

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18-09-2017

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.40702 of 2015

And

MP No.2 of 2015 and WMP No.14991 of 2016

G.Srinivasan

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Petitioner

-vs-

1.The Deputy Inspector General of Police,
Vellore Range,
Vellore.

2.The Additional Superintendent of Police,
Head Quarters,
Tiruvannamalai District.

..

Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, calling for the records of the first respondent in connection with the impugned charge memo issued by him in PR.No.78/2015 dated 4.11.2015 and quash the same and grant such other further relief.

For Petitioner

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Mr.T.Ayngaraprabhu

For Respondents

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Mr.S.Gunasekaran,
Addl. Govt. Pleader.

ORDER

The charge memo dated 4.11.1995 is under challenge in this

writ petition.

2. The writ petitioner was initially appointed as Sub-Inspector of Police on 28.9.1987 and thereafter, promoted to the post of Inspector of Police and the petitioner claims that he has received many rewards in the Department and there is no adverse notice against him. However, a criminal case was registered against the writ petitioner in Crime No.5 of 2014 on the file of the Vigilance and Anti-Corruption Department at Thiruvannamalai in relation to the allegation that the writ petitioner demanded an illegal gratification of Rs.10,000/- from one P.Ravi, residing at Alamara Street, Kazhikulam village, Vazhuthalangunam Post, Thiruvannamalai District, in order to release a Motorcycle bearing Registration No.TN-25-AF-1592, which involved in a theft case.

3. Subsequently, after the registration of a criminal case against the writ petitioner, a trap also was organised on 29.8.2014 in the Police Station and the writ petitioner was not trapped. However, the Station Writer one Krishnasamy, with whom the amount was paid, was arrested and remanded to judicial custody. In this regard, the writ petitioner was placed under deemed suspension with effect from 29.8.2014 and he was enlarged on bail thereafter. The charges against the writ petitioner were framed in proceedings dated 4.11.2015 and

the charges are extracted hereunder:-

“நீர் வேட்டவலம் காவல் நிலைய குற்ற எண் 162/2014 பிரிவு 379 இதச வழக்கில் சம்பந்தப்பட்ட எதிரி ஏபமலை என்பவரின் மோட்டார் சைக்கிள் பதிவு எண் TN-25-AF-1592-யை காவல் நிலையத்தில் எந்தவொரு பதிவேடுகளிலும் பதிவு செய்யாமல் மேற்படி எதிரியிடம் பணம் கையூட்டு பெறும் நோக்கத்தில் தன்னிச்சையாக காவல் நிலையத்தில் மேற்படி மோட்டார் சைக்கிளை வைத்திருந்த உமது இச்செயல் காவல் துறைக்கு களங்கத்தை ஏற்படுத்திய ஒழுங்கீனமான கண்டிக்கத்தக்க செயல்”.

4. On perusal of the charges, this Court is of the opinion that certainly it is serious in nature and relating to the demand of illegal gratification and further a criminal case was also registered against the writ petitioner by the Department of Vigilance and Anti-Corruption. The writ petitioner made a representation on 25.11.2015 to the disciplinary authority stating that the criminal case registered is pending and therefore, the departmental disciplinary proceedings should be kept in abeyance till the criminal case is disposed of.

5. The learned counsel appearing on behalf of the writ petitioner made a submission that the nature of the allegations both in the criminal case as well as in the departmental proceedings are one

and the same and therefore, the departmental proceedings are to be kept in abeyance till the criminal case is disposed of.

6. However, this Court is of the opinion that the nature of the charges framed in the departmental proceedings are also relating to the failure of the writ petitioner in maintaining the concerned Registers and further, such Registers were not maintained in order to get illegal gratification from the persons who gave complaints.

7. Therefore, the pendency in the criminal case, cannot be a bar in this case for proceeding with the departmental proceedings. With regard to the failure on the part of the writ petitioner in maintaining the Station Records, the Department can very well proceed with the domestic enquiry and arrive a conclusion in this regard. Even with regard to the demand of the illegal gratification, the related witnesses can be examined even in the domestic enquiry and a decision can be arrived.

