

HIGH COURT OF CHHATTISGARH, BILASPUR**Order reserved on : 2.1.2018****Order delivered on :22.01.2018****Writ Petition (S) No.253 of 2014**

Madan Mohan Sharma, S/o Shri P.R. Sharma, aged about 46 years, presently posted as Senior Manager (Mining), R/o C-3, Double Storey Quarter, Rajnagar Colliery, P.O.-Rajnagar, P.S.-Rajnagar, District Anuppur (M.P.)

----Petitioner**Versus**

1. South Eastern Coalfields Limited, through Chairman-cum-Managing Director, South Eastern Coalfields Limited, Seepat Road, P.S.-Sarkanda, District-Bilaspur (CG)
2. Chairman-Cum-Managing Director (Disciplinary Authority), South Eastern Coalfields Limited, through Chairman-cum-Managing Director, South Eastern Coalfields Limited, Seepat Road, P.S.-Sarkanda, District-Bilaspur (CG) 495006

---- Respondents**Writ Petition (S) No.2335 of 2014**

Ramadhar Diwan, S/o Late Baldev, aged about 50 years, presently posted as Senior Clerk, Baheraband UG Colliery, SECL, Baheraband Sub-Area, P.O.-Bijuri, P.S.-Bijuri, District-Anuppur (M.P.)

----Petitioner**Versus**

1. South Eastern Coalfields Limited, through Chairman-cum-Managing Director, South Eastern Coalfields Limited, Seepat Road, P.S.-Sarkanda, District-Bilaspur (CG) 495006
2. Chief General Manager, South Eastern Coalfields Limited, Baheraband Sub-Area, Baheraband UG Colliery, P.O.-Bijuri, District Anuppur (M.P.)
3. Senior Manager (Mining) South Eastern Coalfields Limited, Hasdeo Area, Baheraband UG Colliery, P.O.-Bijuri, District-Anuppur (M.P.)

---- Respondents

Writ Petition (S) No.2336 of 2013

Ratan Lal Prasad, S/o Late Shri Kishori Prasad, aged about 49 years, presently posted as Senior Manager (Mining), UG Department, SECL HQ, Bilaspur, R/o C-34, Indira Vihar Colony, Seepat Road, Sarkanda, Bilaspur (CG) P.S. Sarkanda

----Petitioner

Versus

- 1.** South Eastern Coalfields Limited, through Chairman-cum-Managing Director, South Eastern Coalfields Limited, Seepat Road, P.S.-Sarkanda, District-Bilaspur (CG) 495006
- 2.** Chairman-Cum-Managing Director (Disciplinary Authority), South Eastern Coalfields Limited, through Chairman-cum-Managing Director, South Eastern Coalfields Limited, Seepat Road, P.S.-Sarkanda, District-Bilaspur (CG) 495006

---- Respondents

And

Writ Petition (S) No.2338 of 2013

Ashok Kumar Goswami, S/o Late M.G. Goswami, aged about 56 years, presently posted as GM (M), S&R SECL, Bilaspur, R/o Rajiv Vihar, Seepat Road, Bilaspur (CG) P.S. Sarkanda

----Petitioner

Versus

- 1.** South Eastern Coalfields Limited, through Chairman-cum-Managing Director, South Eastern Coalfields Limited, Seepat Road, P.S.-Sarkanda, District-Bilaspur (CG)
- 2.** Chairman-Cum-Managing Director (Disciplinary Authority), South Eastern Coalfields Limited, through Chairman-cum-Managing Director, South Eastern Coalfields Limited, Seepat Road, P.S.-Sarkanda, District-Bilaspur (CG) 495006

---- Respondents

For Petitioners	:	Mr.Chandresh Shrivastava,
For Respondents	:	Mr.H.B.Agrawal, Senior Advocate with Mr.Abhishek Sinha, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**C.A.V. Order**

