

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.5059 OF 2019

**PRASHANT FULCHAND MAGAR
VERSUS
THE UNION OF INDIA AND OTHERS**

....

**WITH
WRIT PETITION NO.5060 OF 2019**

**RAM NARAYAN YADAV
VERSUS
THE UNION OF INDIA AND OTHERS**

...

**WITH
WRIT PETITION NO.5082 OF 2019**

**BABULAL SAMADHAN DHOKNE
VERSUS
THE UNION OF INDIA AND OTHERS**

...

Advocate for Petitioners : Patil Swapnil S.
A.S.G. Deshpande Sanjeev B. For R No. 1 to 4
Navandar Manish N. for Respondents
Adv.A.B.Dhongade for R.1 to 3 (in WP 5082/19)

**CORAM : S.V.GANGAPURWALA &
MANGESH S. PATIL, JJ.**

DATE : 08/08/2019

PER COURT :

All these petitioners are employees of respondent. The criminal case is filed against the petitioners under the provisions of Section 4 of Railways Property (Unlawful Possession) of Act 1966. At the same time Departmental Enquiry is initiated against these petitioners.

2] The petitioners seek stay to the Departmental Enquiry pending finalization of the criminal case.

3] According to Mr. Navandar, learned counsel for respondents the burden of proof in the criminal case and the Departmental Enquiry is different. Criminal case and Departmental Enquiry can proceed simultaneously. There is no bar to proceed with the Departmental Enquiry pending criminal case. The Departmental Enquiry cannot be suspended indefinitely. The petitioners would not suffer any prejudice.

4] It is not disputed that the charges in the Departmental Enquiry and the criminal case are the same. The star witnesses in both the proceedings would be the same. We have considered such a situation in Writ Petition no.4758 of 2014 and other connected Writ Petitions decided under judgment and order dated 23.09.2015 to which one of us S.V. Gangapurwala, J. was a party. The facts are similar. We have considered the judgment of the Apex Court in the case of **Captain M.Paul Anthony Versus Bharat Gold Mines Ltd. reported in 1999 (3) SCC 679** so also judgment of the Apex Court in the case of **G.M.Tank Versus State of Gujarat and others reported in 2006 (5) SCC 446** and in the case of **Indian Overseas Bank Anna Salai and Anr. Versus P.Ganesan and others reported in 2008 AIR (SC) 553.**

5] Considering the aforesaid aspects of the matter we adopt the same course, however the Departmental Enquiry cannot be kept pending for indefinite period. We have to balance the equities. In view of that we pass the following order:

I] We direct the Court dealing with the criminal charges against the petitioners to conclude the proceedings as expeditiously as possible, and preferably within a period of one year from the date of this order.

II] The Departmental Enquiry shall remain stayed for a period of one year or till the completion of the criminal proceedings filed against petitioners whichever is earlier.

III] In case the charge sheet is not filed or belatedly filed, the interim orders granting stay to the ongoing disciplinary proceedings in such case shall remain in force for a period of one year from the date of this order and the disciplinary proceedings initiated against the petitioners in those cases shall be resumed and concluded by the Enquiry Officer thereafter.

IV] We hope and trust that the trial Court will take effective steps to ensure that the witnesses are served, appeared and examined accordingly.

V] The petitioners, who are accused in criminal case, shall cooperate with the trial Court for early disposal of criminal proceedings.

VI] In case, the trial is not completed within a period of one year from today, despite the steps which the trial Court has been directed to take, the disciplinary proceedings, initiated against the petitioners, shall be resumed and concluded by the Enquiry Officer.

VII] We make it clear that the interim orders staying ongoing disciplinary proceedings shall in that case stand vacated upon expiry of a period of one year from the date of this order.

VIII] Registry may communicate this order to the concerned Courts, where the criminal prosecutions against the petitioners are pending.

6] Writ Petitions are disposed of. No costs.

(MANGESH S. PATIL,J.)

(S.V.GANGAPURWALA,J.)

umg/