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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment: 30th July, 2018*

\+ LPA 405/2018

JAINIS DUBEY ..... Appellant

Through: Mr. Anurag Dubey and Mr. Rajesh Pathak, Advs

versus

BANK OF BARODA & ANR ..... Respondents

Through: Mr. Bhupendra Singh Chauhan, Adv for R-1&2

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. ***(ORAL)***

LPA 405/2018 and CM No. 29735/2018 (stay)

1. The present appeal has been filed by the appellant under Clause X of the Letters Patent against the interim order dated 16.07.2018 passed by learned Single Judge of this Court vide which an interim application filed along with the writ petition seeking stay of the inquiry proceedings has been rejected.

2. The facts to be noticed for the dismissal of the appeal, are that the appellant has been employed with the respondent-bank as a Probationary Officer in the Foreign Exchange (Forex) Department. The respondent registered a complaint with the CBI on 9.10.2015 for the FOREX Scam, which took place in the bank. Pursuant to the F.I.R

having been registered, the appellant was suspended by the respondent vide order dated 11.09.2015. Appellant was arrested on 13.10.2015. The CBI filed the charge sheet against the appellant and one, Suresh Kumar Garg, and on the basis of which the Court took cognizance vide order dated 02.02.2016 under Section 13(2) read with Section 13(1)(c)(d) of the Prevention of Corruption Act, 1947. The claim of the bank against the appellant and other persons is to the tune of Rs. 13,75,45,819.28 crores, whereas it is the case of the appellant that he has been falsely implicated in the matter as he had no role to play.

3. According to the bank, the appellant had a strong role to play, which has led to a huge financial loss to the bank. In the writ petition so filed, the appellant had sought quashing of the order dated 10.05.2018 by which the representation of the appellant seeking stay of the departmental inquiry was rejected. The appellant had also sought that the departmental inquiry proceedings be kept in abeyance till the pendency of the criminal trial as the bare perusal of the allegations in the F.I.R and the statement of allegations in the disciplinary proceedings relates to the irregularities of FOREX transactions and are same. Thus, the continuation of the disciplinary proceedings is likely to cause prejudice to the rights of the appellant.

4. The learned counsel of the appellant has placed strong reliance on a judgment reported as ***(2014) 3 SCC 636 Stanzen Toyotetsu India Private Limited vs Girish V. and Ors***, in support of his submission that since complex questions of facts and law are involved in the criminal case pending, the departmental proceedings should be stayed.

reliance is placed on paragraphs 9,10, 11 and 16, which we reproduce below:-

"9.In A.P. SRTC v,. Mohd. Yousuf Miya,(1997) 2 SCC 699, this court declared that the purpose underlying departmental proceedings is distinctly different from the purpose behind prosecution of offenders for commission of offences by them. While criminal prosecution for an offence is launched for violation of a duty that the offender owes to the society, departmental enquiry is aimed at maintaining discipline and efficiency in service . The difference in the standard of proof and the application of the rules of evidence to one and inapplicability to the other was also explained and highlighted only to explain that conceptually the two operate in different spheres and are intended to serve distinctly different purposes.

10. The relatively recent decision of this Court in Karnataka SRTC v. M.G. Vittal Rao, (2012) 1 SCC 442, is a timely reminder of the principles that are applicable in such situation succinctly summed up in the following words.

"(i) <u>There is no legal bar for both the proceedings to go on simultaneously</u>.

(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) <u>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</u>.

(iv) Departmental proceedings can go on simultaneously to the criminal trial, <u>except where both the proceedings are based on the same set of facts and the evidence in both the proceedings is common</u>."

11. We may also refer to the decision of this Court in Capt. M. Paul Anthony v. Bharat Gold Mines Ltd., (1999) 3 SCC 679, where this Court reviewed the case law on the subject to identify the following broad principles for application in the facts and circumstances of a given case: (SCC p. 691, para 2)

"(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(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 department proceedings till the conclusion of the criminal case.

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."

5. Learned counsel for the respondent-bank, who has appeared in the matter on an advance copy having being served, has strongly opposed

this appeal. Counsel for the respondent submits that the disciplinary proceedings are on an advance stage and the charge sheet filed in the departmental proceedings is different from the charge sheet filed in the criminal proceedings. Even otherwise, it is contended that the standard of proof and the application of rules of evidence in a criminal trial is far greater than in a domestic inquiry. In support of his contention, counsel has placed reliance on ***State Bank of India vs R.B. Sharma (2004) 7 SCC 27***, more particularly, paragraphs 8 and 10, which we reproduce below:-

"8. The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a 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 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. Offence generally implies infringement of public duty, as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Indian Evidence Act 1872 (in short the 'Evidence Act'). Converse is the case of departmental enquiry. The enquiry in a departmental

proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. Under these circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances.

10. There can be no straight jacket formula as to in which case the departmental proceedings are to be stayed. There may be cases where the trial of the case gets prolonged by the dilatory method adopted by delinquent official. He cannot be permitted to, on one hand, prolong criminal case and at the same time contend that the departmental proceedings should be stayed on the ground that the criminal case is pending."

6. Reliance is also placed on ***Chairman-Cum-M.D., T.N.C.S. Corpn. Ltd. & Ors vs K. Meerabai (2006) 2 SCC 255***, more particularly, paragraphs 20 and 26 which read as under:-

"20. She has lost sight of the fact that the criminal case instituted against the respondent in the Court of C.J.M. was in respect of the offences under Section 409 IPC (Criminal breach of trust) and falsification of accounts punishable under Section 477A IPC whereas the respondent herein was charged in the departmental enquiry for her failure to maintain prescribed records for issue of a stock and for swindling the Corporation in collusion with the other members of the staff through mis-appropriation of stock and cash of the Corporation thereby causing huge loss to the Corporation to the tune of more than Rs. 9.00 lacs.

