

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :09.10.2018

CORAM

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

W.P.No. 7819 of 2015

S.Vedarasu

..Petitioner

Vs

The Inspector General of Registration,
Chennai-28.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus Calling for the records in connection with the proceedings of the respondent in Charge Memo No.34922/ A2/2014 dated 31.7.2014 and Proc. No.64414/ V2/2009 dated 22.7.2014 and Proc. No.64414/ V2/2009 dated 24.7.2014 and to quash the same and permit the petitioner to peacefully retire from service on 31.7.2014 AN and to settle the retirement and full pensionary benefits within a stipulated time.

For Petitioner : Mr.M.Ravi

For Respondent : Mr.P.Purushothaman
Government Advocate

O R D E R

The order of suspension dated 22.07.2014 and the order dated 24.07.2014, not allowing the writ petitioner to retire from service and the charge memo dated 31.07.2014, are under challenge in this writ petition.

2. The learned counsel appearing for the petitioner states that the writ petitioner was holding the post of Sub Registrar in District Registration Office, Chidambaram. On the date of his superannuation on 31.07.2014, he was placed under suspension and not allowed to retire from service and the charge memo was also issued on 31.07.2014.

4. The learned counsel appearing for the petitioner states that criminal case also was registered against the writ petitioner and the criminal case was ended with an order of acquittal. However, against the order of acquittal, the State preferred the criminal appeal and the same is now pending before this Court.

5. The learned Government Advocate appearing on behalf of the respondents brought to the notice of this Court that other set of charges are also pending against the writ petitioner and therefore, the present writ petition is liable to be rejected.

6. This Court is of an opinion that pendency of criminal case or a criminal appeal is not a bar for the disciplinary authority to proceed with an enquiry and to conclude the same by following the procedures contemplated under law. The standard of proof required to convict the person under criminal law is high in nature. Therefore, such a strong proof is not required to punish the employee under the Discipline and Appeal Rules. Therefore, to punish the Government employee under the Discipline and Appeal Rules, moral turpitude or preponderance of probability are sufficient to impose punishments. This being the difference between the departmental disciplinary proceedings and criminal case. This Court is of an opinion that there is no bar for the disciplinary authority to continue the disciplinary proceedings based on the records available and conclude the same by taking an independent decision and pass a final order. Even in cases, where the criminal case ended with an order of acquittal, thereafter also, the disciplinary authority can initiate action under the relevant Rules.

7. This being the principles to be followed, there is no impediment on the part of the officials to continue the departmental disciplinary proceedings and conclude the same by following the procedures and by providing an opportunity to the writ petitioner. In respect of the present writ petition, the grounds raised by the writ petitioner for quashing of the charge memo is neither candid nor convincing. Charge memo can be challenged only on the ground that simultaneous proceedings are impermissible.

8. 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.

9. 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.

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

11. 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.

12. 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.

13. 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.

14. 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.

15. 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".

16. 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.

17. 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."

18. 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'.

19. 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.

20. 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)

21. 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 proceedings 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.

22. This being the principles to be followed in respect of the ground of simultaneous proceedings raised in the present writ petition, this Court has no hesitation in coming to the conclusion that the writ petitioner has failed to establish any reasonable ground for the purpose of considering the relief as such sought for in the present writ petition.

23. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs.

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Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

To

The Inspector General of Registration,
Chennai-28.

+ 1 cc to Mr.Government Pleader SR.70589

+ 1 cc to Mr.M.Ravi, Advocate SR.6987

WP.No. 7819 of 2015

AK(CO)
EU(06/12/2018)