HONOURABLE SRI JUSTICE P. NAVEEN RAO

<u>WRIT PETITION NO.35334 OF 2013</u>

Date : 03.10.2018

Between:

T Mallesham S/o Vittal, Aged about 55 years,
Occ:Cashier (under suspension), O/o Andhra Bank,
Gundi Gopalraopet, Ramadugu Mandal,
Karimnagar district, R/o. Plot No.218/A,
Near Water Tank, Shapurnagar, Jeedimetla,
Hyderabad.

....Petitioner

and

The Chief Manager (P&D) & Competent Authority,
Andhra Bank, Zonal Office, Karimnagar,
Karimnagar district & others.

....Respondents

The Court made the following:

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ORAL ORDER:

On 20th August 2011, Branch Manager of Andhra Bank, Gopalraopet Branch, lodged a complaint in the Police Station at Ramadugu alleging that petitioner misappropriated a sum of 1,25,400/-. Crime No.88 of 2011 was registered under Sections 403 and 408 of IPC. On 26.08.2011 another complaint was lodged alleging that petitioner misappropriated a sum of 74,87,692.23 paise. The Police have altered the sections under which crime is stated to have been committed as 403, 408, 409, 465, 467, 471 and 420 of IPC. Petitioner was arrested on 22.08.2011. Petitioner was placed under suspension on the same day. On 25.09.2012 he was served with charge memo. The sum and substance of the allegation is petitioner misappropriated amounts deposited by the customers into their accounts and exposed the bank to financial loss. It is alleged that the acts committed by petitioner are prejudicial to the interests of the bank and constitute gross misconduct as per clause 5(J) of Memorandum of Settlement dated 10.04.2002. Petitioner claims to have filed his explanation dated 18.10.2012 denying the charge. Not satisfied with the explanation offered by the petitioner domestic enquiry was ordered and enquiry officer was appointed. It appears, on 12.04.2013 preliminary enquiry was conducted and thereafter enquiry was scheduled to be held on 22.05.2013. It appears petitioner sought adjournment of the enquiry and later instituted this writ petition. Petitioner apprehended that as crime is registered against him on the very same allegation and police are conducting investigation into the crime alleged against the petitioner, conducting domestic enquiry at that stage would prejudice his defence in the criminal proceedings and would have adverse consequence on his right to defend in criminal proceedings. It is the categorical assertion of petitioner that the charges levelled against petitioner in the criminal complaints filed by the bank and the charge levelled against the petitioner in the domestic enquiry are same and based on the same material. Petitioner therefore prayed to stay the domestic enquiry pending criminal proceedings.

2. The contention of the petitioner is opposed by the bank. On due consideration of the respective submissions, by order dated 10.12.2013 made in WP MP No.43911 of 2013 this Court stayed domestic enquiry. Aggrieved by the order of learned single Judge, Bank preferred W.A.No.193 of 2014. The Division Bench was not inclined to entertain the writ appeal. However, Division Bench granted liberty to the Bank to move stay vacate petition.

3. Learned standing counsel represented to advance the hearing of the writ petition on the ground that petitioner is due for retirement in October 2018 and if the Bank is not permitted to conduct domestic enquiry and conclude the disciplinary proceedings before his retirement, Bank may be put to grave prejudice. Accordingly, Writ Petition is taken up for hearing.

4. Heard learned counsel Sri Ch.Jagannath Rao for petitioner and learned standing counsel for Andhra Bank Dr K.Laxmi Narshima.

5.1. It is the forcible submission of learned counsel petitioner that on the very same charge which is the subject matter of investigation by the Police, simultaneously domestic enquiry as part of disciplinary action cannot be held and the same has to be deferred till the conclusion of criminal proceedings. The allegations made in the complaints filed by the Bank with the police and the allegations made in the domestic enquiry and the material on which the bank places reliance while lodging complaint with the Police and in the charge memo being one and same, it is not open to the respondent Bank to conduct domestic enquiry until criminal proceedings are concluded. According to Learned counsel the principle of law is well settled and therefore the single Judge rightly stayed domestic enquiry and therefore no case is made out to vacate the interim order granted by this court and to permit the respondent Bank to continue disciplinary proceedings at this stage.

5.2. According to learned counsel so far investigation is not completed and charge sheet is not filed and therefore there is no change in the circumstances warranting vacation of interim order granting liberty to the respondent Bank to proceed with disciplinary action. He would submit that merely because petitioner is due for retirement is no ground to hold domestic enquiry and the principle of law on the subject is well settled.

