

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :10.10.2017

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.4704 of 2014

and

M.P.No.1 of 2014

E.Shunmugiah,
Inspector of Police,
Social Justice and Human Rights,
Ooty, Coimbatore Range,
Coimbatore. ..Petitioner

vs

1.The Deputy Inspector General of Police,
Coimbatore Range,
Coimbatore - 641 018.

2.The Superintendent of Police/Enquiry Officer,
Tirupur District,
Tirupur. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, forbearing the Respondents from proceedings with enquiry based on the charge memo issued by the 1st Respondent in C.No.J1/PR/125/CBE/09 dated 20.11.2009 in Tamil Nadu Police Subordinate Service(Discipline and Appeal) Rules 1955, till the conclusion of Criminal Case in C.C.No.2 of 2013 on the file of the Special Court for CBI Cases, Coimbatore.

For Petitioner: Mr.G.Sankaran

For Respondents: Mr.R.Vijaya Kumar
Additional Government Pleader

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O R D E R

The relief sought for in this writ petition is to forbear the respondents from proceeding with enquiry based on the charge memo issued by the 1st respondent in C.No.J1/PR/125/CBE/09 dated 20.11.2009 under The Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules 1955, till the conclusion of Criminal Case in C.C.No.2 of 2013 on the file of the Special Court for CBI Cases, Coimbatore.

2.The writ petitioner was initially appointed as Sub Inspector of Police in the year 1987 and thereafter, he was promoted to the post of Inspector of Police, based on his seniority and eligibility in the year 1999. The writ petitioner was posted as Inspector of Police in Central Crime Branch, Tirupur from 31.12.2008 to 12.02.2009 and thereafter, he was transferred to Valparai. A charge memo was issued to the writ petitioner by the 1st respondent in proceedings dated 20.11.2009 and the charges framed against the writ petitioner are extracted hereunder:

Count No.I

Gross neglect of duty and unbecoming conduct in having abruptly dropped further action in CCB Cr.No.1 of 4/2009 u/s 420 IPC on 28.05.2009 under the guise that the complainant requested to withdraw the case.

Count No.II

Gross neglect of duty and unbecoming conduct in having investigated the case in CCB Cr.No.5/2009 u/s 468,471,420 and 120 (b) IPC despite the interim stay granted by the Hon'ble High Court in CrI.OP.No.15158/09 on 03.08.2009.

Count No.III

Gross neglect of duty and unbecoming conduct in having furnished a false and misleading information that CCB Cr.No.10/2009 u/s 467,468 and 471 was charge sheeted on 31.05.2009 while the original charge sheet is very much available in the CD file itself.

Count No.IV

Gross neglect of duty in having failed to write CDs/record statements in CCB Cr.Nos.06,11,13,17,18,19 and 23/2009: failed to give any disposal to CSRs 13,44,47,53,69,72 and 73/2009 and failed to attend to as many as 74 N.Reference and 112 N. Dis current papers and kept them pending as such.

Count No.V

Gross neglect of duty and unethical act in having interfered in the investigation of Thiruppur Rural PS Cr.No.1221/09 u/s.147,148,362,324 and 506(ii) IPC in the capacity of Inspector, Special Branch on 18.07.2009 with a motive to help the accused one Manikandan and thus deprived the Inspector, Thiruppur Rural in taking immediate action against Manikandan against whom a case in CCB Cr.No.28/09 3 and 4 of Prize Chits and Money Circulation (Banning) Act and 420 IPC was subsequently registered on 07.10.2009 on the intervention of the superior officers.

Count VI

Gross neglect of duty and unbecoming conduct in having hushed up the illegal detention of one Naveed @ Ismail at Annuperplayam PS from 19.04.2009 to 08.05.2009 and swindling of cash and properties recovered from the accused by Inspr A.T.Jayakumar and crime party and thereby kept his superiors in dark.
Count No.VII

Gross neglect of duty in having submitted his daily dairy for the month of June at SDO's office only on 13.10.2009 and failure to submit his daily diary for the months of July and August 2009 to his superior officer so far.
Count No.VIII

Malingering duty by not joining the place of postings issued vide R.O.No.275/2009 dated 12.08.2009 and entering on medical leave from 28.08.2009, and not attended the medical board on 14.09.2009 and attended the medical board after availing medical leave up to 12.10.2009."

3.On a perusal of the charges, this Court is of the view that all the allegations are very serious and a full fledged enquiry is certainly warranted. The learned counsel for the writ petitioner made a submission that a criminal case was registered against the writ petitioner in C.C.No.2 of 2013 before the Special Court for CBI Cases, Coimbatore and the same is pending. During the pendency of the trial, the departmental disciplinary proceedings are to be kept in abeyance in view of the fact that the right of defence available to the writ petitioner will get affected in the event of simultaneous proceedings. On a perusal of the nature of the criminal case, a case was registered against the writ petitioner under Sections 120 (B) r/w 347, 384, 506(i), 507 IPC and Sec.8,10,13(2) r/w 13 (1)(d) of Prevention of Corruption Act, 1988. At the outset, the learned counsel for the petitioner pleads that simultaneous proceedings are to be barred, till the final disposal of the criminal case and the respondents cannot proceed with the departmental disciplinary proceedings.

