

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :19.09.2017

CORAM

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

W.P.No.36941 & 36942 of 2016

and

W.M.P.No.31724 & 31725 of 2016

and

W.M.P.Nos.31726 & 31727 of 2016

S.Balasubramanian ...Petitioner in both W.Ps

Vs

1.The Chief Engineer (General)

(Now)

The Director General,

Highways Department,

Guindy,

Chennai - 600 025.

2.The Principal Secretary to Government,

Highways & Small Ports (HK-1) Dept

Fort St George,

Chennai - 600 009.

...Respondents in both W.Ps

Common Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the 1st respondent in connection with the impugned charge memo No.11174/Con.III/2000-43 dated 04.02.2008, No.11174/Con.III/2000-45 dated 10.07.2008 and quash the same.

For Petitioner : Mr.M.Muthappan(in both W.Ps)

For Respondent : Mr.K.Dhananjayan
Special Government Pleader
(in both W.Ps)

C O M M O N O R D E R

The charge memo dated 04.02.2008 and 10.07.2008 issued against the writ petitioner are under challenge in this writ petition.

2.The writ petitioner is working as Assistant Engineer, Highways Department and on account of certain allegations, a charge memo was issued against the writ petitioner in proceedings dated 04.02.2008 and 10.07.2008 and the following charges are framed.

3.In respect of W.P.No.36941 of 2016, the following charges are extracted hereunder:

Charge No.1

That Thiru S.Balasubramanian, formerly Assistant Engineer, has dereliated in his duty by not timely preparing the bitumen transport freight charges for Priya Transports and Super Bulk Carriers, Trichy for the Transport of bitumen from Mangalore to Viralimalai during the months of April 2000 and not getting the sanction of the Divisional Engineer(National Highways)Trichy till 17.11.2000.

Charge No.2

Thiru S.Balasubramanian, Assistant Engineer by his above act, has failed to maintain absolute integrity and devotion to duty, which is unbecoming a member of the service as per rule 20 (1) of Tamil Nadu Government Servants Conduct Rules 1973 and thereby violated the above rule.

4.In respect of W.P.No.36942 of 2016, the following charges are extracted hereunder:

Charge No.1

"During the period between 22.12.1999 and 17.11.2000 the accused officer Thiru S.Balasubramanian, while working as Assistant Engineer, National Highways, Viralimalai, Trichy district, demanded Rs.25,600/- as bribe on 04.10.2000 at about 4 PM on 10.11.2000 at about 2.45 PM and on 15.11.2000 at about 3 PM at his office, as bribe from witness Thiru D.Arulraj, Manager, M/s Priya Transport and M/s Super bulk Carriers, Trichy for preparing the bills for the claim of transport charges due to his said firms totally Rs.1,38,889/- and for issuing cheques after getting the anti-dated sanction order and in pursuance of the said demand and on the request of witness Thiru D.Arulraj, AO reduced his demand amount of bribe of Rs.25,600/- to Rs.22,000/- and AO reiterated his earlier demand and accepted the bribe amount Rs.22,000/- from the said witness Thiru D.Arulraj on 17.11.2000 at about 6.25 PM in the presence of official witness Thiru Chokkalingam at his office. The accused officer Thiru S.Balasubramanian, was arrested in

his office on 17.11.2000 for committing the said grave offence and remanded to judicial custody on 18.11.2000 thereby the accused officer Thiru S.Balasubramanian, has failed to maintain absolute integrity and devotion to duty, in violation rule 20 (1) of Tamil Nadu Government Servants Conduct Rules 1973."

Annexure-II of the charge memo provides statement of allegations and imputation of misconduct of misbehaviour in support of the charges. Annexure-III provides the list of witnesses and Annexure-IV provides list of documents.

5. On a perusal of the nature of allegations and the statement of allegations and imputations of misconduct, this Court is of the opinion that a fullfledged departmental enquiry is necessary for ascertaining the truth behind the allegations. Thus, an enquiry should be allowed to be completed in all respects into the charges framed against the writ petitioner. However, the learned counsel appearing for the writ petitioner made a submission that the charges were framed in the year, 2008 and till date, the same is pending and the respondents have not shown due diligency in concluding the disciplinary proceedings and prolonged it unnecessarily. Thus, the writ petitioner is deprived of his service benefits including his further promotion to the higher posts.

