

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2019

CORAM

THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No.20708 of 2018

and

WMP.No.24332 of 2018

P.Lokesh Kumar

...Petitioner

vs

1. The Deputy Director General (South),
Bureau of Indian Standards,
Southern Regional Office,
CIT Campus, Taramani,
Chennai - 113.
2. The Inquiry Officer/Regional Hallmarking
Officer (South),
Bureau of Indian Standards,
Southern Regional Office,
CIT Campus, Taramani,
Chennai - 113.

....Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ or order or orders or direction particularly in the nature of Writ of Mandamus, to forbear the respondents from proceeding with the disciplinary proceedings in SRO/Admn/029394 dated 07.09.2017 u/r 14 of CCS Rules initiated against the petitioner till the conclusion of the criminal case in Cr.No.320 of 2013 on the file of Royapuram PS, Chennai on account of similar charges and allegations made in both proceedings.

For Petitioner : Mr.S.Sivakumar

For Respondents : Mr.Karthik Sundaram

O R D E R

The relief sought for in the present writ petition is to forbear the respondents from proceeding with the disciplinary proceedings in SRO/Admn/029394 dated 07.09.2017 u/r 14 of CCS Rules initiated against the petitioner till the conclusion of

the criminal case in Cr.No.320 of 2013 on the file of Royapuram PS, Chennai on account of similar charges and allegations made in both proceedings.

2. The learned counsel for the writ petitioner states that, the writ petitioner entered into the service of the respondent as Helper during the year 1984 and subsequently, promoted to the post of Senior Helper in the year 1990. Thereafter, the writ petitioner was further promoted to the post of Attendant during the year 2000. On account of certain allegations, a criminal case has been registered against the writ petitioner in Crime Number.320 of 2013, on the file of Royapuram P.S.Chennai for the alleged offence under Section 420 of the Indian Penal Code. Based on the criminal case, the writ petitioner was arrested and remanded to judicial custody and thereafter, released on bail after 21 days. The writ petitioner was placed under suspension in proceeding dated 21.03.2013, by the respondent under Sub-rule (2) of Rule 10 of the CCS (CC&A) Rules.

3. The learned counsel appearing on behalf of the writ petitioner states that, simultaneous proceedings are impermissible, in view of the fact that, the allegations both in the criminal case as well as in the departmental disciplinary proceedings are one and the same. Thus, the departmental disciplinary proceedings are to be kept in abeyance. Based on the said ground, the present writ petition is filed.

4. The charges framed against the writ petitioner are extracted hereunder:-

"ARTICLE-I

That the said Shri P. Lokesh Kumar, while working as Attendant in BNBO was arrested by Chennai Police on 18th March 2013, after an FIR was filed against him for the alleged offences of cheating the public by luring them with Job in Bureau of Indian standards and receive huge sum of money totally Rs. 60 lakhs whereby the aggrieved persons lodged complaint before police and accordingly was imprisoned and confined to Jail for 21 days. The case is now pending on the file of Central Crime Branch, Egmore, Chennai-8.

By having actively involved in the above-said act Shri P. Lokesh Kumar has failed to maintain the absolute integrity and acted in a manner which is unbecoming of a Government servant, which is in violation of Rule 3 (1) (i) & (iii) of the CCS (Conduct), Rules, 1964.

ARTICLE-II

That the said Shri P. Lokesh Kumar was placed under suspension on 21.03.2013. While under suspension he did not comply with the specific condition that he shall always stay at the HQ at Bangalore and whereas it is found that in the Petition filed by him before Central Administrative Tribunal in O.A.No: 82 of 2015 he has shown his address as "No.05/3, Neithal Street,, MGR Nagar, Chennai-78. Further, Shri.P.Lokesh Kumar in his letter dated 05.09.2015, addressed to Deputy Director General South wherein he sought for modification of clauses and phrases in the Affidavit which he was directed to furnish had clearly mentioned his address as "No.05/3, Neithal Street, MGR Nagar, Chennai-78. Thus it is demonstrable by his own admission that he never stays at HQ i.e. Bangalore and is staying only at Chennai all along.