5.3. In support of his contentions learned counsel placed reliance on the following decisions:

Indian Overseas Bank, Annasalai and another Vs. P.Ganesan and others[1] and **Capt.M Paul Anthony Vs. Bharat Gold Mines Ltd and another**[2].

6.1. *Per contra*, according to learned standing counsel the conditions of service of petitioner are governed by 1st Bipartite Settlement dated 19.10.1966 and subsequent settlements. In terms of the settlement which governs the service conditions of petitioner, if Bank lodges complaint against the employee alleging committing crime under IPC, according to paragraph 4 of terms of settlement, if there is no progress in the investigation by the Police on the alleged offence, it is permissible for the Bank to conduct domestic enquiry and to take disciplinary action on the very same set of allegations forming part of crime registered by the police. As the crime registered on 20.08.2011 and there is no progress even after 7 years, there is no impediment in conducting domestic enquiry. He would submit that as petitioner is retiring from service in October 2018 unless domestic enquiry is concluded before his retirement no adverse action can be taken against him even though huge financial loss is caused to the Bank. He would submit that even if on the very same set of allegations criminal proceedings are pending, it is permissible for the employer to conduct domestic enquiry if there is no progress in criminal proceedings.

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[1] (2008) 1 SCC 650
[2] (1999) 3 SCC 679

6.2. In support of his contention, learned standing counsel placed reliance on the decision of Supreme Court in the case of **State Bank of India and others Vs. Neelam Nag and another[3].**

7. The only issue for consideration is whether it is permissible to the employer to continue disciplinary proceedings on the charges levelled against the employee even though on the very same allegations the bank lodged a complaint with the police and investigation is not concluded by the police.

8. Disciplinary proceedings and criminal proceedings operate in two different fields. Disciplinary action is set in motion if employer lost trust and confidence on the employee on alleged misconduct affecting the image and reputation of the employer. Criminal proceedings relate to committing of crime by a person who is in public employment and in gross abuse of his position in the service. If employee indulges in acts of misconduct which also attract criminal prosecution, ordinarily employer not only initiates departmental action but also lodges complaint with the police.

9. The relationship of employee–employer is based on trust and confidence of the employer on the employee. If the employer has an element of doubt on the conduct and character of the employee, employer may not be willing to continue the employee in his service. However, before acting against an employee, the employer is required to follow due process and on establishment of charges leveled against him, appropriate punishment can be imposed. In domestic enquiry to establish charge, what is required is proof based on principle of

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[3] (2016) 9 SCC 491

preponderance of probabilities. Circumstantial evidence can be taken into consideration to hold the charge as proved and to impose appropriate punishment. On the contrary, criminal law requires that the charges leveled against a person must be proved beyond reasonable doubt and burden lies on the prosecution to establish the charges. Any deficiency and element of doubt in evidence will go against the prosecution.

10. There is long line of precedents on the issue of desirability to continue domestic enquiry pending criminal investigation/trial.

10.1. In **Capt M.Paul Anthony,** Supreme Court has delineated the principles on the desirability of continuing disciplinary proceedings during the pendency of the criminal proceedings. The parameters of judicial intervention are set out in para 22. They read as under:

> "22. The conclusions which are deducible from various decisions of this Court referred to above are:
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> (*i*) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.
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> (*ii*) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.
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> (*iii*) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during

investigation or as reflected in the charge-sheet.

(*iv*) The factors mentioned at (*ii*) and (*iii*) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(*v*) ***If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest.***"

(emphasis supplied)

10.2. In **State of Rajasthan v. B.K.Meena and others**[4], Supreme Court held as under:

"14. It would be evident from the above decisions that each of them starts with the indisputable proposition that 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, it is emphasised, 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 be enunciated in that behalf. The only ground suggested in the above decisions as constituting 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.

[4] AIR 1997 SC 13

> .....
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> One of the contending considerations is that the disciplinary enquiry cannot be — and should not be — delayed unduly.
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> ......
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> While it is not possible to enumerate the various factors, for and against the stay of disciplinary proceedings, ***we found it necessary to emphasise 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***."
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> (emphasis supplied)

10.3. In **Divisional Controller, Karnataka State Road Transport Corporation Vs M.G.Vittal Rao**[5], Supreme Court held that **Capt M Paul Anthony** does not lay down the law of universal application. Facts, charges and nature of evidence, etc., involved in an individual case would determine as to whether decision of acquittal would have any bearing on the findings recorded in the domestic enquiry. (Para 24).

