

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.09.2017

CORAM

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

W.P.No.25418 of 2017

and

W.M.P.No.26871 of 2017

G.S.Rajaneesh Petitioner

Vs

1.Senior Divisional Security Commissioner,
Railway Protection Force, Southern Railway,
5th Floor, NGO Complex, DRM Building,
Park Town, Chennai - 600 003.

2.Assistant Security Commissioner,
Railway Protection Force/TNPM, Southern Railway,
5th Floor, NGO Complex, DRM Building,
Park Town, Chennai - 600 003. Respondents

Prayer: Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Mandamus,
directing the 1st respondent to defer all further proceedings
pursuant to the charge memo dated 10.03.2017 of the 2nd
respondent pending criminal proceedings in Crime No.6 of 2017 on
the file of the Learned Session Judge, Mahila Court, Salem.

For Petitioner : Mr.V.Stalin
For Respondents : Mr.P.T.Ramkumar
Standing Counsel
for R1 & R2

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O R D E R

The factual matrix required to be considered in this writ
petition is that the writ petitioner has joined as a Constable
in Railway Protection Force in the year 2005 and states that he
got married and having two children.

2.The writ petitioner was deputed to Escort, Nilagiri Express train from Chennai to Salem along with three other staff on 11.01.2017. While travelling, he was alleged to have misbehaved and sexually harassed two minor girls, who were travelling in the same train. Along with the school children, the principal was also travelling in the train and she has filed a complaint against the writ petitioner initially to Government Railway Police Station, Coimbatore, immediately after the incident and thereafter, the complaint was transferred to the Government Railway Police, Salem for registration. Accordingly, a case was registered against the writ petitioner in Crime No.6 of 2017 under Protection of Child From Sexual offence Act, 2012 for alleged offence under Section 9(m)(1) and 10 of the Act, 2012. The criminal case is under investigation and the charge sheet is yet to be filed, and simultaneous departmental disciplinary proceeding was initiated against the writ petitioner. The learned counsel appearing for the writ petitioner informed this Court that the alleged incident took place on 12.01.2017 and the writ petitioner was placed under suspension with effect from the very same date on 12th January, 2017. After conducting a preliminary enquiry, a charge memo was also issued to the writ petitioner in proceedings dated 10th March, 2017. However, an order of suspension was revoked on 28th June, 2017 and the writ petitioner was transferred from Chennai to Sulurpet in Andra Pradesh. A charge memo was issued by the 2nd respondent in proceedings dated 10.03.2017 under Rule 153 of the Railway Protection Force Rules, 1987. The charges against the writ petitioner are extracted hereunder:
Charge:

"He was deputed for Train Escorting duty by Tr.No.12671 Nilagiri Exp./12624 Chennai Mail along with three other staff on 11/12.01.17. While performing Train escort duty by Train No.12671 Nilagiri Express from MAS to SA, at about 01.45hrs on 12.01.17, he had repeatedly flashed torch light of his mobile phone on the faces of school girls/teacher of Brindavan Vidhyalaya Public School, Madukarai, Coimbatore District who travelled in S5 Coach of Tr.No.12671 Exp and also had sexually harassed two minor school girls of the said school travelling in S5 Coach.

This discreditable conduct of Sri.G.S.Rajaneesh, Con/NHC has led to lodge a complaint by Principal, Brindavan Vidhyalaya Public School, Madukarai, Coimbatore District with GRP/CBE and thereby a Criminal case was registered against him by GRP/CBE in GRP/CBE Cr.No.09/17 U/Sec 9 a(iii) R/W 10 POCSO Act-2012 and the same was transferred to GRP/SA on the point of jurisdiction, who registered a case in Crime No.06/17 U/Sec 9 a (iii) R/W 10 POCSO Act-2012.

Thus he has brought discredit to the reputation of the Force and thereby contravened Rule 146.4 of RPF Rules and Rule 3 (1)(iii) of Railway Services Conduct Rules 1966.

Hench the Charge."

Statement of allegations are also furnished against the writ petitioner, list of documents are marked and list of witnesses are also furnished along with the charge sheet.

3. On a perusal of the charge memo, this Court is of the firm view that the charges are serious in nature and a full fledged enquiry into the allegations are certainly warranted. The writ petitioner, being a police constable and posted as escort in Nilagiri Express for the protection of the passengers, alleged to have misbehaved with the two school girls/teachers of Brindavan Vidhyalaya Public School, Madukarai, Coimbatore District, who travelled in S5 Coach of Tr.No.12671 Exp and also had sexually harassed two minor school girls of the said school travelling in S5 Coach.

4. Even if it remains as an allegation, at this stage, this Court is able to visualize the situation if at all the incident happened. However, at this stage, this Court cannot record any comment in respect of the allegations made since 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 more so, the allegations are to be considered in relation to the nature of the job, duties and responsibilities of the writ petitioner. The writ petitioner is not a co-passenger or a third person. The writ petitioner was posted as an escort, Nilagiri Express and the escort of the train is supposed to be the custodian of the passengers and his capacity as a custodian is alleged to have been misused and abused. Thus, this Court is not inclined to show even a slightest leniency and undoubtedly serious actions are to be initiated.

5. The principal of the school, who was also travelling along with the school children, without any delay, registered the complaint against the writ petitioner. The complaint was also registered under Protection of Child From Sexual Offences Act, 2012 for alleged offence under Section 9(m)(1) and 10 of the Act, 2012. The investigation is in progress. However, the writ petitioner filed this writ petition on the ground that till the criminal case is disposed of, departmental disciplinary proceedings cannot be proceeded with. In other words, simultaneous proceedings are not permissible under the Law.

6.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?

7.On a perusal of the charge sheet filed by the 2nd respondent 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 sheet. The list of documents are also filed and the list of witnesses are also furnished. Thus, it is very much possible to conduct an enquiry based on the list of documents annexed in the charge sheet and recording the depositions of the respective witnesses cited in the charge sheet. 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 sheet, this Court is of the opinion that an independent departmental enquiry shall be conducted by calling for the witnesses and recording their depositions in this regard.

8.The learned counsel appearing on behalf of the respondents also informed this Court that along with the principal, 55 school children and 13 staff members of Brindavan Vidhyalaya Public School, Madukarai, Coimbatore District, were travelling in the said coach. Thus, the teachers and many of the school children would be aware of the incident and all were travelling in the same train and most of them are in the same coach. This being the factum of the case, the depositions of those teachers, principal and if necessary and if the consent is obtained from the Parents/Guardians, the deposition of the school children can also very well be recorded by the enquiry officer and the departmental proceedings shall be conducted in accordance with the rules in force. The question is whether the facts are so complicated so as to bar the departmental proceedings during the pendency of the criminal case. The Court has to examine whether the facts are complicated and whether the examination of witnesses will cause any prejudice to the writ petitioner in the criminal trial.

9.In this regard, let us examine the situation prevailing in the case on hand, the alleged incident took place in a running train namely, Nilagiri Express, in which 55 children along with 13 teachers were travelling. This apart, there are many witnesses available in the train including the Principal as well as the teachers. Independent examination of the Principal and teachers, if necessary, may be conducted and their depositions can be recorded by the enquiry officer. 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, 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 opinion 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 the writ petitioner. At the outset, it is the onus on the part of the petitioner to prove his innocence, both before the criminal court as well as before the departmental disciplinary proceedings.

10. Now, this Court has to examine whether an independent departmental disciplinary proceedings are to be conducted under the given circumstances. On a perusal of the charges, it is clear that it is an incident took place in the running train and therefore, the list of documents and witnesses are also cited in the charge sheet and those documents and witnesses can be relied upon by the presenting officer and the domestic enquiry can be conducted in this regard. Thus, there is no impediment in conducting or proceeding with the departmental disciplinary proceedings as far as the competent authority is concerned.

