IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2019

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.No.2410 of 2019
and
WMP.No.2656 of 2019

S.Anandan ... Petitioner

Versus

Indian Overseas Bank,
Rep. by its Chief Manager,
Personal Administration Department,
Central Office, No.762, Anna Salai,
Chennai - 600 002. ... Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, call for the records of the respondent in proceedings No.DO/CBI/CM(RP)3509-2015-16 dated 14.08.2015 and DO.DA.CM(SR) VIG 213.467/2018-19, dated 25.05.2018 and all other further proceedings pertaining there to quash the same and consequently direct the respondents to superannuate the petitioner from 30.09.2015 to pay all the terminal benefits which the petitioner is entitled to and pass such orders.

For Petitioner : Mrs.Kalyani Kailasam

For Respondents : Mr.N.G.R.Prasad

O R D E R

The order of suspension dated 14.08.2015 and the charge sheet filed against the writ petitioner in proceedings dated 25.05.2018 are under challenge in the present writ petition.

2. The writ petitioner was employed as Clerk assigned with SA duties in Indian Overseas Bank, Arumbakkam Branch, Chennai. On account of the complaint of demand and acceptance of bribe, a criminal case was registered against the writ petitioner by CBI - Anti-Corruption Branch, Chennai under Sections 120-B r/w 420, 468, 471 of IPC and under Sections 7 and 13 (2) r/w (1)(d) of Prevention of Corruption Act 1998.

3. The criminal case is pending against the writ petitioner, meanwhile, the writ petitioner is placed under suspension on the ground that the criminal case was

registered against him. Subsequently, the charge sheet was issued against the writ petitioner in proceeding dated 25.05.2018. The learned counsel for the writ petitioner states that there is a delay in issuing the charge sheet itself. The respondent states that in view of the fact that the writ petitioner has attained the age of superannuation and in order to facilitate the disciplinary authority to continue the proceedings in accordance with the rules, charge sheet has been issued.

4. The charges against the writ petitioner are reads as under:-

"Statement of Allegations:

Our Bank issued a circular No.EST/71/2010-11 dated 23.03.2011 for the absorption of temporary messengers/sweepers who were working in permanent vacancies subject to the eligibility criteria's mentinoed there in . The absorption scheme was introduced by the bank as per the agreement dated 17.02.2011 entered into with the AIOBE Union.

1) During the above absorption process, one Mr.Ravichandran was absorbed as a Sweeper and posted in Besant Nagar Branch with Roll No.22961. Later it came to light that the educational qualification given in the application dated 06.04.2011was fabricated one. Mr.Ravichandran did not have the requisite age/educational qualification to be a suitable candidate as per the scheme of absorption in terms of IR Department, CO Circular dated 23.03.2011. By taking advantage of your position as Assistant General Secretary of the AIOBU and knowing well that the member was an ineligible, you had arranged for submission of the said false educational / TC certificate as if he is eligible for sweeper post. For securing his absorption in the service of the Bank, you had demanded and accepted a illegal gratification of Rs.30,000/- on behalf of the Union office bearers.

Later on, vide order dated 15.02.2013, Mr.Ravichandran was terminated from the service of the Bank for submitting fabricated TC.

2) You had arranged for absorption of the following candidates who were ineligible for absorption and finally they were terminated from the services of the Bank for submitting fabricated educational/service certificate. The names of few such candidates are as below:

S.No	Name	Roll.No	Category	Terminated
1	M.Parvathy	23230	Sweeper	15.12.2013
2	M.Indira	23172	Sweeper	21.01.2014
3	B.Saraswathi	23001	Sweeper	02.04.2013
4	S.Shanthi	23084	Sweeper	02.04.2013
5	P.Vijaya	22962	Sweeper	21.01.2014

3) During the above absorption process, one Mr.Nagarajan was absorbed as a Sweeper and posted to Eekatttuthangal Branch with Roll.No.23023. Later it came to

light that the educational qualification given in the application was fabricated one Mr.Nagarajan did not have the requisite age/educational qualification to be a suitable candidate as per the scheme of absorption in terms of IR Department, CO circular dated 23.03.2011. By taking advantage of your position as Assistant General Secretary of the AIOBEU and knowing well that the member was an ineligible, you had arranged for submission of the said false educational/TC certificate as if he is eligible for sweeper post. For securing his absorption in the service of the Bank, you had demanded and accepted a illegal gratification of Rs.25,000/- on behalf of the Union office bearers. Later on, vide order dated 21.01.2014, Mr.Nagarajan was terminated from the service of the Bank for submitting fabricated TC.