10.4. In **Stanzen Toyotestsu India Private Limited v. Girish V and others**[6], Supreme Court reviewed the entire case law on the subject and held as under:

> "8. .... The law on the subject is fairly well settled for similar issues and has often engaged the attention of this Court in varied fact situations. Although the pronouncements of this Court have stopped short of prescribing any straitjacket formula for application to all

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[5] (2012) 1 SCC 442
[6] (2014) 3 SCC 636

> cases, the decisions of this Court have identified the broad approach to be adopted in such matters leaving it for the courts concerned to take an appropriate view in the peculiar facts and circumstances of each case that comes up before them. Suffice it to say that there is no short-cut solution to the problem. ***What is, however, fairly well settled and was not disputed even before us is that there is no legal bar to the conduct of the disciplinary proceedings and a criminal trial simultaneously.***"
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> ……
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> 13. 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 levelled 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.***
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> …..
> …..
> 16. …..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."
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> (emphasis supplied)

11. From several precedent decisions including ***Stanzen Toyotetsu***, broad principle evolved is, ordinarily disciplinary action should not be stayed even when criminal case is pending on the

same set of facts and law and even if it is stayed, if there is delay in concluding trial, the employer should be permitted to hold domestic enquiry. Burden is on the employee to satisfy the Court that the charges levelled in both proceedings are same; the material facts and evidence relied on by the employer is same; that there are complicated questions of law and facts involved; and he has not disclosed his defense so far. Even if employee satisfies above parameters, Court may refuse to stay the domestic enquiry if there is a likelihood of delay in commencement and conclusion of criminal proceedings. Each case is required to be considered on its merits, by the Constitutional Courts whenever an issue of this nature comes up before the Court.

12. Though, domestic enquiry can be deferred if on the very same set of allegations and material, crime is registered but if the investigation/trial could not be concluded within a reasonable time, it is permissible to grant liberty to conduct domestic enquiry on the very same set of allegations even after the charge sheet is filed and trial is in progress. Fundamentally, disciplinary action should not be stayed for long time and should be concluded as expeditiously as possible. In the case on hand, the crime is registered on 20.08.2011 and so far investigation is not completed and police have not filed charge sheet. Thus, as of now, apparently, it is only at the stage of investigation. The employer has no control over actions of police in concluding investigation and filing charge sheet. Further, employee is due for retirement on 31.10.2018 on attaining the age of superannuation. Thus, in the facts of this case, stay on domestic enquiry can not be continued further and the employer be granted liberty to pursue disciplinary action. It is

appropriate to note that serious allegation of misappropriate is made and Bank can not be helpless in taking action against its employee on such serious allegation.

13. Further, petitioner is governed by Memorandum of Settlement. Clause-4 of the Settlement enables the Bank to resume disciplinary action, after one year.

14. In **State Bank of India,** the scope of clause 4 of Memorandum of settlement was considered by the Supreme Court. Supreme Court held as under:

> "**21.** On the plain language of Clause 4, in our opinion, it is not a stipulation to prohibit the institution and continuation of disciplinary proceedings, much less indefinitely merely because of the pendency of criminal case against the delinquent employee. On the other hand, it is an enabling provision permitting the institution or continuation of disciplinary proceedings, if the employee is not put on trial by the prosecution within one year from the commission of the offence or the prosecution fails to proceed against him for want of any material.
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> ....
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> ....
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> **24.** In the fact situation of the present case, it is possible to take the view that the first part of Clause 4 is attracted. In that, Respondent 1 has been put on trial in connection with the alleged offence, by framing of charges on 12-6-2007. That has happened after one year from the commission of the offence.
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> **25** Be that as it may, the remedy of writ being an equitable jurisdiction and keeping in mind the larger public interests (at least in cases of involvement of the employees of the public sector banks in offence of breach of trust and embezzlement), the arrangement predicated in *Stanzen* [*Stanzen Toyotetsu India (P) Ltd.* v. *Girish V.*, (2014) 3 SCC 636 : (2014) 1 SCC

> (L&S) 641] would meet the ends of justice. For, the disciplinary proceedings instituted against Respondent 1 cannot brook any further delay which is already pending for more than 10 years."

15. Thus, looking from any aspect, stay on domestic enquiry cannot be continued further. Accordingly, Writ Petition is dismissed. Miscellaneous petitions, if any pending, are closed.

P NAVEEN RAO,J

DATE: 03-10-2018
TVK

HONOURABLE SRI JUSTICE P. NAVEEN RAO

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