

AFR**Court No. - 34**

Case :- WRIT - A No. - 13227 of 2002

Petitioner :- Devendra Kumar Malik

Respondent :- Director General Railway Protection Force And Others

Counsel for Petitioner :- Ashwani Kumar Mishra

Counsel for Respondent :- Tarun Verma,A.K.Gaur,Praveen Kumar
Srivastava,S.C.

Hon'ble Sudhir Agarwal,J.

1. Heard Sri Ashwani Kumar Mishra, learned counsel for petitioner and Sri Praveen Kumar Srivastava, Advocate for respondents.
2. Writ petition is directed against order dated 28.05.1999 passed by Senior Divisional Security Commissioner, Railway Protection Force, Izzatnagar, Bareilly (*hereinafter referred to as "Disciplinary Authority"*) imposing punishment of dismissal upon petitioner and appellate as well as revisional orders dated 15.11.2000 and 03.08.2001 whereby petitioner's appeal and revision has been dismissed.
3. Firstly, it is contended that first information report was lodged against petitioner for the same offence for which disciplinary proceedings initiated though it could not have been done and reliance is placed on this Court's judgment in **Ram Surat Ram Vs. General Manager, Feeder Balancing Dairy, Varanasi, 2002(1) AWC 191**. Secondly, it is contended that punishment imposed upon petitioner is highly disproportionate to the charge found proved and reliance is placed on Supreme Court's decision in **State of Tamil Nadu vs. M. Natarajan, 1997(6) SCC 415**. Thirdly, it is contended that Inquiry Officer found Charges-1, 2 and 4 proved and Charge-3 not proved but Disciplinary Authority without disagreeing to the findings of Inquiry Officer in respect of Charge-3 and without giving opportunity to petitioner, in punishment order disagreed with the findings and imposed punishment

which is illegal and contrary to law laid down in **Punjab National Bank Vs. Kunj Behari Misra, 1998 (7) SCC 84.**

4. Learned counsel appearing for respondents, however, submitted that inquiry has been conducted after giving due opportunity to petitioner and after proving charge, hence no interference is called for in this case.

5. The first question is, whether simultaneous disciplinary proceedings vis-a-vis criminal proceedings are permissible in law or not. It is now well settled that departmental proceedings can proceed simultaneously with criminal proceedings and there is no bar as such therein as held in **Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. & Another 1999 (3) SCC 679** where the Court has held that departmental as well as criminal, both proceedings can go on simultaneously as there is no bar in their being conducted simultaneously. The question, whether during pendency of criminal proceeding, departmental proceeding should be stayed depends upon the facts and circumstances of the individual case. In **Ajit Kumar Nag Vs. General Manager I.O.C. JT 2005 (8) SC 425**, Court said that the procedure followed in both the cases as well as the subject matter of the departmental enquiry and criminal proceeding has different scope and it cannot not be said that when a criminal proceeding is going on a particular criminal charge, in that regard, the departmental proceeding cannot be allowed to proceed. The same view has been reiterated subsequently, in **Chairman/ Managing Director TNCS Corporation Ltd. & others Vs. K. Meerabai JT 2006 (1) SC 444**, **Suresh Pathrella Vs. Oriental Bank of Commerce AIR 2007 SC 199** and **Union of India & others Vs. Naman Singh Shekhawat 2008 (4) SCC 1.**

6. Referring to **Capt. M. Paul Anthony (supra)**, in **Managing Director, State Bank of Hyderabad & another Vs. P. Kata Rao JT 2008 (4) SC 577** Court has observed that the legal principle enunciated

to the effect is that on the same set of facts, the delinquent shall not be proceeded in a departmental proceeding and in a criminal proceeding simultaneously has been deviated from. It also said that the dicta laid down in **Capt. M. Paul Anthony (supra)**, though has remained unshaken but its applicability has been found to be dependent on the facts and situations obtained in each case.

7. Similarly, in **Noida Entrepreneurs Assn. Vs. NOIDA & others JT 2007 (2) SC 620**, Court has reproduced the following conclusion deducible from various judgments as noticed in para-22 of the judgment in **Capt. M. Paul Anthony (supra)**, namely :

"(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature, which involved complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest."