By the above-said act Shri P. Lokesh Kumar who has violated the condition imposed on him to stay at Head quarters(Bangalore) while suspending him from service, failed to maintain absolute integrity and acted in a manner which is unbecoming of a Government servant, which is in violation of Rule 3 (1) (i) & (iii) of the CCS (Conduct), Rules, 1964."

5. Annexure-II provides statement of imputation of misconduct in support of Articles of charges framed against the writ petitioner. Annexure-III to the charge memo also provides statement of imputation of misconduct. Annexure-IV enumerates the list of documents relied on by the respondents.

6. On a perusal of the charge memorandum, this Court is of the considered opinion that, the enquiry can be proceeded with. Mere pendency of the criminal case is not a bar for the continuance of the departmental disciplinary proceedings. Even in case, the allegations are one and the same, the Competent Authorities has to take a decision, whether the documents and materials are available with the disciplinary proceedings so as to continue the departmental disciplinary proceedings. In the event of availability of the materials to establish the allegations, then the Disciplinary Authority is at liberty to proceed with the departmental disciplinary proceedings. Only if the Authorities of the opinion that, no materials are available on record to continue the departmental disciplinary proceedings, then they have to take a decision to keep the departmental

disciplinary proceedings in abeyance till the final disposal of the criminal case.

7. Thus, in all the cases, wherever the allegations both in the departmental disciplinary proceedings and the criminal case are one and the same, it is not necessary that, the departmental disciplinary proceedings should be kept in abeyance till the final disposal of the criminal case. It is always preferable to conclude the departmental disciplinary proceedings if materials are available to establish the allegations. To convict a person under criminal law, high standard of proof is required. However, no such strict proof is required to punish the employee under the Discipline and Appeal Rules. Thus, the standard of proof required for the departmental disciplinary proceedings and criminal case are distinct and different. This apart, the procedures to be followed for conducting a trial and to conduct an enquiry in departmental disciplinary proceedings are also distinct and different.

8. Thus, the departmental disciplinary proceedings and criminal proceedings can never be compared with and the preponderance of possibilities are enough to punish an employee under the Discipline and Appeal Rules. This being the different procedures to be adopted, mere pendency of a criminal case is not a bar for the continuance of the departmental disciplinary proceedings.

9. The disciplinary proceedings initiated against the writ petitioner shall be allowed to be concluded in all respects and all such proceedings should reach its logical conclusion. Intermittent intervention in disciplinary proceedings are to be exercised cautiously and the judicial review in this regard are certainly limited and the Courts have to exercise the judicial review only on exceptional circumstances in disciplinary proceedings, more-so, when the allegations are relating to corruption.

10. Government servants play a significant role in running the administration of the country. They are important constituents of the administrative set up 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 higher ups for their effective resolution. The Government employees have different work culture and responsibilities as compared to their counterparts in private sector. They are smartly paid and have some kind of perquisites given to them but at the same time, they have heavy responsibilities towards the Government in

particular and public in general. However, when the Government servants deviate from the established rules of conduct, the departmental disciplinary proceedings will be initiated. It is the need of the hour to analyse whether conducting departmental proceedings and criminal proceedings would amount to double jeopardy or such simultaneous proceedings are to be continued simultaneously.

11. The departmental authorities are free to exercise such lawful powers as are conferred on them by the departmental rules and regulations.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.”

17. 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.

18. 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.#

19. 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'.

20. 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.

21. 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)

22. 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 it is conducted simultaneously.

23. In view of the fact that, the departmental disciplinary proceedings are kept on account of the interim order granted in the present writ petition, this Court is of the considered opinion that, the charges now framed against the writ petitioner is capable of being provided with and it is left open to the writ petitioner to participate in the departmental disciplinary proceedings and establish his innocence or otherwise, by producing document and by adducing evidences if required.

