

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2019

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No. 20067 of 2018
and

W.M.P.No.23528 of 2018

S. Gurusamy

...Petitioner

Vs.

1. Principle Chief Security Commissioner,
Office of the Railway Protection Force,
Moore Market Complex, 6th Floor,
Chennai -3.
2. Senior Divisional Security Commissioner,
Office of the Railway Protection Force,
NGO Building, 5th Floor, Chennai-3
3. The Assistant Security Commissioner,
Office of the Railway Protection Force,
Arakonam Railway Station,
Arakonam/Chennai Division.
4. T. Selvaraj, (Enquiry Officer)
Post commander,
Railway Protection Force Post,
Katpadi/Chennai Division.

.... Respondents

Prayer: The writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to quash the impugned order No.M/XP.227/02/AJJ/03/2012-18 dated 10.07.2018 and direct the respondents to drop the DAR enquiry against the Petitioner.

For Petitioner : Mr.A.V.Somasundaram

For Respondents

No.1 to 3 : Mr.P.T.Ramkumar

For Respondent
No.4 : No Appearance

O R D E R

The challenge made in the present writ petition is to the enquiry notice issued to the writ petitioner in proceedings No.M/XP.227/02/AJJ/03/2012-18 dated 10.07.2018, by the 3rd respondent, directing the petitioner to attend the enquiry till it reaches its logical conclusion.

2. The learned counsel for the writ petitioner states that in respect of the similar set of allegations, a criminal case was registered against the writ petitioner under the Prevention of Corruption Act, 1988 before the learned VIII Principal Special Judge for CBI case at Chennai, in C.C.No.21 of 2012. The writ petitioner was acquitted from the criminal charges. Thus, the department cannot proceed against the writ petitioner in respect of same set of allegations.

3. The learned counsel for the writ petitioner further submitted that the witness and the evidence relied upon by the department before the Criminal Court of law as well as in the Departmental Proceedings are one and the same and therefore, the petitioner cannot be subjected to the Discipline and Appeal rules. At the out set, it is contended that when the person is acquitted from the Criminal Court, he cannot again be imposed with the punishment under the Discipline and Appeal Rules.

4. This Court is of the considered opinion that the legal principles in this regard are already settled. There is no bar for the Departmental authority to proceed with the enquiry. Even in cases where the Public Servant is acquitted in a criminal case, more particularly, in a criminal case, the same would not exonerate the Government Employee from the Departmental Disciplinary proceedings. To convict a person under the Criminal Law, strict and high standard of proof is required.

5. Further, no such strict proof is required to punish a person under the Discipline and Appeal rules. Thus, the procedures to be followed both in the Criminal proceedings as well as departmental proceedings are distinct and different.

6. This apart preponderance of probabilities are enough to put the person under the Discipline and Appeal rules. Even moral Turpitude is a ground to impose the punishment under Conduct rules. Thus, being the difference between and Department proceedings and the Criminal case, mere acquittal in a criminal

case, would not confer any right to exonerate from the Departmental Disciplinary Proceedings.

7. The disciplinary authority is empowered to conduct the disciplinary proceedings based on the documents available and based on the witnesses or materials on record and the writ petitioner is bound to participate in the process of enquiry.

8. Contrary to the claim of the writ petitioner to drop the Departmental enquiry based on the order of acquittal, issued by the Criminal Court of law by extending the benefit of doubt cannot be considered at all. The Criminal Court of law grants the writ petitioner the benefit of doubt and such benefit of doubt granted in favour of the accused will not be a ground to seek exemption from the Departmental Disciplinary Proceedings.

9. In the present case on hand, the claim of the writ petitioner is that the entire Departmental disciplinary proceedings ought to be kept in abeyance, in view of the fact that the Criminal case is pending. In other words similar proceedings are impermissible in law.

10. In the case of Sri Bhagwan Ram v. The State of Jharkhand, 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.

11. 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.

12. 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.

13. 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.

14. 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".

15. 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.

16. 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."

17. 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'.

18. 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.

19. 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)

20. 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.

21. Therefore, the argument as advanced by the writ petitioner deserves no merit and consideration. Thus, it is left open to the writ petitioner to participate in the Departmental Disciplinary proceedings and the respondents should ensure that such proceedings are conducted and concluded as expeditiously as possible without causing any delay. Accordingly, this writ petition stands dismissed. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Principle Chief Security Commissioner,
Office of the Railway Protection Force,
Moore Market Complex, 6th Floor, Chennai -3.
2. The Senior Divisional Security Commissioner,
Office of the Railway Protection Force,
NGO Building, 5th Floor, Chennai-3
3. The Assistant Security Commissioner,
Office of the Railway Protection Force,
Arakonam Railway Station,
Arakonam/Chennai Division.

4. The Post commander,
Railway Protection Force Post,
Katpadi/Chennai Division.

+1cc to Mr.A.V.Somasundaram, Advocate, SR.No.36073

+1cc to Mr. P.T.Ramkumar, Advocate SR.No. 36209 (20/08/2019)

W.P.No. 20067 of 2018
and

W.M.P.No.23528 of 2018

Kak(20/06/2019)



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