11. The learned counsel appearing for the respondents further brought to the notice of this Court, the other escort Constables, who were available in the train were also cited as witnesses and other witnesses also can be examined and the depositions may be recorded in the departmental enquiry proceedings. A mere pendency of a criminal case alone, cannot be a bar for proceeding with the departmental proceedings. The standard of proof required before the Criminal Court, is high in nature. However, preponderance of probabilities are sufficient to punish an employee under the Discipline and Appeal Rules. Thus, the departmental proceedings initiated against the writ petitioner need not be kept in abeyance, in view of the fact that the charges framed against the writ petitioner are self contained and, witnesses are available including the other Police Constables, who travelled along with the writ petitioner as escorts in the same train. The disciplinary proceedings initiated against the writ petitioner shall be allowed to be

concluded in all respects and all such proceedings should reach its logical conclusion. Intermittent intervention in disciplinary proceedings has to be exercised cautiously and the judicial review in this regard are certainly limited and the Courts have to exercise the judicial review only on exceptional circumstances in disciplinary proceedings, more-so, when the allegations in the charge memo are serious in nature and it is a criminal offence and therefore, this Court is not inclined to show any leniency in this regard to the writ petitioner. Government employees, more so a uniformed personnel, posted as an escort in a train, wherein hundreds of passengers are travelling, plays a significant role in guarding the train as well as the passengers. The capacity of an escort is such that he has equipped with arms and ammunitions. Thus, he has to be so vigilant and he must protect the passengers in the train. When such a guard, who is the custodian of the train has committed such a heinous offence against the minor school children, the Court has to deal with the case in an appropriate manner in accordance with law and any leniency in this regard will send an adverse message not only to the society, but will create a bad precedent in law.

12. Violence against women is perhaps the most shameful human rights violation, and it is perhaps the most pervasive. It knows no boundaries of geography, culture or wealth. As long as it continues, we cannot claim to be making real progress towards equality, development and peace.

13. Feminism arose as a result of unequal laws created by men through whom women were denied certain fundamental rights. Simone de Beauvoir, a French philosopher, has been the most important feminist thinker. She has shown as how from the earliest times men enslaved women due to their physical structure. Women, as it happened generally became weak due to repeated child birth, so they were thought to be less important than the male members of the group.

14. This inferior and unequal status of women is the main reason behind sexual violence behind them.

15. While gender violence is as old as humanity it is only in the past two decades that it has been publically recognized, systematically structured and legislated against to a significant degree. In 1990's such violence was finally admitted on international level with recognition of human rights issue. Internationally, the World Conference on Human Rights (1993) at Vienna, which was one of the main turning points in women's right declared that human rights of women and of the girl child are inalienable, integral and indivisible part of universal

human rights. The Vienna Declaration specifically condemned gender based violence and all forms of sexual harassment and exploitation. The Conference concluded that:

" The human rights of women and of the girl child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic and social and cultural life at national, regional and international levels, and eradication of all forms of discrimination on grounds of sex are primary objectives of the international community.... The world governmental and non-governmental organisations to intensify their efforts for the protection on human rights urges governments, institutions, intergovernmental and non-governmental organisations to intensify their efforts for the protection and promotion of human rights of women and the girl-child."

16. 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.

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

18. 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.

19. 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.

20. 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.

21. 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.

22. 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".

23. 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.

24. 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."

25. 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'.

26. 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.

27. 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)

28. 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.

29. The learned Counsel for the respondents further states that the respondent passed orders, stating that the writ petitioner should not be deployed for train escorting and other sensitive posts. However, The Chief/Senior Divisional Security Commissioner, Railway Protection Force, Southern Railway has to take appropriate measures in respect of the protection of passengers, travelling in the train and ensure no such incidence

take place in future and the school children by virtue of the concessions granted by the Indian Railways are travelling in the train for educational and other touring purposes. Their security is of utmost importance and the higher officials in this regard should have consistent and constant watch of these guards and the custodians posted in running trains. Such a care is necessarily to be taken by the higher officials in this regard.

30. 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/-
Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

Kak

To

1. The Chief Senior Divisional Security Commissioner,
Railway Protection Force, Southern Railway,
5th Floor, NGO Complex, DRM Building,
Park Town, Chennai - 600 003.

2. Assistant Security Commissioner,
Railway Protection Force/TNPM, Southern Railway,
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+1cc to Mr. P. T. Ramkumar, Advocate, S.R.No. 70242
+1cc to Mr. V. Stalin, Advocate, S.R.No. 69380

Rmp (07/11/2017)

W.P.No. 25418 of 2017