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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.07.2019

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THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

W.P(MD) Nos.18934 of 2013

and

M.P(MD) Nos.1 of 2013 & 1 of 2014

and

W.P(MD) No.8335 of 2014

and

M.P(MD) No.1 of 2014

W.P(MD) No.18934 of 2013

T.Selvaraj

... Petitioner

Vs

1.The Divisional Security Commissioner,
Railway Protection Force,
Thiruvananthapuram Division,
Southern Railway, Thiruvananthapuram.

2.The Assistant Security Commissioner,
Railway Protection Force,
Palghat Division, Southern Railway,
Palghat, Kerala.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents to keep the disciplinary proceedings in abeyance initiated by the first respondent in No.VXP/153/04/13 dated 10.09.2013 till the disposal of the criminal case registered against the petitioner in Cr.No.627 of 2013, dated 16.09.2013 on the file of the Kottar Police Station, Kanyakumari District.

W.P(MD) No.8335 of 2014

T.Selvaraj

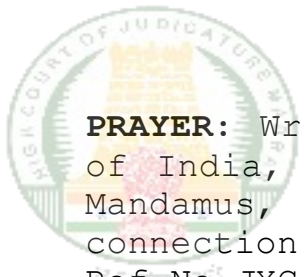
... Petitioner

Vs

1.The Divisional Security Commissioner,
Railway Protection Force,
Thiruvananthapuram Division,
Southern Railway, Thiruvananthapuram.

2.The Assistant Security Commissioner/
PGT & Enquiry Officer @ NCJ
Railway Protection Force,
Palghat Division, Southern Railway,
Palghat, Kerala.

... Respondents



PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records of the second respondent in connection with the impugned orders passed by him in Ref.No.JXC/NCJ-DAR/ASC/2014 dated 14.05.2014 and quash the same and direct the respondents to keep the disciplinary proceedings in abeyance initiated by the first respondent in No.VXP/153/04/13 dated 10.09.2013 till the disposal of the criminal case registered against the petitioner in Cr.No.627 of 2013 dated 16.09.2013 on the file of the Kottar Police Station, Kanyakumari District.

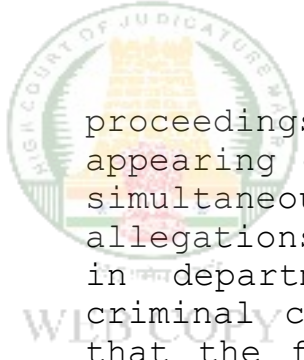
For Petitioner : Mr.K.Venkataramani
Senior counsel
in both petitions for Mr.T.Ayngaraprabhu
For Respondents : Mr.S.Manohar
in both petitions

COMMON ORDER

The relief sought for in W.P.(MD)No.18934 of 2013 is to direct the respondents to keep the disciplinary proceedings in abeyance initiated by the first respondent in No.VXP/153/04/13 dated 10.09.2013 till the disposal of the criminal case registered against the petitioner in Cr.No.627 of 2013, dated 16.09.2013 on the file of the Kottar Police Station, Kanyakumari District.

2.In W.P(MD)No.8335 of 2014 was filed to call for the records of the second respondent in connection with the impugned orders passed by him in Ref.No.JXC/NCJ-DAR/ASC/2014 dated 14.05.2014 and quash the same and direct the respondents to keep the disciplinary proceedings in abeyance initiated by the first respondent in No.VXP/153/04/13 dated 10.09.2013 till the disposal of the criminal case registered against the petitioner in Cr.No.627 of 2013 dated 16.09.2013 on the file of the Kottar Police Station, Kanyakumari District.

3.The facts in nutshell to be considered for the purpose of deciding the two writ petitions are that the writ petitioner was appointed as Sub-Inspector in the Railway Protection Force, Southern Railway and subsequently, promoted to the rank of Assistant Security Commissioner and promotion order was issued by the Railway Board vide L.No.2013/SEC(E)/PM-2/1 dated 12.08.2003, but he was not relieved by the Administration in view of the order of suspension issued against him. The writ petitioner was placed under suspension on 20.08.2013, based on the fact that the criminal case was registered against the writ petitioner in Cr.No.200 of 2013 under Section 403 of IPC on 20.08.2013.



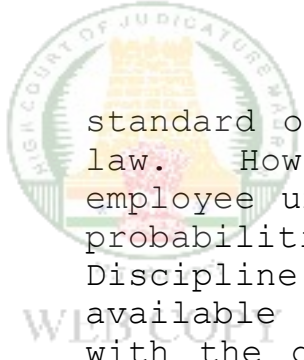
proceedings are also commenced. The learned Senior Counsel appearing on behalf of the writ petitioner made a submission that simultaneous proceedings are impermissible. The nature of the allegations, documents relied upon as well as the witnesses both in departmental disciplinary proceedings as well as in the criminal charges are one and the same. It is further contended that the facts and circumstances are also similar and therefore, the departmental disciplinary proceedings are to be kept in abeyance till the final disposal of the criminal case. It is relevant to extract the charges against the writ petitioner.

"Charge: On 19.07.2013 about 22.15 hours on duty RPF staff recovered one red colour trolley bag found unclaimed inside Tr.No.12660 Express at NCJ railway station. The said bag was weighing about 50 kgs., and the contents identified as ganja by RPF staff and further verified and identified as ganja by Sri.M.N.Prasad, SIPF.NCJ which was kept in the personal custody of the IPF/NCJ in the IPF's record room as per his own instructions and which is directly under his control, failed to dispose the same legally whereas, the same disappeared without any trace from the personal custody of IPF/NCJ for which he is solely responsible."

Statement of imputations were furnished in the memorandum of charges. List of witnesses and list of documents were also furnished along with the charge memorandum. Thus, there is no infirmity as such in respect of the charge memorandum issued against the writ petitioner.

5. The charge contains the definite allegations against the writ petitioner and the statement of the allegations are also clear with reference to the charges framed against the writ petitioner. The charge memorandum denotes the list of documents as well as the list of witnesses to be examined. This court is of the considered opinion that simultaneous proceedings are impermissible only on certain circumstances and there is no total bar for simultaneous proceedings.

6. In the event of non-availability of documents or materials with the disciplinary authority, then alone, the disciplinary authority can take a decision to keep the departmental disciplinary proceedings in abeyance till the disposal of the criminal case. Contrarily, if the disciplinary authority is in possession of the documents, materials and files, then the authority is at liberty to proceed with the departmental disciplinary proceedings even during the pendency of the criminal case. The procedure to be followed in the criminal case is different. The procedure to be followed in the departmental disciplinary proceedings are no way connected with the criminal case pending against the writ petitioner. A high



standard of proof is required to convict a person under criminal law. However, no such strict proof is required to punish an employee under Discipline and Appeal Rules. Even preponderance of probabilities are enough to punish an employee under the Discipline and Appeal Rules. Therefore, if the materials are available and the disciplinary authority is capable of proceeding with the departmental disciplinary proceedings, then there is no bar for continuance of the departmental disciplinary proceedings even during the pendency of the criminal case. This being the principles settled by the Supreme Court also is not as if in all the cases wherever the criminal case is registered, the departmental disciplinary proceedings are to be kept in abeyance. A judicial approach is required in this regard by the Disciplinary Authority.

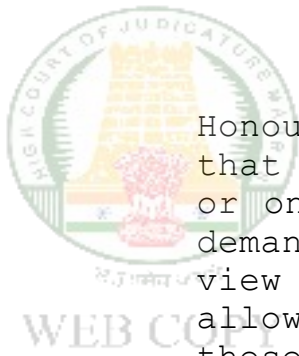
7. Before proceeding with the department disciplinary proceedings, the competent authority should make an assessment whether the materials available are enough to punish an employee under the Discipline and Appeal Rules and to conclude the departmental disciplinary proceedings or not. In the event of taking such a decision that the enough materials are available with the department then there is no bar for continuance of the departmental disciplinary proceedings even during the pendency of the criminal case registered against the same delinquent officials. This being the principles to be adopted for the purpose of continuance of the departmental disciplinary proceedings during the pendency of the criminal case. This Court is of the considered opinion that the respondents in these writ petitions have decided to commence the departmental disciplinary proceedings and commenced already if the information provided to this Court. In respect of simultaneous proceedings, this Court has passed an order in W.P.No.40702 of 2015, dated 18.09.2017 and the relevant paragraphs are extracted hereunder:-

"8. A mere pendency of a criminal case alone, cannot be a bar for proceeding with the departmental proceedings. The standard of proof required before the Criminal Court, is high in nature and even preponderance of probabilities are sufficient to punish an employee under the Discipline and Appeal Rules.

9. Thus, the writ petition filed, in order to keep in abeyance the departmental disciplinary proceedings are entirely different. The allegations against the writ petitioner is in relation to the demand of bribe and by citing the pendency of the criminal case, the writ petitioner shall not be allowed to escape from the clutches of the disciplinary proceedings.

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10. The cases of Corruption have to be viewed certainly serious and no leniency can be shown. The



Honourable Supreme Court also, time and again, emphasised that the charges cannot be quashed on the ground of delay or on technical grounds when the charges are relating to demand of bribe or corruption. This being the consistent view of the Courts, the writ petitioner shall not be allowed to escape from the disciplinary proceedings on these technical grounds.

11. 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.

12. Thus, this Court is of the firm opinion that in corruption cases where there are certain technical grounds, even then the enquiry should be allowed to be completed in all respects and it is left open to the delinquent officials to establish their innocence before the enquiry proceedings and the very charge memo, cannot be quashed in this regard.

13. 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 proceedings are to be continued simultaneously.



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

15. 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.

16. 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.

17. 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 is not applicable. It is a settled legal position.



18. 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.

19. 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".

20. 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 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 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.

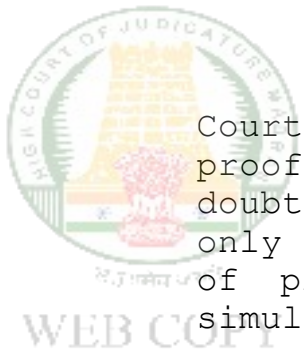
21. In the case of State Bank of India & Ors. Versus R.B.Sharma, [AIR 2004 SC 4144], the Hon'ble Supreme Court reiterated observing that both proceedings can be held simultaneously. It held, "the purpose of departmental inquiry and of prosecution is to put a distinct aspect. Criminal prosecution is launched 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."

22. 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'.

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23. 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.

24. 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)

25. 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 proceedings 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.

8. In view of the facts and circumstances, this Court is of the considered opinion that the respondents are empowered to continue the departmental disciplinary proceedings even during the pendency of the criminal case. However, it is made clear that the enquiry proceedings are to be conducted and concluded by following the procedures under rules and by affording an opportunity to the writ petitioner. This being the factum, following orders are passed:-

i) The relief as such sought for in these writ petitions stand rejected.

ii) The writ petitioner is directed to submit his explanations/objections afresh along with the documents, if any, within a period of three weeks from the date of receipt of a copy of this order. On receipt of the explanations/objections, the enquiry proceedings may be commenced by the enquiry officer.

iii) The respondents are directed to permit the writ petitioner to engage the defence assistant with reference to the Rule 153.8 of the Railway Protection Force Rules 1987. In the event of preferring to engage such defence assistant, the writ petitioner has to choose the defence assistant and furnish the name and details of the defence assistant to the competent authority within a period of three weeks from the date of receipt of a copy of this order.

iv) The respondents are directed to permit the writ petitioner to cross-examine all the witnesses who have already been deposed before the enquiry officer and such an opportunity is to be provided at the first instance on commencement of the enquiry proceedings. The remaining witnesses can be examined thereafter

and the writ petitioner must be provided with an opportunity to cross-examine the other witnesses also.

v) The writ petitioner is directed to co-operate for the early disposal of the enquiry proceedings. The writ petitioner should not ask frequent or unnecessary adjournments of enquiry proceedings on one reason or other. The enquiry officer can grant adjournment of the enquiry proceedings only, if the reasons are genuine or not otherwise.

vi) The respondents are directed to proceed with the enquiry proceedings as expeditiously as possible and complete the enquiry proceedings and pass final orders preferably, within a period of six months from the date of receipt of a copy of this order.

20. With these directions, the writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar (CS)

To

1. The Divisional Security Commissioner,
Railway Protection Force,
Thiruvananthapuram Division,
Southern Railway,
Thiruvananthapuram.

2. The Assistant Security Commissioner,
Railway Protection Force,
Palghat Division,
Southern Railway,
Palghat, Kerala.

+2 CC to Mr.S.MANOHAR, Advocate SR-76727 & 76728

W.P (MD) Nos.18934 of 2013
and
W.P (MD) No.8335 of 2014
19.07.2019

CS (14.08.2019) 11P 5C