4) Similarly, you had arranged for absorption of Ms.M.Indira, (Roll No.23172) Ms.B.Saraswathi, (Roll No.23001), Ms.S.Shanthi, (Roll.No.23084), Mr.P.Vijaya (Roll.No.22692) and Ms.Parvathy (Roll. No.23230), who were otherwise ineligible. Later on they were terminated from the service of the Bank. Thus, you had acted in a manner prejudicial to the interest of the Bank.

5) During the above absorption process, you had demanded and accepted bribe from the following candidates for their absorption who were ineligible for absorption.

S.No	Name	Dsignation	Amount (Rs.)
1	A Karthich (R.No.46742)	Messenger	1,50,000
2	Raman Kuttyl (R.No.46878)	Messenger	1,25,000
3	B Thiyagarajan (R.No.47242)	Messenger	2,00,000
4	N Sivakumaran (R.No.47247)	Messenger	2,00,000 with 8 gms gold coin
5	G Malakondiah (R.No.22965)	Sweeper	35,000
6	C Vijayakumar (R.No.23203)	Sweeper	25,000 with 4 gms gold ring
7	M Parvathy (R.No.23230)	Sweeper	25,000
8	A Nagarajan (R.No.23023)	Sweeper	25,000
9	K Raja		30,000
10	S Davamani (R.No.23030)	Sweeper	35,000

6) The Central Bureau of Investigation (CBI)-ACB, Chennai had registered a criminal case under Sections 120-B r/w 420,468,471 IPC and under Section 7,13(2) r/w 13(1)(d) under the Prevention of Corruption Act 1988, vide their FIR No.RC.MA 1 2015 A 0030 dated 30.07.2015 for offences involving moral turpitude. You had acted in a manner of unbecoming of an Bank employee. The irregularities in the absorption of temporary messengers and sweepers and the

arrest of union leaders were published in Newspapers and magazine. As you were a part of the regularities, in as much as a case was registered by CBI, ACB, Chennai you had brought disrepute to the name of Bank and tarnished the image of the Bank before the general public."

5. On a perusal of the allegations set out in the charge sheet, undoubtedly, it is serious and relating to the corrupt practices. This apart, the writ petitioner had already reached the age of superannuation and under these circumstances, this Court cannot allowed the writ petitioner to retire from service by revoking the order of suspension, as the consequences would be the bank has to settle the terminal and retirement benefits. In the event of pending of criminal case, more specifically, in relation to the corruption allegations and if the employee is placed under suspension, the said suspension cannot be revoked and only after the disposal of the criminal proceedings as well as the departmental disciplinary proceedings, appropriate orders shall be passed in this regard by the Competent Authorities.

6. The grounds raised in respect of the merits cannot be adjudicated in the present writ petition, as the complex, facts and circumstances are ought to be adjudicated by producing documents and adducing evidences if required before the Competent Authorities. Such an exercise can never be done by this Court in the present writ petition. It is left open to the writ petitioner to submit his explanation/objection and establish his innocence or otherwise by producing documents and adducing evidences.

7. This being the procedures to be followed, this Court is of an opinion that, the entire charge sheet cannot be quashed on the ground that there is a delay in issuing the charge sheet. Undoubtedly, the departmental disciplinary proceedings were initiated against the writ petitioner during the year 2015 itself and a criminal case was registered against him under the provisions of Prevention of Corruption Act.

8. Thus, this Court is of an opinion that the delay may not be of any avail to the writ petitioner for the purpose of quashing the entire charge sheet. The other question raised is that whether the right of the writ petitioner would be prejudiced in the event of concluding the departmental disciplinary proceedings. The nature of the departmental disciplinary proceedings are entirely different and the criminal trial is no way connected with the departmental disciplinary proceedings. This apart, the moral turpitude or preponderance of probabilities are sufficient to punish an employee under the Discipline and Appeal Rules. Taking in to account, the service records and the allegations of misconduct now sett out with the writ

petitioner. However, trial in a criminal case stands in a different footing. Thus, there cannot be any comparison of the departmental disciplinary proceedings as well as the criminal trial. The allegations against the writ petitioner is corruption.

9. The employees who all are involved in such allegations are bound to establish their innocence or otherwise by participating in the departmental disciplinary proceedings as well as by facing the trial. Contrarily, they are adopting a tactics to protract and prolong the issues, in order to frustrate the proceeding one way or other and finally take an attempt to escape from the clutches of law. This being the practice which is noticed by the Constitutional Courts frequently, the Courts are of the opinion that all such proceedings initiated ought to be continued simultaneously and the decision is to be taken based on the records available and by examining the witnesses by affording opportunity to the delinquent official.

10. Corruption is a social evil and spreading like a cancer in our great Nation. The public servants involved in corrupt activities ought to be dealt with iron hand and iron heart. There cannot be any leniency or otherwise in respect of dealing with the corruption cases. Both the criminal court of law as well as the departmental disciplinary proceedings are bound to be vigilant and strict in dealing with all such cases of corruption. People at large are totally frustrated in respect of such corrupt activities of the public servants.

11. When such corruption activities are experienced by the common man day in and day out, the Competent Authorities are bound to initiate serious steps in controlling such corrupt activities by surprise inspections and the vigilance officers of the Department would also conduct surprise inspection, gather materials and prosecute all those corrupt officials who all are in service for long years and tarnishing the image of the Government as well as causing disrepute to the institution itself.

12. Government servants play a significant role in running the administration of our great Nation. They are important constituents of the administrative setup of the Nation. They are pillars of the Government Departments on whose shoulders the responsibility to implement the Government policies lies. They provide public services to the citizens at the grass root level and in the same way, they forward grievances of the public, their representations and demands to the higher for their effective resolution. The Government employees have different work culture and responsibilities as compared to the counterparts in private sector. They are smartly played and they have some kind of perquisites given to them, but at the same time, they have heavy responsibilities to the

Government in particular and public in general.

13. However, when the Government servants deviate from the established Rule of Conduct, departmental disciplinary proceedings would be initiated. It is the need of the our to analyze whether conducting departmental disciplinary proceedings and criminal proceedings would amount to double jeopardy or such simultaneous proceedings are to be continued simultaneously. The Departmental Authorities are free to exercise such lawful powers as on confirmed by them by the departmental proceeding Rules and Regulations.

14. In the case of Sri Bhagwan Ram v. The State of Jharkand, State of Bihar and others(2017), it is well-settled that a domestic enquiry and a criminal trial can proceed simultaneously and the decision in the criminal case would not materially affect the outcome of the domestic enquiry. The nature of both the proceedings and the test applied to reach a final conclusion in the matter, are entirely different.

15. In the case of Dr.Bharathi Pandey-Deputy General Manager V. Union of India[Special Civil Application No.15602 of 2013], the Apex Court held that it is clear that the departmental inquiry proceedings in every case need not be stayed till the criminal proceedings against the petitioner are concluded. It may be done in case of grave nature involving complicated questions of facts and law. The advisability and desirability has to be determined considering facts of each case.

16. In the case of Ajith Kumar Das v. Union of India and Others[W.P.(C) NO.4036 of 2017], the Court held that the departmental enquiry is to maintain discipline in 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 guideline as inflexible rules in which the departmental proceeding may or may not be stayed pending trial in criminal case against the delinquent officer. There would be no bar to proceed simultaneously with the departmental proceeding and trial of a criminal case unless the charge in a criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public as distinguished from mere private right punishable under criminal law, when trial for criminal offence is conducted it should be in accordance with the proof of offence as per the evidence defined under the provisions of the evidence act. Converse in the case of departmental enquiry in a departmental proceeding relates to conduct of breach of duty of the delinquent officer who punish him for his misconduct defined under the relevant statute/rule or law that strict standard of rule or applicability of Evidence Act stands excluded in a settled legal position.

17. In the case of Avinash Sadashiv Bhosale v. Union of India[(2012) 13 SCC 142], the Court held that there is no legal bar for both proceedings to go on simultaneously. 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 question of fact and law. 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.

18. The Supreme Court in the case of Karnataka State Road Transport Corporation v. M.G.Vittal Rao[(2012) 1 SCC 442] gave a timely reminder of the principles that are applicable in such situations succinctly summed up in the following words:

(i) There is no legal bar for both proceedings to go on simultaneously.

(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) 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.

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

19. In the case of NOIDA Entrepreneur Association v. NOIDA and the others[JT 2001 (2) SC 620], the Court held that the standard of proof and nature of evidence in the departmental inquiry is not the same as in criminal case. The purpose of departmental enquiry and of prosecution is two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty the offended 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.

20. In the case of State Bank of India & Ors. Versus R.B.Sharma, [AIR 2004 SC 4144], the Hon'ble Supreme Court reiterated observing that both proceedings can be held simultaneously. It held, #the purpose of departmental inquiry and of prosecution is to put a distinct aspect. Criminal prosecution is launched for an offence for violation of 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 a public duty. The departmental inquiry is to maintain discipline in the service and efficiency of public service.#

21. In the case of Ajith Kumar Nag v. General Manager (PJ), Indian Oil Corporation Ltd., Haldia[2005-7-SCC-764], the Honourable Apex Court considered the issue of validity of conducting departmental proceeding when the criminal case was pending against the official and held as follows:

Acquittal by a criminal court would not debar an employer from exercising power in accordance with 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 offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with service Rules. 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 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'.

22. In the case of West Bokaro Colliery(Tisco Ltd.) v. Ram Parvesh Singh(2008) 3 SCC 729, the Hon'ble Supreme Court has held in the case of that since standard of proof required in criminal case are beyond reasonable doubt and what is required in departmental inquiry is only of finding the guilt on the basis of preponderance of probability, there is no bar in continuing both simultaneously.

23. In the case of S.A.Venkatraman v. Union of India, AIR 1954, SC 375 it has been held by the Supreme Court that taking recourse to both, does not amount to double jeopardy.

1. In Stanzen Toyotetsu India Private Limited v. Girish V. And Other (2014) 3 SCC 636. It was held that 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 advisable course in cases where the criminal charge against the employee is grave and continuance of the disciplinary proceedings is likely to plagiarize their defence before the criminal court.

2. The Supreme Court in State of Rajasthan v. B.K.Meena and Others (1996) 6 SCC 417 held 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.

Therefore, stay of disciplinary proceedings cannot be, and should not be, a matter of recourse.

3. It is also to note that acquittal in criminal proceedings on the same set of charges, per se, does not entitle the delinquent to claim immunity from disciplinary proceedings, as observed by the Supreme Court in the case of C.M.D.U.C.O. vs. P.C.Kakkar, AIR 2003 SC 1571. In the same way, departmental proceedings may be continued even after retirement of the employee. (U.P.S.S.Corp.Ltd. vs. K.S.Tandon, AIR 2008 SC 1235)

24. Considering the above judgments, this Court is of the firm opinion that the procedure for taking disciplinary action against a Government servant is lengthy and detailed one, giving maximum opportunity to the government servant to prove his innocence. A Government employee is expected to perform his duties with utmost diligence, efficiency, economy and effectiveness. The Government procedures are lengthy in order to ensure that the Government employees perform their responsibilities without any pressure or exterior considerations. However, at the same time, it ensures discipline amongst the employees and shows the door to the employees who have become dead wood and do not perform as per expectations of public in general and his department in particular. Disciplinary proceeding are conducted to ensure that the morale of the employees as a whole is boosted. It ought to be noted that criminal proceedings will last for years and this can lead to loss of evidences and thereby staying departmental disciplinary proceedings from being conducted simultaneously would lead to gross miscarriage of justice. Also, it is pertinent to note the fact that the object of such departmental proceedings is not to penalise but to assist in restoring the morale of Government servants. Thus, it is of utmost importance that the Court has to strike a balance between the need for a fair trial to the accused on one hand and the competing demand for an expeditious conclusion of the ongoing disciplinary proceedings on the other which will not have any adverse impact if is conducted simultaneously.

25. In view of the fact that the present writ petition is in relation to the allegations of corruption against the writ petitioner. This Court is of an opinion that the writ petitioner has to face both the departmental disciplinary

proceedings as well as the criminal trial. The departmental disciplinary proceedings has already been initiated by the Competent Authorities and the very enquiry notice issued to the writ petitioner itself is under challenged in the present writ petition.

26. Thus, the respondents are at liberty to proceed with the departmental disciplinary proceedings by affording opportunity to the delinquent official in the manner prescribed and conclude the same and pass final orders in the departmental disciplinary proceedings as expeditiously as possible and without causing any undue delay. The writ petitioner is directed to cooperate for the conclusion of the enquiry proceeding in all respects and in the event of non-cooperation on the part of the writ petitioner, the same shall be recorded by the Enquiry Officer as well as by the Disciplinary Authority.

27. In view of the discussions made in the afore mentioned paragraphs, the writ petitioner has not made out any acceptable legal ground for the purpose of considering the relief as such sought for in the present writ petition.

28. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

The Chief Manager,
Indian Overseas Bank,
Personal Administration Department,
Central Office, No.762, Anna Salai,
Chennai - 600 002.

+1cc to Mr.A.V.Bharathi, Advocate SR.No. 17102
+1cc to Mr.N.G.R.Prasad , Advocate SR.No. 17825

W.P.No.2410 of 2019

A.SK(22/03/2019)