

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :24.08.2017

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WRIT PETITION No.22696 of 2017
and
W.M.P.No.23793 of 2017

S.Kathiravan ... Petitioner
Vs.

1. The Commandant,
Office of the DIGP,
Group Centre,
CRPF, Chennai - 65.

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

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

... Respondents

Prayer : Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, forbearing the 1st and 2nd respondent from proceeding with the departmental proceedings in order No.P.VIII.2/2017-EC-2-GC AVD, DATED 13-06-2017 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 Petitioner : Mr.L.P.Maurya

For Respondents : M/s.G.Hema,
Central Government
Standing Counsel (CGSC)
for R1 and R2

Mr.K.Dhananjayan
Special Government Pleader
for R3

O R D E R

The relief sought for in this writ petition is to forbear the 1st and 2nd respondents from proceeding with the departmental proceedings in order No.P.VIII.2/2017-EC-2-GC AVD dated 13.06.2017 pending disposal of the criminal case registered against him in Crime No.990/2016 on the file of the Learned Judicial Magistrate No.VII, Coimbatore District.

2. The learned counsel appearing for the writ petitioner submits that on account of certain serious allegations against the writ petitioner, a criminal case was registered in Crime No.990 of 2016 and pending on the file of the Learned Judicial Magistrate No.VII, Coimbatore District. The criminal case is under investigation and even the charge sheet has not yet been filed. However, the departmental disciplinary proceedings are initiated against the writ petitioner, as the writ petitioner is holding the post of Constable in CRPF, Avadi which is an uniformed service. The allegation against the writ petitioner in the criminal case was that he has involved in a case of exchange of old currency and he has used the pistol for the purposes and was in possession of the pistol during the exchange of old currency. The learned counsel appearing for the writ petitioner states that it is based on the false complaint, the criminal case was registered and the writ petitioner is ready and willing to defend the case before the criminal Court. The department has simultaneously placed the writ petitioner under suspension on the ground that a criminal case was registered and pending against the writ petitioner. Thereafter, the memorandum of charges are issued by the respondent in proceeding No.P.VIII.2/2017-EC-2-GC AVD dated 13.06.2017.

3. The Articles of charge framed against the writ petitioner is extracted hereunder:

ARTICLE-I

"That the said No.961160522 CT/Band S.Kathiravan(u/s) of this GC, CRPF, Avadi while functioning as Constable (Band) 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 Sulur 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.961160522 CT/Band S.Kathiravan(u/s) of this GC, CRPF, Avadi while

functioning as Constable (Band) 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 accompanied No.850829186 CT/GD S.Subramanian and allegedly involved in crime of exchange of old currency on commission basis and was in possession of unauthorised pistol 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.961160522 CT/Band S.Kathiravan(u/s) of this GC, CRPF, Avadi while functioning as Constable (Band) 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 16/03/2017 (AN) at his own after remained absent for 27 days without any valid reasons which is prejudicial to good order and discipline of the Force.

ARTICLE-IV

That the said No.961160522 CT/Band S.Kathiravan(u/s) of this GC, CRPF, Avadi while functioning as Constable (Band) 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 refused to receive Order dated 16/05/2017 for his review of suspension which is prejudicial to good order and discipline of the Force."

4. On perusal of the charge memo, it is certainly serious in nature and the writ petitioner being a constable, working in the disciplined uniform services i.e., CRPF, is certainly liable for disciplinary proceedings under the Rules on these charges.

5. The contention raised on behalf of the writ petitioner that the documents, evidences and witnesses to be produced both before the departmental proceedings and before the criminal Court are one and the same and now the department has already commenced the enquiry proceedings and three enquiries were already conducted and now the stage has come that the writ petitioner has to cross-examine the witnesses. Under these circumstances, the examination of witnesses by the writ petitioner will have a direct implication in the criminal cases and in the event of cross-examining the witnesses, their right

of submitting their defence before the criminal case will be affected. Thus, it is necessary to stay the entire departmental proceedings till the final disposal of the criminal proceedings.

6. Such a contention need not be considered by this Court in the facts and circumstances of the case, in view of the fact that the writ petitioner is working in uniformed disciplined force and he was charged with the misconduct of exchanging the old currency as well as holding a pistol with him at the time of committing such misconduct. Though it remains as an allegation, it is for the department to proceed with the enquiry and after completion of enquiry, the authorities has to form an opinion based on the enquiry report and pass final orders in the disciplinary proceedings. It is left open to the writ petitioner to submit his explanation/objections in this regard and prove his innocence before the enquiry officer.