26. We shall now advert to the rulings cited by Mr. Ambrish Kumar, learned counsel for the appellants, in support of his submission:

(1) Lalit Popli vs. Canara Bank and Others, (2003) 3 SCC 583 While considering the nature of proof required in a departmental enquiry on the scope of judicial review of the High Court under Article 226, this Court held as follows:-

"It is fairly well settled that the approach and objective in criminal proceedings and the disciplinary proceedings are altogether distinct and different. In the disciplinary proceedings the preliminary question is whether the employee is guilty of such conduct as would merit action against him, whereas in criminal proceedings the question is whether the offences registered against him are established and if established what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial are conceptually different. (State of Rajasthan v. B.K. Meena and Ors. (1996) 6 SCC 417). In case of disciplinary enquiry the technical rules of evidence have no application. The doctrine of "proof beyond doubt" has no application. Preponderance of probabilities and some material on record are necessary to arrive at the conclusion whether or not the delinquent has committed misconduct.

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(3) In Ajit Kumar Nag vs. General Manager (PJ), Indian Oil Corpn. Ltd., Haldia and Others, (2005) 7 SCC 764 (Three Judges Bench). Thakker, J. speaking for the Bench held as under:-

"11. As far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with the 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 the

offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. 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 a 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". Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal Court, the impugned order dismissing him from service deserves to the quashed and set aside."

7. We have heard learned counsel for the parties and considered their rival submissions and also examined the judgments relied upon by the counsel for both the parties. The law laid down in the judgments relied upon by the parties have conclusively held that there is no absolute legal bar in conducting both the departmental proceedings and the criminal trial simultaneously.

8. The Apex Court in the case of **Stanzen Toyotetsu (supra)** has analyzed all the relevant judgments on the issue in question and broadly outlined the factors which are to be considered by a Court

while reaching to a conclusion as to whether the departmental proceedings should go on or not. Paragraph 15 of the aforesaid case is reads as under:-

"15.To the same effect is the decision of this Court in State of Rajasthan v. B.K. Meena, 1996 (6) SCC 417, 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:

"14….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….”

9. In the case of **State Bank of India and Ors. Vs. Neelam Nag, (2016) 9 SCC 491**, the Supreme Court held as under:-

“13. We have heard the learned Counsel for the parties at some length. The only question that arises for consideration, is no more res-integra. It is well-settled that there is no legal bar to the conduct of the disciplinary proceedings and criminal trial simultaneously. However, no straightjacket formula can be spelt out and the Court has to keep in mind the broad approach to be adopted in such matters on case to case basis. The contour of the approach to be adopted by the Court has been delineated in series of decisions.

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18. In the peculiar facts of the present case, therefore, we accede to the contention of the Appellants that the pendency of the criminal case against the Respondent cannot be the sole basis to suspend the disciplinary proceedings initiated against the Respondent for an indefinite period; and in larger public interest, the order as passed in Stanzen's case be followed even in the fact situation of the present case, to balance the equities.”

10. In the present case, the charges framed against the appellant in the departmental proceedings are as under:-

“Bank of Baroda

(Annexure of Memorandum no. ZO:ND:ZVD:66 Dated:15.01.2018)

Annexure -I

ARTICLES OF CHARGE

"{In terms of Regulation 5(2) read with Regulation (6) of Bank of Baroda Officer Employees' (Discipline & Appeal) Regulations 1976)"

Mr. Jainis Dubey, EC NO. 97871 Officer, posted at Mid Corporate branch, New Delhi, (Presently under suspension), while working as Officer (FOREX) at Ashok Vihar branch, New Delhi, from 04.08.2014 to 16.07.2015, is reported to have committed certain acts and deeds of commission and omission in FOREX transactions at Ashok Vihar branch, New Delhi, which , if proved, would amount to misconduct in terms of Regulations 3 and 24 of Bank of Baroda Officer Employees'(Conduct) Regulations, 1976.

Mr. Jainis Dubey, is therefore, charged as under:-

1. He was negligent in performance of his duties and did not take all possible steps to ensure and protect interest of the Bank.

2. He adopted such acts and took such actions as were prejudicial, detrimental and injurious to the interest of the Bank.

3. He did not adhere to follow established rules, regulations and procedures of the Bank.

4. He did acts which are likely to cause financial and reputational loss to the Bank.

5. He did acts unbecoming of a Bank Officer.

(P.D. Gupta)
Dy. General Manager (NDZ) &
Disciplinary Authority"

11. The charges framed against the appellant in the departmental proceedings strictly pertains to the nature of his work profile and his negligent behavior at work place, which is different and distinct from the charges levied on him under the criminal trial. The apex court has time and again in catena of judgements clearly held that though there is no bar in conducting both the proceedings simultaneously, while the departmental proceedings can be kept in abeyance provided that the same

is based on similar set of charge in the criminal case. However, the appellant has not been able to show that the entire matter in the departmental proceedings and before Criminal Court is substantially the same.

12. Moreover, even if the appellant is acquitted of the charges of having committed criminal offences by the Court of the criminal jurisdiction, the respondent can still proceed to conduct a departmental enquiry and on the basis of preponderance of facts and the principles of probabilities could hold the appellant guilty of his negligence. We may also note that another strong factor which is to be considered by the Court is that, in case the departmental proceedings are stayed, it would have a direct impact in the discipline and efficiency of other employees in the bank having regard to the nature of charges which have been framed against the appellant in the departmental proceedings.

13. We find no infirmity in the order passed by the learned Single Judge whereby the interim stay was declined to the appellant.

14. The appeal and pending application are accordingly dismissed.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

JULY 30, 2018
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