24. Contrarily, the departmental disciplinary proceedings cannot be prolonged or protracted, by raising an objection that till the criminal case is disposed of, no departmental disciplinary proceedings should be continued. It may take long time for the disposal of a criminal case. Thus, the idea of delinquents in normal circumstances are to prolong the matter, so as to escape from the clutches of the departmental disciplinary proceedings. Such an attitude of the delinquent employee can never be encouraged by the Courts. If the Disciplinary Authorities are in possession of relevant materials, then they must be allowed to continue the departmental disciplinary proceedings, conclude the same and pass final orders on merits and in accordance with law.

25. As far as the grievances of the writ petitioner regarding the non-payment of subsistence allowance, the same shall be redressed by the Competent Authority by paying the subsistence allowance as admissible under the Rules. With these observations, the writ petition stands dismissed. No Costs. Consequently, connected miscellaneous writ petition is closed.

Sd/-
Assistant Registrar (CS-VIII)

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Sub Assistant Registrar

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To

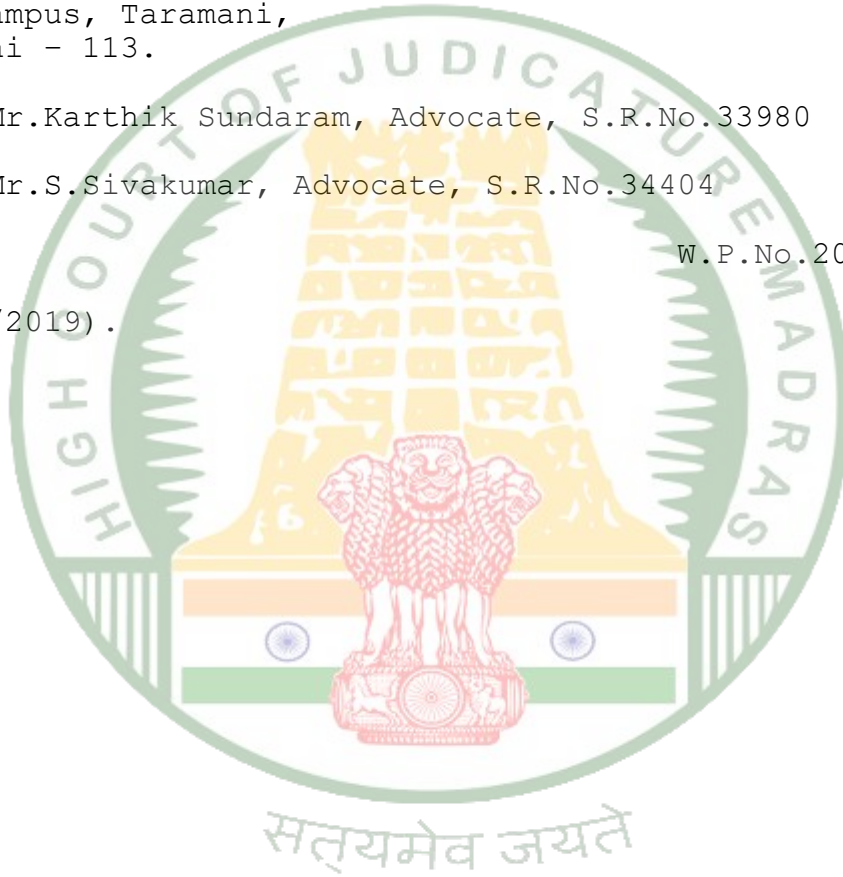
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Officer (South),
Bureau of Indian Standards,
Southern Regional Office,
CIT Campus, Taramani,
Chennai - 113.

+1 cc to Mr.Karthik Sundaram, Advocate, S.R.No.33980

+1 cc to Mr.S.Sivakumar, Advocate, S.R.No.34404

W.P.No.20708 of 2018

SKV(CO)
SSM(08/05/2019).



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