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8. 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 and even preponderance of probabilities are sufficient to punish an employee under the Discipline and Appeal Rules.

9. Thus, the writ petition filed, in order to keep in abeyance the departmental disciplinary proceedings are entirely different. The allegations against the writ petitioner is in relation to the demand of bribe and by citing the pendency of the criminal case, the writ petitioner shall not be allowed to escape from the clutches of the disciplinary proceedings.

10. The cases of Corruption have to be viewed certainly serious and no leniency can be shown. The Honourable Supreme Court also, time and again, emphasised that the charges cannot be quashed on the ground of delay or on technical grounds when the charges are relating to demand of bribe or corruption. This being the consistent view of the Courts, the writ petitioner shall not be allowed to escape from the disciplinary proceedings on these technical grounds.

11. 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 are 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 are relating to corruption.

12. Thus, this Court is of the firm opinion that in corruption cases where there are certain technical grounds, even then the enquiry should be allowed to be completed in all respects and it is left open to the delinquent officials to establish their innocence before the enquiry proceedings and the very charge memo, cannot be quashed in this regard.

13. 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.

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

15. ***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.

16. ***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.

17. ***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.

18. ***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.

19. 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”.

20. ***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 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.

21. ***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."

22. ***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'.

23. ***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.

24. ***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)

25. 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 is conducted simultaneously.

26. Such being the view of this Court, no further adjudication on merits is 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 petition is also dismissed.

Speaking/Non speaking Order
Index : yes/no
Svn

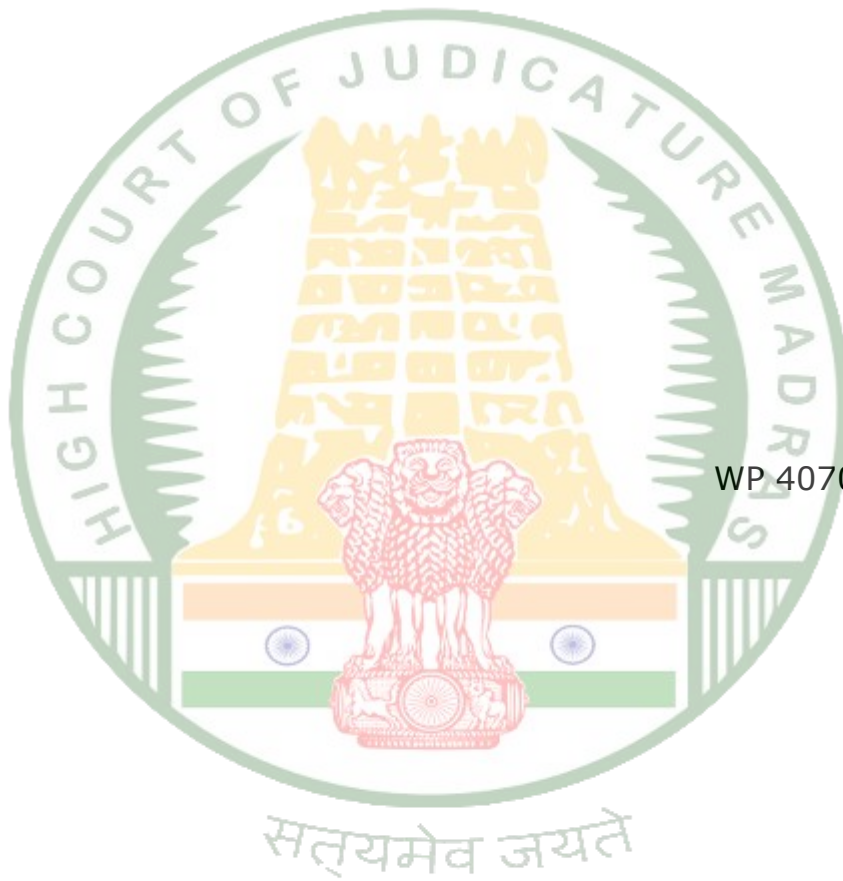
18-09-2017

To

- 1.The Deputy Inspector General of Police,
Vellore Range,
Vellore.
- 2.The Additional Superintendent of Police,
Head Quarters,
Tiruvannamalai District.



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