8. A similar view has also been taken in **Indian Overseas Bank Vs. P. Ganesan & others AIR 2008 SC 553** and Court has held, where a prayer is made that so long as criminal proceedings are going on,

departmental proceeding may not be proceeded, Court must record a finding that non grant of stay on departmental proceeding would not only prejudice the delinquent officer, but the matter also involve a complicated question of law. Nothing of that sort has been shown by the learned Counsel for the petitioner in the case in hand.

9. Following the aforesaid authorities, this Court has taken a similar view in **Priti Chauhan vs. State of U.P. & others 2008 (9) ADJ 388**.

10. In the light of law laid down by Superior Court, I do not find any substance in the argument advanced on behalf of petitioner and there is no such rule of thumb laid down in **Ram Surat Ram (supra)** that disciplinary proceedings besides criminal proceedings cannot be initiated simultaneously. First question, therefore, is answered against petitioner.

11. Now coming to second argument, I find that petitioner is a member of disciplined force. He was supposed to demonstrate best possible behaviour. Interference with punishment, imposed by disciplinary authority after considering gravity of charge, is not a routine matter but limited to the case where punishment is such so as to shock the conscience and only then Court may interfere and not otherwise.

12. In **Ranjit Thakur Vs Union of India and others, (1987) 4 SCC 611**, Court held:

*"Judicial review generally speaking, is not directed against a decision, but is directed against the "decision making process". **The question of the choice and quantum of punishment is within the jurisdiction and discretion of the competent authority.** But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. **It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. If one can say that punishment imposed is wholly irrational and perverse it is a recognised ground of judicial review.**" (emphasis added)*

13. This judgment was explained in **Union of India Vs R.K. Sharma, 2001 (9) SCC 492**, wherein Court said:

"In Ranjit Thakur, the charge was ridiculous, the punishment was harsh and disproportionate and it was on such gross facts that this Court had

*held that the punishment was so strikingly disproportionate that it called for interference; and the said observations in Ranjit Thakur are not to be taken to mean that a court can, while exercising the power of judicial review, interfere with the punishment merely because it considers the punishment to be disproportionate. It was held that **only in extreme cases, which on their face, show perversity or irrationality, there could be judicial review and merely on compassionate grounds, courts should not interfere.**" (emphasis added)*

14. Both the aforesaid judgments have been noticed and reiterated in **Union of India and others Vs Bodupalli Gopalaswami, (2011) 13 SCC 553.**

15. In **Prem Nath Bali Vs Registrar, High Court of Delhi and others, AIR 2016 SC 101**, question arose, 'whether punishment of compulsory retirement was excessive, unjust and does not commensurate with the charge proved against delinquent employee. Court said:

"Once the charges leveled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and then imposed the punishment as provided in the Rules.

Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major) then the Courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment.

Such power is exercised when the Court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the Court or when it is found to be in contravention of the Rules."

(emphasis added)

16. The above observations are reiterated in **Commissioner of Police and others Vs Sat Narayan Kaushik, AIR 2016 SC 1464**. In the matter of punishment it is always relevant, to consider the position, delinquent employee was holding, what was nature of his duties, degree of trust, integrity etc. maintained by such person and other relevant factors.

17. In the matter of a member of disciplined force, who left campus without prior permission, proceeded to the market, consumed liquor and quarreled with the civilians, it was held that punishment of dismissal cannot be said to be disproportionate or excessive. In **Union of India and others Vs Diler Singh, (2016) 13 SCC 71**, Court held:

"when a member of the disciplined force deviates to such an extent from the discipline and behaves in an untoward manner which is not conceived of, it was difficult to hold that the punishment of dismissal as was imposed was disproportionate and shocking to the judicial conscience."

18. In **Divisional Controller, N.E.K.R.T.C. Vs. H. Amaresh, 2006 SCC 187**, dealing with the question of quantum of punishment, Court held:

*"misappropriation of the funds by the delinquent employee was only Rs. 360.95 but it is not question of quantum of money misappropriated by delinquent employee but it is a question of loss of confidence and the basic aptitude of lack of integrity on the part of such person. Court said "This Court in a catena of judgments held that the loss of confidence as the primary factor and not the amount of money misappropriated and that the sympathy or generosity cannot be a factor which is impermissible in law. When an employee is found guilty of pilferage or of misappropriating a Corporation's funds, there is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of dismissal. **In such cases, there is no place for generosity or misplaced sympathy on the part of the judicial forums and interfering therefore with the quantum of punishment.**" (emphasis added)*