6. This apart, the learned counsel for the petitioner urged before this Court that the criminal case was also registered against the writ petitioner and the Trial Court passed an order of acquittal in favour of the writ petitioner. Thus, the department ought to have concluded the disciplinary proceedings based on the judgment delivered in the criminal case. Contrarily, it kept the disciplinary proceedings pending the following orders without any progress, causing great prejudice to the writ petitioner including his chances of promotion to the higher category. Relying on these factors, the learned counsel for the writ petitioner submits that now the respondents should not be allowed to continue the disciplinary proceedings on account of long delay.

7. The learned Special Government Pleader on behalf of the respondents, relying on the counter filed by the 2nd respondent has stated that the allegations set out in the charge memo are serious in nature and a criminal case was also registered initially against the writ petitioner under the provisions of the Prevention of Corruption Act. The sanction of prosecution was accorded against the writ petitioner. It is further stated that as per G.O.(Ms).

No.251, Personnel and Administrative (N) Department, dated 21.04.1988 and para 125(2)(i) of the Vigilance Manual, departmental disciplinary proceedings was initiated against the writ petitioner by framing the charges under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules in proceedings dated 10.07.2008. Thus, a mere order of acquittal will not grant any exemption to the writ petitioner from facing the departmental disciplinary proceedings initiated under the Discipline and Appeal Rules. This apart, the learned Special Government Pleader has stated that the prosecution has preferred a criminal appeal in C.A.No.544/2008, which is pending trial before the Hon'ble Madurai Bench of this Court. The departmental files were also in process simultaneously and the charges were framed immediately after the trial was concluded and thereafter the criminal appeal was pending and under those circumstances, the department was unable to proceed with the disciplinary proceedings. Since the writ petitioner has also made several representations during the pendency of the criminal appeal to keep the departmental disciplinary proceedings in abeyance, under these circumstances, the department was unable to proceed with the departmental enquiry proceedings and the writ petitioner was also placed under suspension and his services were retained under Rule 56(c)(1) of the Fundamental Rules.

8.This Court is of the firm view that the charge memo against the writ petitioner and the allegations set out in the charge memo are relating to demand and acceptance of bribe and the criminal case was also registered under the provisions of the Prevention of Corruption Act. This being the nature of the allegations against the writ petitioner, the departmental disciplinary proceedings ought to have been concluded as per the rules and the same should be allowed to continue till it reaches its logical conclusion. No doubt, the delay certainly cause prejudice to the delinquent officials in certain circumstances. However, in the present case on hand, the trial Court acquitted the writ petitioner on benefit of doubt and against which the prosecution preferred a criminal appeal before this Court and the same is pending. In such circumstances, the delay at some point of time is unavoidable in one way or other and it is possible that the authorities are also getting confused. Under these circumstances, whether to proceed with the departmental disciplinary proceedings or not. There are divisive opinions in this regard by the Courts and on several occasions, the Courts came to the conclusion that the pendency of a criminal case is also a ground for keeping in abeyance, the departmental disciplinary proceedings. In some cases, the Courts have held that

simultaneous proceedings are permissible and a mere pendency of the criminal case is not a bar for departmental disciplinary proceedings. When there are many decisions in this regard, the Hon'ble Supreme Court of India has derived a principle holding that simultaneous proceedings are permissible under law and in certain cases, where the facts are complex in nature, it is preferable to keep the departmental proceedings in abeyance. However, the general principle is that simultaneous proceedings are certainly permissible and there is no bar for the department to proceed with the disciplinary proceedings even during the pendency of the criminal case. The nature of the allegations, the consequences and the actions proceeded has to be considered before taking a decision in these kind of cases.