7. The learned counsel strenuously contended that the evidences and the documents produced before the departmental disciplinary proceedings will have a direct impact on the criminal proceedings. This Court is unable to accept this principle, in view of the fact that truth should prevail, in these kind of allegations, any attempt by any delinquent employee for postponement of disciplinary proceedings or criminal cases can never be accepted. As contended by the learned counsel for the writ petitioner, if the writ petitioner is innocent of the allegations both in the criminal case as well as in the departmental proceedings, while speaking about the truth, the writ petitioner need not afraid or seek any exemption or file petitions for postponement of the cases. Without going into these aspects, this court is of the firm opinion that any evidences submitted or deposition given before the departmental disciplinary proceedings will certainly have certain implications in the criminal cases and the same may be cited by either of the parties before the criminal Court or before any other forum for the purpose of characterizing the delinquents. So also, if any deposition or evidence or documents filed before the criminal Court will also have certain implications in the departmental proceedings or any other proceedings. Thus, this Court is of the view that which is to be conducted first is not a question, what is the truth and facts alone is the question. Wherever the documents and evidences and witnesses are produced at the first instance, that documents will have a reliance before the other forum and it is the natural course of action which cannot be prevented or stopped. Thus, documents produced in the departmental proceedings will have an implication in the criminal case and the documents and evidences produced before the Criminal Court will certainly have further implications on the departmental proceedings. Corroboration of these evidences

and comparison of the documents are necessary to cull out the truth and the offences committed by the public servants. Such comparisons or discrepancies arising out of various documents and evidences are also important to find out the truth behind the entire allegations set out both in the departmental disciplinary proceedings as well as in the criminal charge sheet. Thus, the right of defence in this regard is not a basic question to be adjudicated in this writ petition. The right of defence is always available to the delinquent or an accused person both in the departmental as well as the criminal cases.

8. The very concept of barring of simultaneous proceedings mooted out by the learned counsel for the writ petitioner is doubtful. The procedure of conducting trial in the criminal case is altogether different and the procedure to be adopted in a departmental domestic proceedings are under the service rules and they are not akin to that of the criminal trial. This apart, both the criminal trial as well as departmental enquiry even if relates to the similar kind of allegations, the Court is unable to understand why the departmental proceedings is to be stopped on account of the pending criminal case. As far as the criminal case is concerned, the prosecution conducts investigation, files a separate charge sheet and evidences and the witnesses will be produced based on the charge sheet filed before the criminal Court. So also, in the departmental proceedings, the charge memo will contain the documents and the evidences. Whatever deposition taken before the criminal Court or before the departmental enquiry proceedings, the same can be relied upon by either of the parties in order to prove and establish the truth behind the facts relating to the allegations. The ultimate object of the discipline and appeal rules is to punish an employee, who committed an act of misconduct, so also, in the criminal case to convict a person, for an offence punishable under the Indian Penal Code. In both the cases, truth alone is the sole object to be achieved. The great Poet John Keats once said in one poem "Truth is Beauty, Beauty is Truth". Thus, the concept of truth alone is the sole criteria for the purpose of conducting all these enquiries against the erring officials or the persons committed offences. In the event of recording a deposition in the departmental disciplinary proceedings based on the documents available or based on the statement of the witnesses, there cannot be a different version before the criminal proceedings, since the entire matter is to be proceeded on the actual facts. Thus, the question of affecting the right of defence in the event of simultaneous proceedings are just imaginary and has no legal basis. The sole object of filing such a writ petition to avoid simultaneous proceedings is to protract and prolong the enquiry proceedings so as to gain or continue the employment without any interruption. Thus, the very attitude of the employees in this

regard cannot be encouraged by the Constitutional Courts.

9. The right of defence is a valuable right provided under law. The principles of natural justice require that any person against whom a charge is framed, has got a right of defence. The right of defence being a valuable right cannot be denied to a person against whom departmental proceedings are initiated or a criminal case is registered. However, by virtue of the right of defence, an employee or an accused cannot seek postponement of the conduct of enquiry on the ground that the charges are similar in nature. Assuming that the charges are similar, then also the materials and evidences are to be scrutinised and adduced. Thus, this Court is of the opinion that if any contradictory or inconsistent statement are made both before the departmental proceedings and before the criminal Court, it is for the respective forum to find out, what is the truth behind the statement. That is the judicial system as well as the system of domestic enquiry. The delinquent or the accused person may produce various evidences and furnish statements and depositions. It is for the respective forum to identify the factual statements and cull out the truth behind the entire incident. This being the very nature of job to be performed by the judicial officers/enquiry officers, the claim of barring of simultaneous proceedings are meaningless and this Court is unable to accept such a concept.

10. The right of defence means a person charged departmentally or before the criminal Court is entitled for defence in the manner known to law. However, such a right of defence for a delinquent or an accused before the criminal court is very well available and they are free to exercise their option to avail the same in accordance with law.

11. The standard of proof required in the criminal court are high in nature and preponderance of probabilities are sufficient to punish an employee under the departmental disciplinary proceedings. Thus, a moral turpitude or a misconduct is enough to issue a charge memo under the Discipline and Appeal Rules and an employee can be punished even for such a small moral turpitude or a misconduct. Thus, the standard of proof required in the criminal case need not be necessarily to be in the departmental disciplinary proceedings. Therefore, the contention raised in this regard by the learned counsel for the writ petitioner that the departmental proceedings are to be stayed till the final disposal of the criminal case cannot be accepted and need not be granted. It is for the writ petitioner to prove his innocence both before the departmental proceedings as well as the criminal Court. If at all any deposition is given by the writ petitioner before the departmental disciplinary proceedings and the documents are furnished, the

same can be relied upon by him even before the criminal Court and vice-versa before the criminal court as well as the department. Such being the legal proposition to be followed, where simultaneous proceedings are initiated, no delinquent shall be allowed to escape from the clutches of the disciplinary proceedings on the simple ground that till the final disposal of the criminal case, the departmental disciplinary proceedings are to be stayed. This Court is of the opinion that these kind of grounds raised by the writ petitioner is only to postpone the departmental disciplinary proceedings for his personal claim. For instance, the Judicial system is so in our country that disposal of the criminal case are taking long time, prosecution has to produce and examine the witnesses before the criminal Court in a systematic manner and conclude the proceedings in all respects. The delinquents are very well aware that they can easily prolong and protract the criminal proceedings pending before the criminal Court. With this idea, the delinquents are moving such writ petition for prolonging the departmental disciplinary proceedings, so that he can peacefully continue in service for the years to come. This Court is of the concern that if such a person, who is alleged to have been committed a serious misconduct of exchange of old currency and any illegal possession of a said pistol is allowed to escape from the clutches of disciplinary proceedings, the same will be dangerous for the department and for the public in general. The writ petitioner being the personnel of uniformed services is frequently allowed to handle fire arms and unambiguously such person is to be dealt with strictly in accordance with Discipline and Appeal Rules.

12. The Courts have certainly held in certain cases, where simultaneous proceedings may be stayed, but the same cannot be cited as a precedent in all cases. Each case has to be decided based on the facts and circumstances and on perusal of the allegations set out in the charge memo. In the case on hand, it is certainly serious and the writ petitioner should not be allowed to escape from the clutches of disciplinary proceedings by prolonging or protracting the completion of the same.

13. The respondents in this regard has promptly initiated action against the writ petitioner by framing the memorandum of charges and further appointment of enquiry officer also was done without any further delay. The notice of preliminary hearing was issued on 19.07.2017 and the departmental enquiries were conducted on 21.07.2017, 25.07.2017 and on 01.08.2017. Thus, the departmental enquiry proceedings are in progress and at this juncture, this writ proceeding is moved by the writ petitioner for stalling the entire departmental proceeding on the ground that the criminal case is pending. Thus, the intention of the writ petitioner is clear that he wants to avoid the departmental

disciplinary proceedings. Having participated in the proceedings, now, the writ petitioner need not be allowed to stall the proceedings, further more. In this view of the matter, grounds raised in the writ petition regarding the merits of the charge memo and the allegations cannot be adjudicated and it is left open for the writ petitioner to submit his further explanation and objections in this regard and prove his innocence before the enquiry officer appointed for the purpose.

14. In this view of the matter, no further adjudication needs to be undertaken on the grounds raised in the writ petition. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Commandant,
Office of the DIGP,
Group Centre,
CRPF, Chennai - 65.

2. The Deputy Inspector General,
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3. The Inspector of Police,
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Coimbatore District,
Tamil Nadu.

+1cc to Mr.G.Hema,CGSC, S.R.No.61200

+1cc to Mr.L.P.Maurya, Advocate, S.R.No.61244

+1cc to the Government Pleader, S.R.No.61952

W.P.No.22696 of 2017

BR(CO)
GN(06/09/2017)