1. Since common question of law and fact is involved in these batch of writ petitions, they were heard together and are being disposed of by this common order.
2. The petitioners are Senior Officers working in the respondent-SECL. Regular departmental proceedings have been initiated against them by serving a copy of charge-sheet on 7.6.2013 and 24.10.2013 respectively. In the meanwhile, Central Bureau of Investigation has also registered criminal case and chargesheeted them under the provisions of the Prevention of Corruption Act, 1988 (hereinafter called as "PC Act") for offences punishable under Section 120B & 409 of the IPC and Section 13(2) read with Section 13 (1) (c) of the PC Act.
3. The petitioners have filed these writ petitions seeking quashment of disciplinary proceedings initiated against them by charge-sheet dated 7.6.2013 and 24.10.2013 and in alternative, for issuance of direction to the respondent-SECL to withhold the enquiry till the decision of Special Case No.2/2011 (renumbered as Special Case No.35/2014) pending before the Special Judge, CBI Cases, Jabalpur.
4. The main ground for seeking quashment of disciplinary proceedings is that the charges of misconduct levelled

in the disciplinary proceedings are identical to the charges framed by the Special Judge and witnesses are also common in both proceedings. Therefore, if the departmental enquiry and criminal proceedings both are allowed to continue, it will cause irreparable loss to the petitioners as they will not be able to put their proper defence in criminal trial.

5. The respondent-SECL has filed its reply opposing the writ petitions and stating inter-alia that both proceedings can go on simultaneously and it is not barred. Therefore, the writ petitions deserve to be dismissed.
6. Mr.Chandresh Shrivastava, learned counsel appearing for the petitioners, would submit that the charges framed against the petitioners in criminal proceedings are grave in nature and similar charges have been framed against them in the departmental enquiry and if criminal proceedings and departmental enquiry both are allowed to continue, same will cause prejudice to defence of the petitioners. Therefore, departmental proceedings be directed to be stayed till the criminal proceedings pending against the petitioners are finally adjudicated by learned Special Judge.
7. Mr.H.B.Agrawal, learned Senior Counsel along with

Mr. Abhishek Sinha, learned counsel for the respondents, would submit that there is no express legal bar to conduct departmental proceedings and criminal trial simultaneously and the petitioners have already enjoyed interim order staying departmental proceedings for four years. Therefore, the writ petitions deserve to be dismissed.

8. I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and also gone through the records with utmost circumspection.
9. The question raised in these batch writ petitions as to whether disciplinary proceedings can be stayed till the closure of recording of prosecution evidence in criminal case instituted against the petitioners based on same facts is no longer res-integra and stands determined by two judgments of the Supreme Court delivered recently.
10. In the matter of **M/s. Stanzen Toyotetsu India P. Ltd. Vs. Girish V and others**¹ Their Lordships of the Supreme Court while noticing the earlier decisions of **Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd**² and other decisions held as under:-

¹ AIR 2014 SC 989

² 1999 (3) SCC 679

“12. It is unnecessary to multiply decisions on the subject for the legal position as emerging from the above pronouncements and the earlier pronouncements of this Court in a large number of similar cases is well settled that disciplinary proceedings and proceedings in a criminal case can proceed simultaneously in the absence of any legal bar to such simultaneity. It is also evident that while seriousness of the charge leveled against the employees is a consideration, the same is not by itself sufficient unless the case also involves complicated questions of law and fact. Even when the charge is found to be serious and complicated questions of fact and law that arise for consideration, the Court will have to keep in mind the fact that departmental proceedings cannot be suspended indefinitely or delayed unduly. In *Paul Anthony (supra)* this Court went a step further to hold that departmental proceedings can be resumed and proceeded even when they may have been stayed earlier in cases where the criminal trial does not make any headway. To the same effect is the decision of this Court in *State of Rajasthan v. B.K.Meena 1996(6) SCC 417 : (AIR 1997 SC 13)*, where this Court reiterated that there was no legal bar for both proceedings to go on simultaneously unless there is a likelihood of the employee suffering prejudice in the criminal trial. What is significant is that the likelihood of prejudice itself is hedged by providing that not only should the charge be grave but even the case must involve complicated questions of law and fact. Stay of proceedings at any rate cannot and should not be a matter of course. The following passage is in this regard apposite:

“there is no legal bar for both proceedings to go on simultaneously and then say 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. The staying of disciplinary proceedings, is a matter to be determined having regard to the facts and circumstances of a given case and that no hard and fast rules can enunciated in that behalf. The only ground suggested in the above questions as constitution a valid ground for staying the disciplinary proceedings is that the defence of the employee in the criminal case

may not be prejudiced. This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law. In our respectful opinion, it means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, 'advisability', 'desirability' or 'propriety', as the case may be, has to be determined in each case taking into consideration all the facts and circumstances of the case. While it is not possible to enumerate the various factors, for and against the stay of disciplinary proceedings, we found it necessary to emphasize some of the important considerations in view of the fact that very often the disciplinary proceedings are being stayed for long periods pending criminal proceedings. Stay of disciplinary proceedings cannot be, and should not be, a matter of course. All the relevant factors, for and against, should be weighed and a decision taken keeping in view the various principles laid down in the decisions referred to above. ... Indeed, in such cases, it is all the more in the interest of the charged officer that the proceedings are expeditiously concluded. Delay in such cases really works against him."

(emphasis supplied)

13. 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 an advisable course in cases where the criminal charge against the employee is grave and continuance of the disciplinary proceedings is likely to prejudice their defense before the criminal Court. Gravity of the charge is, however, not by itself enough to determine the question unless the charge involves complicated question of law and fact. The Court examining the question must also keep in mind that criminal trials get prolonged indefinitely especially where the number of accused arraigned for trial is large as is the case at hand and so are the number of witnesses cited by the prosecution. The Court, therefore, has to draw a balance between the need for a fair trial to the accused on the one hand and the competing demand for an expeditious

conclusion of the on-going disciplinary proceedings on the other. An early conclusion of the disciplinary proceedings has itself been seen by this Court to be in the interest of the employees.”

11. Subsequently, in the matter of **State Bank of India and Ors Vs. Neelam Nag**³ the following question was formulated by the Supreme Court for consideration:-

“Whether the High Court was justified in directing stay of the disciplinary proceedings initiated by the appellant-Bank against the respondent until the closure of recording of prosecution evidence in the criminal case instituted against the respondent, based on the same facts ?”

Following the earlier decision of **M/s. Stanzen Toyotetsu India P. Ltd.** (supra), it has been held by the Supreme Court as under:-

“9. The recent decision relied by the appellant in the case of Stanzen (supra), has adverted to the relevant decisions (2005) 10 SCC 471 : (AIR 2005 SC 1406) Hindustan Petroleum Corpn. Ltd. v. Sarvesh Berry, (1999) 3 SCC 679 : (AIR 1999 SC 1416) Capt. M. Paul Antony v. Bharat Gold Mines Ltd. (1997) 2 SCC 699: (AIR 1997 SC 2232) A.P. SRTC v. Mohd. Yousuf Miya. (1996) 6 SCC 417 : (AIR 1997 SC 13) State of Rajasthan v. B.K. Meena in paragraph 16, this Court opined as under:

“16. 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 an advisable course in cases where the criminal charge against the employee is grave and continuance of the disciplinary proceedings is likely to prejudice their defence before the criminal Court. Gravity of the charge is, however, not by itself enough to determine the question unless the charge involves complicated question of law and fact. The Court examining the question

must also keep in mind that criminal trials get prolonged indefinitely especially where the number of accused arraigned for trial is large as is the case at hand and so are the number of witnesses cited by the prosecution. The Court, therefore, has to draw a balance between the need for a fair trial to the accused on the one hand and the competing demand for an expeditious conclusion of the ongoing disciplinary proceedings on the other. An early conclusion of the disciplinary proceedings has itself been seen by this Court to be in the interest of the employees."

(emphasis supplied)"

12. Following the principle of law laid-down by the Supreme Court in the aforesaid judgments (supra), if the facts of the present case are examined, it is quite vivid that there is no express legal bar to conduct disciplinary proceedings and criminal trial simultaneously and both can go on together.
13. There is an additional reason for not granting the relief as prayed for by the petitioners in these writ petitions as these writ petitions were entertained by this Court way back and interim order is operating in favour of petitioners since 23.1.2014, 2.8.2013 and 8.5.2014 respectively. In the charge-sheet served for disciplinary proceedings, five witnesses namely Mr. Deepak Khare, Mr. Sudhir Agarwal, Mr. Sandeep, Mr. L.N. Mishra and Mr. Manoj Sharma have been cited as witnesses on behalf of the Management. It appears from the record and written

statement filed by the parties that Mr. Deepak Khare has been examined on 3.1.2013, Mr. Sudhir Agrawal was given up by the prosecution on 3.1.2013 and Mr. Sandeep, Senior Manager has already been examined on 4.1.2013 and thereafter, the petitioners have cross-examined these witnesses at length. Thus, the petitioners have already disclosed their defence in criminal trial. Even otherwise, departmental proceedings remain stayed for four years by interim order of this Court and as such, no prejudice would be caused to the petitioners in further proceedings with the departmental enquiry.

14. On the basis of aforesaid analysis, I do not find any merit in these writ petitions. The writ petitions deserve to be and are hereby dismissed. However, the respondent-SECL is at liberty to proceed with the departmental proceedings pending against the petitioners. No cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

B/-