19. In **Divisional Controller, KSRTC (NWKRTC) Vs. A.T. Mane, (2005) 3 SCC 254**, the amount found to be in possession of unaccounted money was only Rs. 93/-, but dealing with the question of quantum of punishment, Court said:

*"..... question of quantum of punishment, one should bear in mind the fact that it is **not the amount of money misappropriated that becomes a primary factor for awarding punishment, on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration.** In our opinion, when a person is found guilty of misappropriating corporation's fund, there is nothing wrong in the corporation losing confidence or faith in such a person and awarding a punishment of dismissal."*

(emphasis added)

20. In **Niranjan Hemchandra Sashittal and another Vs State of Maharashtra, (2013) 4 SCC 642**, Court in para 25 of judgment said:

*"In the present day scenario, corruption has been treated to have the potentiality of corroding the marrows of the economy. **There are cases where the amount is small and in certain cases, it is extremely high. The gravity of the offence in such a case, is not to be adjudged on the bedrock of the quantum of bribe. An attitude to abuse the official position to extend favour in lieu of benefit is a crime against the collective and an anathema to the basic tenet of democracy, for it erodes the faith of the people in the system. It creates an incurable concavity in the Rule of Law.....**"* (emphasis added)

21. In **Rajasthan State TPT Corporation and another Vs. Bajrang Lal, (2014) 4 SCC 693**, Court said:

*"in cases involving corruption-there cannot be any other punishment than dismissal. **Any sympathy shown in such cases is totally uncalled for and opposed to public interest.** The amount misappropriated may be small or large; it is the act of misappropriation that is relevant."* (emphasis added)

22. Considering the alleged misconduct of petitioner which has been found proved it cannot be said that punishment imposed upon petitioner is disproportionate to the charge found proved, hence the second issue is also answered against petitioner.

23. Now I come to third question, whether disciplinary authority in disagreeing with the findings of Inquiry Officer without giving reasons for disagreement and recording finding of its own and then non issue of notice to petitioner to make representation has acted legally.

24. Here I find that disciplinary authority has committed a manifest and serious procedural error resulting in denial of adequate opportunity of defence to petitioner. The findings of disagreement consists a material which has arrived subsequently i.e. after the inquiry by inquiring authority is over and, therefore, it is incumbent upon him to communicate the said findings to the employee concerned. This aspect was initially considered by Court in **Punjab National Bank Vs. Kunj**

Behari Misra (supra) and following Constitution Bench judgement in **Managing Director, ECIL, Hyderabad Vs. B. Karunakar, 1993 (4) SCC 727** it was held that when inquiry officer holds the charges proved then that report has to be given to delinquent officer who can make a representation before disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the inquiry report is in favour of delinquent officer but the disciplinary authority proposes to differ with such conclusions then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he could be condemned unheard. In departmental proceedings what is of ultimate importance is the findings of the disciplinary authority and, therefore, whenever the disciplinary authority disagrees with the inquiry authority on any article of charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its final findings. The report of the inquiry officer containing its findings of disagreement will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the inquiry officer and not to proceed with his tentative findings which are contrary from the report of the inquiry officer. It was held by three Judge Bench of Apex Court in **Kunj Behari Misra (supra)** that non compliance of the above would vitiate the proceedings. This has been followed consistently in **Yoginath D. Bagde Vs. State of Maharashtra & another, AIR 1999 SC 3734; SBI & others Vs. Arvind K. Shukla, JT 2001 (4) SC 415; State Bank of India & others Vs. K.P. Narayanan Kutty, 2003 (2) SCC 449; and Ranjit Singh Vs. Union of India and others, 2006(4) SCC 153.**

25. Third issue, therefore, is answered in favour of petitioner. Impugned order of punishment as well as appellate and revisional orders, therefore, cannot be sustained.

26. In the result, writ petition is allowed. Impugned orders dated 28.05.1999, 15.11.1999 and 03.08.2001 are hereby set aside. Petitioner is entitled for all consequential benefits.

27. Respondents, however, may have the liberty to proceed afresh from the stage of inquiry report received by disciplinary authority, and to proceed further from that stage, in accordance with law.

Order Date :- 22.02.2019

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