4.The writ petitioner was holding the post of Inspector of Police and he has involved in the allegations relating to the corrupt activities. Thus, this Court cannot show any leniency with regard to the allegations of corruption. The learned counsel for the writ petitioner states that the writ petitioner was granted with pardon under Section 306 of Criminal Procedure Code on 22.06.2012. Accordingly, the writ petitioner was treated as an approver and thereafter, cited as a witness in the criminal case. Further, the learned counsel for the petitioner states that he has to make a deposition before the Criminal Court and so also in the departmental proceedings. May that it be whether the writ petitioner is an accused or subsequently, turned as an approver and cited as a witness, now, the question

arises for consideration is whether the respondents are permitted to proceed with the departmental disciplinary proceedings pursuant to the charge memo issued to the writ petitioner in proceedings dated 20.11.2009. No doubt, the charges remain as an allegation at this stage and this Court cannot record any statement in relation to the allegations set out in the charge memo. It is left open to the writ petitioner to participate in the enquiry proceedings and prove his innocence before the competent authorities. However, the very nature of the allegations are certainly serious and, the allegations are to be considered in relation to the nature of the job, duties and responsibilities of the writ petitioner as Inspector of Police. The responsibility of the cadre of the Inspector of Police is onerous and he has to perform his duties and responsibilities with utmost honesty and integrity. This Court cannot show even a slightest leniency in relation to the charges as framed in the charge memo.

5. However, this Court has to examine whether the simultaneous proceedings in the case on hand, will cause any prejudice to the rights of the writ petitioner under the Service Rules, or not?

6. On a perusal of the charge memo issued to the writ petitioner under the service rules categorically enumerates that the nature of the allegations against the writ petitioner are grave in nature and accordingly, the statement of allegations are also furnished along with the charge memo, the statement of allegations enumerates the facts and circumstances, substantiating the charges. This apart, Annexure-III of the charge memo provides list of documents by which the charges are framed, and 15 Documents are marked. Annexure-IV provides list of witnesses by whom the charges was framed, and 6 witnesses are cited. Thus, it is very clear that the charges were framed in clear terms, statement of allegations and imputations are also furnished, list of documents and list of witnesses are also annexed along with the charge memo issued to the writ petitioner in proceedings dated 20.11.2009. Thus, it is very much possible to conduct an enquiry based on the charge memo issued to the writ petitioner. This Court has to find out whether an independent departmental disciplinary proceedings can be conducted even during the pendency of the criminal case. On a perusal of the list of documents and list of witnesses stated in the charge memo, this Court is of the opinion that an independent departmental enquiry shall be conducted by examining the witnesses and recording their depositions and by considering the documents cited in the charge memo.

7. Independent examinations of the witnesses and scrutinization of the documents are listed in the charge memo along with the depositions can be recorded by the enquiry

officer, appointed for the purpose of conducting the enquiry. However, this Court is of the opinion that the depositions to be recorded by the enquiry officer in the departmental enquiry can be relied upon by the writ petitioner in the criminal case or by the prosecution. So also, if any depositions or statements are recorded in the criminal case by the prosecution, they can be cited as an evidence by the delinquent officials or by the competent authorities in the departmental disciplinary proceedings. Under these circumstances, the Court is of the view that the authorities competent should thrive hard to cull out the truth behind the incident. Such being the object of the investigation and conducting domestic enquiry, the depositions recorded either by the police officers or before the criminal Court and before the departmental enquiry officer, can be relied upon simultaneously either before the disciplinary authorities or before the criminal court for the purpose of corroboration. The depositions, list of documents and other materials available commonly shall be relied upon both by the delinquents as well as by the presenting officer wherever necessary. However, corroboration of these statements and other documents certainly will not cause any prejudice to any of the parties in the proceedings. At the outset, it is the onus on the part of the writ petitioner to prove his innocence, both before the criminal court as well as before the departmental disciplinary proceedings.

8. Government servants play a significant role in running the administration of the country. They are important constituents of the administrative set up of the nation. They are pillars of the Government departments on whose shoulders the responsibility to implement the Government policies lies. They provide public services to the citizens at the grass root level and in the same way, they forward grievances of the public, their representations and demands to higher ups for their effective resolution. The Government employees have different work culture and responsibilities as compared to their counterparts in private sector. They are smartly paid and have some kind of perquisites given to them but at the same time, they have heavy responsibilities towards the Government in particular and public in general. However, when the Government servants deviate from the established rules of conduct, the departmental disciplinary proceedings will be initiated. It is the need of the hour to analyse whether conducting departmental proceedings and criminal proceedings would amount to double jeopardy or such simultaneous proceedings are to be continued simultaneously.

