

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CWP-28041-2018 (O&M)
Date of Decision: 31.10.2018**

Virender Kumar

... Petitioner

Versus

Union of India & others

... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present:- Ms. Tanu Bedi, Advocate for the petitioner.

...

TEJINDER SINGH DHINDSA, J. (ORAL)

Petitioner is an employee of the Food Corporation of India and is occupying the post of Assistant Grade-II (Accounts) (under suspension).

Apparently, regular departmental proceedings were initiated against the petitioner by service of a charge sheet vide Memo dated 05.11.2015 (Annexure P-7).

The instant writ petition has been filed assailing the order dated 24.04.2018 (Annexure P-9) and in terms of which inquiry proceedings that had earlier been kept in abeyance have been directed to be resumed.

Counsel would submit that on the same very charge upon which departmental proceedings had been initiated, petitioner is also facing criminal prosecution. Further urged that on a previous occasion, on a request having been made by CBI, the departmental inquiry proceedings had been kept in abeyance but a similar request made by the petitioner even though earlier in point of time has not been acceded to. It is argued that since the

disciplinary proceedings as also criminal prosecution are on identical charge, it would be in the interest of justice that the disciplinary proceedings be stayed so as to ensure that defence of the petitioner/employee in the criminal case be not prejudiced.

Having heard counsel for the petitioner at length and having perused the case paper book, this Court is of the considered view that no interference in the matter is warranted.

Perusal of the charge memo at Annexure P-7 (colly) reveals the precise article of charge formulated by the competent authority/employer against the petitioner is to the following effect:

“That Sh. Virender Kumar, while posted and functioning as AG II (A/Cs) at Pay Office, Kurukshetra failed to maintain absolute integrity and due devotion to his duty, in as much as, that the said Sh. Virender Kumar posted at Pay Office Kuruksetra demanded and accepted an amount of Rs.7000/- as bribe on 03.06.2015 from Sh. Dalwinder Singh, S/o Chhotu Ram, R/o Ward No.11, Guhla Cheeka, District Kaithal, Haryana for making the CPF payment of Rs.29,41,236/- in favour of his father Sh. Chhotu Ram, an ex-employee of the Corporation at Cheeka, Kaithal.”

It is by now well settled that departmental inquiry proceedings as also criminal prosecution on identical charge can proceed simultaneously. One ground that would be available to a delinquent employee to pray for staying disciplinary proceedings is that his defence in the criminal case be not prejudiced. However, it stands clarified and laid down by the Apex Court that even such ground would be available **'only in cases involving complex questions of facts and law.'** A reference in this regard may be made to the judgments in **Divisional Controller, Karnataka State Road**

Transport Corporation Vs. M.G. Vittal Rao, (2012) 1 SCC 442 and Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd., (1999) 3 SCC 679.

The precise charge formulated against the petitioner is with regard to demand and acceptance of illegal gratification during the course of discharge of his official duties and as has been noticed hereinabove. In spite of having repeatedly called upon the counsel to advance submissions and demonstrate that the article of charge against the petitioner in the departmental proceedings involves complicated questions of law and fact, the response forthcoming is that the CBI in the criminal prosecution has cited as many as 21 prosecution witnesses and the present petitioner/accused in defence would also be examining defence witness and leading documentary evidence. Counsel submits that another aspect that would have to be highlighted and emphasized in defence is as to whether the petitioner/accused was in a position to have raised the demand while facilitating the release of CPF funds.

The aforesaid response would not qualify the charge against the petitioner to fall within the expression “complicated question of law and fact”.

If the contention raised by counsel was to be accepted, then in every case where departmental proceedings and criminal prosecution are based on similar/identical charge, the departmental proceedings ought to be deferred. Such a proposition would go against the dictum laid down by the Apex Court in **Capt. M. Paul Anthony's case (supra)**.

Even the contention raised by counsel as regards departmental inquiry proceedings having earlier been deferred on the request of the CBI

would not be relevant. The prayer made by the petitioner to stay the departmental inquiry proceedings would have to be dealt with independently and in the light of the settled principle of law enunciated in **M.G. Vittal Rao's case (supra)**. Such prayer stands rejected in view of the reasoning and discussion herein above.

No merit.

Dismissed.

31.10.2018

harjeet

(TEJINDER SINGH DHINDSA)
JUDGE

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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |