Unit
Salem Steel Plant
Salem District 636 013.

+ 1 cc to Mr.M. Md. Ibrahim Ali, Advocate Sr.84567
+ 1 cc to MR. D. Simon, Advocate SR.84455

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GJ(CO)
EU(27/12/2017)