9. The departmental authorities are free to exercise such lawful powers as are conferred on them by the departmental rules and regulations.

10. In the case of Sri Bhagwan Ram v. 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.

11. In the case of Dr.Bharathi Pandey-Deputy General Manager V. 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.

12. In the case of Ajith Kumar Das v. 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.

13. In the case of Avinash Sadashiv Bhosale v. 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.

14. The Supreme Court in the case of Karnataka State Road Transport Corporation v. 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".

15. In the case of NOIDA Entrepreneur Association v. 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 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.

16. 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."

17. In the case of Ajith Kumar Nag v. 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'.

18. In the case of West Bokaro Colliery(Tisco Ltd.) v. 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.

19. In the case of S.A.Venkatraman v. 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 v. 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 v. 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)

20. Considering the above judgments, this Court is of the firm opinion that the procedure for taking disciplinary action against a Government servant is lengthy and detailed one, giving maximum opportunity to the government servant to prove his innocence. A Government employee is expected to perform his duties with utmost diligence, efficiency, economy and effectiveness. The Government procedures are lengthy in order to ensure that the Government employees perform their responsibilities without any pressure or exterior considerations. However, at the same time, it ensures discipline amongst the employees and shows the door to the employees who have become dead wood and do not perform as per expectations of public in general and his department in particular. Disciplinary proceeding are conducted to ensure that the morale of the employees as a whole is boosted. It ought to be noted that criminal proceedings will last for years and this can lead to loss of evidences and thereby staying departmental disciplinary proceedings from being conducted simultaneously would lead to gross miscarriage of justice. Also, it is pertinent to note the fact that the object of such departmental proceedings is not to penalise but to assist in restoring the morale of Government servants. Thus, it is of utmost importance that the Court has to strike a balance between the need for a fair trial to the accused on one hand and the competing demand for an expeditious conclusion of the ongoing disciplinary proceedings on the other, which will not have any adverse impact, if it is conducted simultaneously.

21. Such being the view of this Court, no further adjudication on merits are to be undertaken in this writ petition. Accordingly, the writ petition stands dismissed.

However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Asst.Registrar (CS V)

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Sub Asst. Registrar

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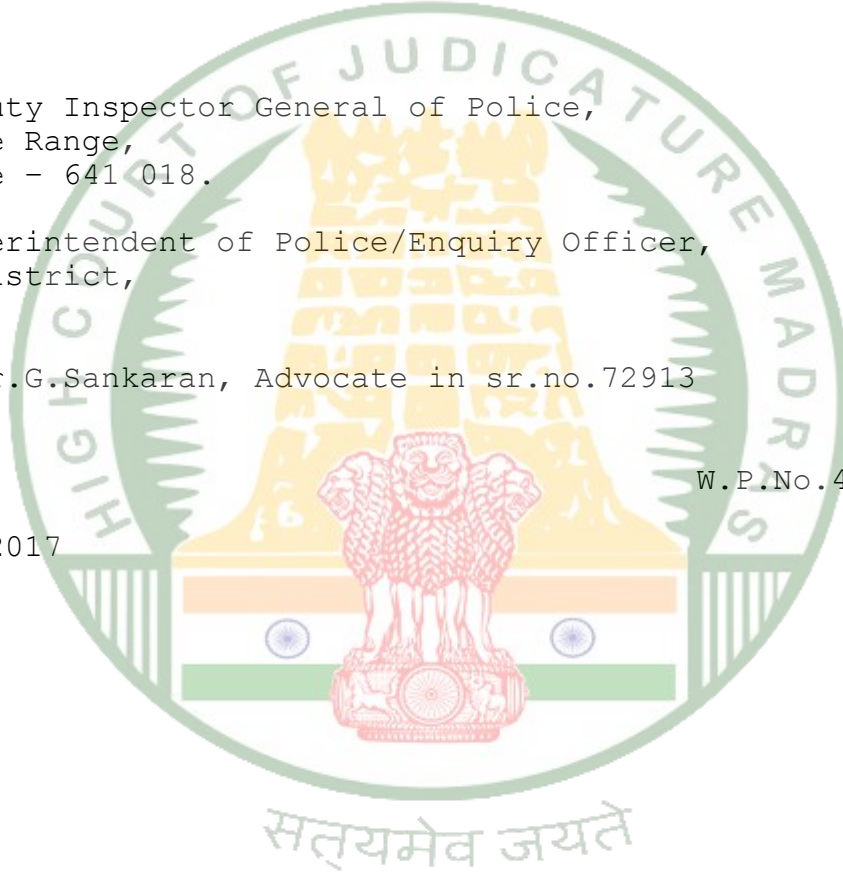
1.The Deputy Inspector General of Police,
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Tirupur.

+1cc to Mr.G.Sankaran, Advocate in sr.no.72913

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