9. This Court is of the firm view that a public servant involving in a case of demand and acceptance of bribe has to be dealt with iron heart and there cannot be any leniency in corruption cases. The Hon'ble Supreme Court also time and again reiterated and emphasised that the cases against corruption shall not be quashed merely on the ground of delay or on certain technical grounds. All such cases are allowed to be concluded and the same should reach its logical conclusion. It is for the delinquent official to establish his innocence before the enquiry proceedings. Thus, quashing of the charge memo in corruption cases are certainly undesirable and the Courts must be cautious in interfering with the charge memo and considering the merits and the contentions raised in this regard

10. 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.

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

12.In the case of Sri Bhagwan Ram v. The State of Jharkhand, 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.

13.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.

14.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.

15. 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.

16. 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".

17. 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.

18. 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."

19. 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'.

20. 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.

21. 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)

22. 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.

23. In the case on hand, the counter statements filed by the first respondent as well as the second respondent narrates the circumstances that took place consequent to the acquittal in the criminal case. Under these circumstances, this Court is unable to consider the facts on merits and the grounds of delay raised by the learned counsel appearing on behalf of the writ petitioner and the same is accordingly rejected. However, the department can very well now proceed with the disciplinary proceedings since the trial was over before the criminal Court and they can easily receive the copies of documents from the appropriate authorities and proceed with the departmental disciplinary proceedings as early as possible without causing any further delay in this regard. The departmental proceedings already initiated has to be proceeded with by the respondents at the earliest possible and soon after the receipt of all the relevant documents from the appropriate authorities and this Court is of the opinion that the disciplinary authorities shall conclude the disciplinary proceedings and pass final orders in this regard preferably within a period of six months from the date of receipt of a copy of this order.

24. While undertaking the possible analysis in this matter, this Court is of the opinion that in the event of acquitting the writ petitioner in the criminal appeal, the departmental proceedings can go on and the final order in the disciplinary proceedings shall be passed by the competent authorities and if the charges are proved departmentally based on the preponderance of probabilities and other evidences, then also, the department shall pass orders. To take a case, where the writ petitioner is convicted in the criminal appeal. Then also, there is a provision under the Tamil Nadu Civil Services (Discipline and Appeal) Rules to review the final order passed in the disciplinary proceedings.

25. In this context, it is relevant to cite Rule 37 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules which reads as follows:

"The State Government may, at any time, either on their own motion or otherwise, review any order passed by them under these rules, when any new material or evidence which could not be produced or was not available at the time of passing the order under review and which has the effect of changing the nature of the case, has come, or has been brought, to their notice:

Provided that no order imposing or enhancing any penalty shall be made by the State Government unless the Government servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed or where it is proposed to impose any of the major penalties specified in rule 8 or to enhance the minor penalty imposed by the order sought to be reviewed to any of the major penalties and if an inquiry under sub-rule(b) of rule 17 has not already been held in the case, no such penalty shall be imposed except after an inquiry in the manner laid down in the said sub rule(b) of rule 17 which shall be subject to the provisions of sub-rule(c) thereof, and except after consultation with the Tamil Nadu Public Service Commission, where such consultation is necessary."

26. Under the above provision, the Government at any time may review the final orders passed in the departmental proceedings and there is no time limit prescribed. When the provision for reviewing the order is available, this Court is of the opinion that the disciplinary authorities need not wait for the final outcome in the criminal appeal or in the trial cases. In all such cases, where the criminal cases are registered, it is unnecessary for the competent authorities to wait for the final disposal of the criminal case and they can very well proceed under the Discipline and Appeal Rules and pass final orders on the disciplinary proceedings. Waiting for long years for the disposal of the criminal case will certainly cause prejudice to the very initiation of the disciplinary proceedings and the very purpose and object sought to be achieved will also be defeated.

27. Accordingly, the grounds in these writ petitions deserve no further consideration and stand dismissed. However, there is no order as to costs. Consequently, connected miscellaneous petitions are also closed.

Kak

Sd/-

Assistant Registrar

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Sub-Assistant Registrar

To

1. The Chief Engineer (General)

(Now)

The Director General,
Highways Department,
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W.P.No.36941 & 36942 of 2016

MK[CO]

MK:27/10/2017

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