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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 421 of 2019**

*{Arising out of order dated 22.08.2019 passed by the learned Single Judge in Writ
Petition (S) No. 6103 of 2019}*

- Rajendra Kumar Gilhare, aged 52 years, S/o Lakhan Lal Gilhare, Working as Assistant Grade-III at Office of the District Mining Officer, R/o Near Small Railway Crossing Purena, P.S. Telibandha, Civil & Revenue District Raipur, Chhattisgarh.

---- Appellant**Versus**

1. State of Chhattisgarh, Through the Secretary, Department of Mining Resources, Mantralya, Mahanadi Bhawan, Atal Nagar, District Raipur (C.G.)
2. The Director, Geology & Mining, Chhattisgarh, Block-IV, 2nd Floor, Indravati Bhawan, Atal Nagar, District Raipur (C.G.)
3. The Collector (Mining Branch) Raipur, District Raipur (C.G.)
4. District Mining Officer, Raipur, District Raipur (C.G.)
5. Station House Officer of Police Station, Civil Lines, Raipur, District Raipur (C.G.)

---- Respondents

For Appellant	:	Shri Surfaraz Khan, Advocate.
For Respondents	:	Shri Sudeep Verma, Deputy Government Advocate.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Justice Parth Prateem Sahu, Judge****Judgment on Board****Per P. R. Ramachandra Menon, Chief Justice****20.09.2019**

1. "Whether the departmental action sought to be initiated against the delinquent employee should be stayed till the criminal proceedings launched in respect of the offence involved are finalized by the trial Court or at least till the witnesses sought to be examined by the prosecution in the criminal case are examined, lest it should prejudice the rights and interest of the accused" is the moot question raised in the appeal preferred by the delinquent employee.

2. Heard Shri Surfaraz Khan, the learned counsel for the Appellant as well as Shri Sudeep Verma, the learned counsel appearing for the State at length.
3. The factual matrix revealed from the pleadings and proceedings is that, the Appellant was working as Assistant Grade-III in the office of the District Mining Officer, at Raipur. While so, some instances/acts involving serious misconduct came to the notice of the Departmental authorities, which allegedly constituted some offences punishable under Sections 467, 468, 471 read with Section 120B of the Indian Penal Code as well. The Police conducted detailed investigation and a charge-sheet has been submitted in terms of the Section 173 (2) of the Cr.P.C. In the meanwhile, the Appellant was placed under suspension on 22.11.2018 and is continuing as such. With reference to the misconduct stated as committed by the Appellant, Annexure P/1 charge-sheet was issued by the 5th Respondent seeking for an explanation as to why Disciplinary proceedings shall not be pursued further; which made the Appellant to approach this Court by filing the writ petition to quash the charge-sheet (Annexure P/1) and also to set aside Annexure P/3 order *i.e.* the order appointing an Enquiry Officer and Presenting Officer. The prayers are in the following terms:

“10.1 That, this Hon'ble Court may kindly be pleased to call entire records pertaining to the case of petitioner for its kind perusal.

10.2 That, this Hon'ble Court may kindly be pleased to stay the departmental enquiry proceeding initiated against the petitioner till the prosecution witnesses are examined in criminal trial procedure.

10.3 That, this Hon'ble Court may kindly be pleased to quash the impugned charge-sheet dated 26.07.2019 (Annexure P/3) issued by Office of Director, Geology & Mining.

10.4 That, this Hon'ble Court may kindly be pleased to set-aside order of appointment of Enquiry Officer and Presenting Officer vide order No. 6081/Stha.1/Na.Kra.154/2018 dated 25.07.2019.

10.5 Any other relief/order may also be granted that may be deemed fit and just in the facts and circumstances of the case.”

4. After hearing the matter, the learned Single Judge held that no interference was required to be made in the writ petition, except the liberty given to the Petitioner to approach the Enquiry Officer, simultaneously directing the said authority to have the matter considered with reference to the request to stay the departmental enquiry pending the criminal case, in accordance with the rules governing the field. It was also made clear in the penultimate paragraph of the judgment that the Court had expressed no opinion with regard to the merit of the case, as to the entitlement of the relief sought for and that the Enquiry Officer would be at liberty to pass appropriate orders on the merits of the case. This, according to the Appellant is not adequate enough, asserting that the prayers as sought for in the writ petition ought to have been granted by the learned Single Judge and hence, the writ appeal.
5. The prayers are sought to be resisted from the part of the State, as put forth by Shri Sudeep Verma, the learned Deputy Government Advocate representing the Respondents.
6. The learned counsel appearing for the Appellant submits that the nature of offence levelled against the Appellant, particularly with reference to Sections 467, 468, 471 read with Section 120B of the Indian Penal Code (for short 'the IPC') and the witnesses sought to be examined are very important. If the said witnesses are to be examined in the departmental enquiry as well, the Appellant would be compelled to reveal his defence, which will prejudicially affect the rights and interest of the Appellant/accused in the criminal case. It has been held in various rulings to the effect that during pendency of the criminal proceedings, it is 'desirable' to have the departmental proceeding stayed. It was accordingly that the Appellant was also constrained to move this Court by filing

the writ petition with the prayers, as aforesaid. The learned counsel also sought to place reliance on Annexure P/5 orders, pointing out that under similar circumstance, the learned Judges of this Court have interdicted the departmental proceedings till the criminal case was finalized.

7. On going through Annexure P/5 (produced collectively and pertaining to WP(S) No.3901/2016 and WP(S) No.3693/2018), it is seen that no law has been declared by the learned Judge in WP(S) No.3693/2018, but for making an observation that in view of the facts and circumstances involved in the said case, the learned Judge was of the opinion to have the disciplinary proceeding interdicted. Coming to the second case (i.e., in WP(S) No.3901/2016) interference was made with regard to the disciplinary proceedings in the said case in view of the facts and particular circumstances involved, however alerting the writ Petitioner to co-operate with the proceedings and holding that, under no circumstance, was he supposed to protract the criminal trial; making it clear that if at all he acts contrary to the same, it will be open for the Respondents to move for vacating the interim stay granted by the Court. In the instant case, it has been conceded by the Appellant that the criminal trial has been caused to be challenged by him and an interim order of stay has been obtained. This being the position, the reliance sought to be placed on the judgments dated 19.09.2016 and 08.11.2017 passed by the learned Single Judges of this Court in WP(S) No. 3901 of 2016 and WP(S) No. 3693 of 2018 respectively is quite out of context and they do not come to the rescue the Appellant in any manner.
8. Coming to the legal position, it has always been a subject matter of discussion and consideration before the Apex Court and various High Courts, as to the desirability of proceeding with the disciplinary action during pendency of the criminal trial. Various rulings were rendered by the Apex Court at different

points of time, observing that it was 'advisable', 'desirable' or 'proper' to have the disciplinary proceedings stayed till completion of the criminal trial. The difference in the nature of the proceedings, the exceptional circumstances under which defence of the accused was likely to be affected if the departmental proceedings were also pursued simultaneously and such other relevant aspects were put to scrutiny again by the Supreme Court on a later point. Granting of interim stay of the disciplinary proceedings, as a matter of course, was deprecated with reference to various rulings rendered on the point including in ***State of Rajasthan vs. Shri B.K. Meena & Others*** reported in **(1996) 6 SCC 417** and in ***Depot Manager, A.P. State Road Transport Corporation vs. Mohd. Yousuf Miya & Others*** reported in **(1997) 2 SCC 699** and it was made clear by the Apex Court in ***Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. and Another*** reported in **(1999) 3 SCC 679** holding that no straitjacket formula could be adopted and that the purpose of the proceeding, particularly disciplinary action, is certainly different from the scope of a criminal trial. The Apex Court also made it clear that the very act of a delinquent employee may result in different types of proceedings; such as **Departmental action, Criminal case** and in some instances, Civil case as well.

9. If it is a simple misconduct, as in the case of unauthorised absence or dereliction of duty or using abusive words against superior officers or disobeying the instructions, it may be a matter of 'disciplinary proceedings simplicitor'. The act may also constitute some offence, like assaulting a co-worker or others; when, apart from the instance of misconduct, it involves an 'offence' as well; to be tried by the Criminal Court so as to cause the accused employee to be punished at the instance of the State, which is the scope of the criminal trial. The misconduct may give rise to yet another situation as well; whereby civil proceedings also may be necessary, as in the case of stealthily removing some property or belongings of the Management or an act involving

misappropriation of funds or in causing loss or damage. Such instance, besides warranting disciplinary proceedings for the misconduct committed, may involve an 'offence' to be punished in terms of the relevant provisions of the IPC or such other statute and that apart, because of the loss caused to the employer, it would confer a right upon the employer to recover the 'loss' by way of appropriate steps; in turn giving rise to the Civil proceedings as well. The Apex Court in **Paul Anthony's case** (supra) made it clear that, it is quite open to proceed with all these actions simultaneously and stay of the disciplinary proceedings shall be by an 'exception', only in a circumstance where extreme complexity of facts is involved, which may cause prejudice to the defence of the accused. The Apex Court observed that, Criminal trial may get delayed indefinitely, due to various reasons including complicity of facts, involvement of more number of accused with somebody absconding, completion of procedural formalities in connection with the trial etc. If the delinquent employee is innocent, his innocence with respect to the 'misconduct' has to be established at the earliest and that, this will be in the best interest of the employee as well. The declaration that Departmental proceedings pending Criminal proceedings does not warrant an automatic stay, has been reiterated by the Apex Court in the later judgments as well {**Ram Tawekya Sharma v. State of Bihar & Others**, (2008) 8 SCC 261} Three Member Bench; **Indian Overseas Bank, Anna Salai & Another v. P. Ganesan & Others**, (2008) 1 SCC 650; **Avinash Sadashiv Bhosale (D) Thr. Lrs. v. Union of India & Others**, (2012) 13 SCC 142; **Stanzen Toyotetsu India P. Ltd. (M/s) v. Girish V. & Others**, AIR 2014 SC 989 : (2014) 3 SCC 636; and **State Bank of India & Others v. Neelam Nag**, (AIR 2016 SC 4351 : (2016) 9 SCC 491}.

10. As mentioned already, Annexure P/3 charge-sheet issued to the employee is in the following terms:

“श्री राजेन्द्र कुमार गिलहरे, सहायक ग्रेड—तीन, कार्यलय कलेक्टर (खनिज शाखा) रायपुर, द्वारा 206 नग अभिवहन पास (रायल्टी चुकता पर्ची) एवं फर्जी सील बनाने की कूट रचना एवं जालसाजी की योजना बनाकर कतिपय पट्टेदार एवं सामाग्री प्रदातों (Supplier) को लाभ पहुंचाने में मदद की गई। उनके द्वारा इस कृत्य से शासन को हानि पहुंचाने का प्रयत्न किया तथा उक्त कृत्य से शासन की छवि धूमिल हुई है।

श्री गिलहरे द्वारा छ.ग. सिविल सेवा (आचरण) नियम 1965 के नियम 3(1), (एक) (दो) (तीन) का उल्लंघन किया गया है।”

11. Obviously, this is with reference to the misconduct stated as committed by the employee which is liable to be proceeded with, for violation of Rule 3(1) (i), (ii) and (iii) of the Chhattisgarh Civil Services (Conduct) Rules, 1965 (for short 'the Rules, 1965') for which, enquiry is to be conducted in terms of Rule 14 of the Chhattisgarh Civil Services (Conduct) Rules, 1965. Rule 3 of the Rules, 1965 is extracted below for convenience of reference:

“3. General. - (1) Every Government servant shall at all times:-

(i) maintain absolute integrity;

(ii) maintain devotion to duty; and

(iii) do nothing which is unbecoming of a Government servant.

(2) (i) Every Government servant holding a supervisory post shall take all possible steps to ensure the integrity and devotion to duty of all Government servants for the time being under his control and authority.

(ii) No Government servant shall, in the performance of his official duties or in the exercise of the powers conferred on him, act otherwise than in his best judgment except that when he is acting under the direction of his official superior and shall, where he is acting under such direction, obtain the direction in writing, wherever practicable, and where it is not practicable to obtain the direction in writing, he shall obtain written confirmation of the direction as soon thereafter as possible.

Explanation. - Nothing in clause (ii) of sub-rule (2) shall be construed as empowering the Government servant to evade his responsibilities by seeking instructions from, or approval of, a superior officer or authority when such instructions, are not necessary

under the scheme of distribution of powers and responsibilities.

12. The instance of misconduct stated as committed by the Appellant, though has given rise to registration of a Crime involving the offences under Sections 467, 468, 471, read with Section 120B of IPC, the misconduct committed by the Appellant if failed to maintained absolute integrity [**Rule 3(1)(i)**] or failed to maintain devotion to duty [**Rule 3(1) (ii)**] or failed in doing nothing which is unbecoming of a Government Servant [**Rule 3(1) (iii)**], it could be separately proceeded against, by way of departmental action. The nature and scope of evidence to be adduced in such a departmental enquiry is entirely different from the nature and scope of evidence to be led in the criminal trial. As mentioned above, if the delinquent employee is innocent, his innocence has to be established at the earliest opportunity and he need not live in fear or apprehension as to the fate of his career / service, indefinitely.
13. With regard to the nature of evidence to be adduced, it is settled law that in a criminal trial, it is with intent to punish the guilty by way of imprisonment or fine, or by such other means, as stipulated in the relevant provisions of law; for which the charge levelled against the employee has to be proved beyond reasonable doubt, whereas in the case of disciplinary proceedings, 'preponderance of probability' is enough, to find the delinquent employee guilty of the charges levelled against him. Borrowing the words of Justice V.R. Krishna Iyer, as the then was, in a disciplinary proceedings, there is 'no allergy even to hearsay evidence' as held in ***State of Haryana & Another v. Rattan Singh***, (1982) 111 LLJ 46 SC. Ruling rendered in ***Shri J.D. Jain vs. The management of State Bank of India and another***, 1982 (1) LLJ 54 SC also subscribes to similar view.
14. In the above circumstances, this Court is of the firm view that the idea and understanding of the Appellant as to the scope of the proceedings is thoroughly

wrong and misconceived. We do not find any reason to accede to the prayer for sustaining the challenge.

15. Appeal fails. It is dismissed accordingly.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge