



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

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W.P.(MD)No.3276 of 2014

and

M.P.(MD)No.1 of 2014

R. Ramaraj

... Petitioner

Vs.

The Managing Director,
Tamil Nadu Water Supply and Drainage Board,
31, Kamarajar Salai,
Chepauk,
Chennai 005.

... Respondent

PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondent i.e., the Managing director, TWAD Board, Chennai not to continue the disciplinary proceedings initiated in charge memo No.64207/Estt (DP) A2005 dated 15.11.2003 till the end of the criminal case pending in SPL. C.C.No.5 of 2007 on the file of the Chief Judicial Magistrate/Special Judge, Ramanathapuram.

For Petitioner : Mr.S.Visvalingam
For Respondent : Mr.Porkodi Karnan

ORDER

The relief sought for in the present writ petition is for a direction to direct the respondent as Managing director, TWAD Board, Chennai not to continue the disciplinary proceedings initiated in charge memo No.64207/Estt(DP) A2005 dated 15.11.2003 till the end of the criminal case pending in SPL. C.C.No.5 of 2007 on the file of the Chief Judicial Magistrate/Special Judge, Ramanathapuram.

2. The learned counsel appearing on behalf of the writ petitioner states that the writ petitioner was not allowed to retire from service on attaining the age of superannuation on account of the pendency of the criminal case in Spl. C.C. No.5 of 2007 on the file of the learned Chief Judicial Magistrate/ Special Judge, Ramanathapuram. Simultaneously, the departmental disciplinary proceeding were also initiated against the writ



petitioner by issuing charge memo in proceedings, dated 15.11.2003. The charges against the writ petitioner are extracted hereunder:

"Charge No.1 : that he has demanded and accepted a bribe of Rs.3000/-from Thiru.R. Vignesh, Contractor for forwarding 12 quotations for the work of OHTs., in Paramakudi District to the Executive Engineer, TWAD Board, Maintenance Division, Paramakudi, thereby committed misconduct and violated the rules under Regulation 6(v) & 6 (xxx) of TWAD Board Employees' (Discipline and Appeal) Regulations, 1972.

Charge No.2 : that he has failed to maintain high standard of integrity and devotion to duty as expected from an officer of his rank as per Regulation 3 of TWAD Board Officers' and Servants' Conduct Regulations, 1972."

3. The allegation against the writ petitioner is demand and acceptance of bribe from Tr.Vignesh @ Ayyanar as a Contractor. Thus, the allegations are very serious warranting an enquiry.

4. Annexure-2 to the charge memo provides the statement of allegations, namely the imputation of misconduct. Annexure-3 stipulates the list of documents relied upon by the department. Near about 37 documents were relied upon for the purpose of establishing the charges. Annexure-4 denotes the list of witnesses to be examined. It is pertinent to note that near about 61 witnesses were cited for the purpose of establishing the charges by the department. Thus, there is no infirmity as such in respect of the charge memo issued against the writ petitioner. The main grounds raised in the writ petition is that during the pendency of the criminal case, the departmental disciplinary proceedings cannot be proceeded with. In other wards, it is contended that simultaneous proceedings are impermissible and the departmental disciplinary proceedings are to be kept in abeyance till the final disposal of the criminal case. The very concept mooted out by the writ petitioner is unacceptable on the ground that simultaneous proceedings are certainly permissible. Simultaneous proceedings are not permissible only on certain limited circumstances. If the departmental authorities are not possessing the required files, documents and other materials then alone the disciplinary authorities can take a decision to keep the departmental disciplinary proceedings in abeyance. If the documents, witnesses, materials are available in the department then they are at liberty to proceed with the departmental disciplinary proceedings by following the procedures contemplated under law and by affording an opportunity to the delinquent



5. By Order of this Court, dated 12.09.2017 passed in W.P. (MD) No.40702 of 2015 held as follows:

4. On perusal of the charges, this Court is of the opinion that certainly it is serious in nature and relating to the demand of illegal gratification and further a criminal case was also registered against the writ petitioner by the Department of Vigilance and Anti-Corruption. The writ petitioner made a representation on 25.11.2015 to the disciplinary authority stating that the criminal case registered is pending and therefore, the departmental disciplinary proceedings should be kept in abeyance till the criminal case is disposed of.

5. The learned counsel appearing on behalf of the writ petitioner made a submission that the nature of the allegations both in the criminal case as well as in the departmental proceedings are one and the same and therefore, the departmental proceedings are to be kept in abeyance till the criminal case is disposed of.

6. However, this Court is of the opinion that the nature of the charges framed in the departmental proceedings are also relating to the failure of the writ petitioner in maintaining the concerned Registers and further, such Registers were not maintained in order to get illegal gratification from the persons who gave complaints.

7. Therefore, the pendency in the criminal case, cannot be a bar in this case for proceeding with the departmental proceedings. With regard to the failure on the part of the writ petitioner in maintaining the Station Records, the Department can very well proceed with the domestic enquiry and arrive a conclusion in this regard. Even with regard to the demand of the illegal gratification, the related witnesses can be examined even in the domestic enquiry and a decision can be arrived.

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 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



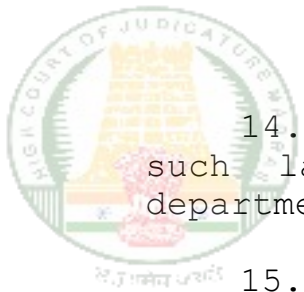
petitioner shall not be allowed to escape from the clutches of the disciplinary proceedings.

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 putting the Government servants in double jeopardy or such simultaneous proceedings are to be continued simultaneously.



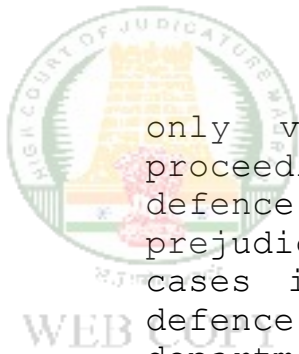
14. The departmental authorities are free to exercise such lawful powers as are conferred on them by the departmental rules and regulations.

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 stands excluded in a settled legal position.

<https://hcservices.ecourts.gov.in/hcservices> 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:

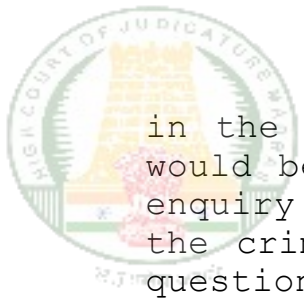
"(i) There is no legal bar for both proceedings to go on simultaneously.

(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 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 to the circumstances 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.

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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'.

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.

<https://hcservices.ecourts.gov.in/hcsefiles/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.

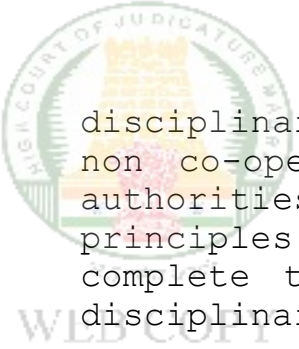


1. In Stanzen Toyotetsu India Private Limited v. Girish V. And Other (2014) 3 SCC 636. It was held that suffice it to say that while there is no legal bar to the holding of the disciplinary proceedings and the criminal trial simultaneously, stay of disciplinary proceedings may be advisable course in 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)

6. As far as the present case is concerned, the charges were already framed against the writ petitioner by the disciplinary authorities. The charges are very much specific. The statement of allegations, imputation of misconduct are also enumerated in the annexure-2 and list of documents and list of witnesses are very much available. Thus there is no impediment for the authorities to continue the departmental disciplinary proceedings even during the pendency of the criminal case. The standard of proof required to convict a person in a criminal law is high in nature. However, no such strict proof is required to punish an employee under the Discipline and Appeal Rules. This apart, the procedures to be followed in a criminal case as well as in the departmental disciplinary proceedings are distinct and different. This being the procedures to be adopted, there is no bar for the continuance of the departmental disciplinary proceedings even during the pendency of the criminal case and accordingly, the respondents are at liberty to proceed with the departmental disciplinary proceedings by affording an opportunity to the writ petitioner and conclude the same and pass final orders as expeditiously as possible. The writ petitioner is also directed to co-operate for the early disposal of the departmental



disciplinary proceedings and in the event of non co-operation, the same shall be recorded by the competent authorities in the proceedings itself. This being the legal principles to be followed, the respondents are directed to complete the enquiry and pass final orders in the departmental disciplinary proceedings as expeditiously as possible.

7. Accordingly, the writ petition stands dismissed. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

The Managing Director, Tamil Nadu Water Supply and Drainage Board,
31, Kamarajar Salai, Chepauk, Chennai 005.

+1cc to Mr.S.Visvalingam, Advocate, SR.No.75575

+1cc to Mrs.Porkodi Karnan, Advocate, SR.No. 75795

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