

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No. 10657 of 2020(O&M)
Date of Decision: July 28 , 2020.**

Suresh Kumar

..... Petitioner

Versus

State of Haryana and others

..... Respondents.

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Ms. Sonia G. Singh, Advocate
for the petitioner.

Mr. Ashish Yadav, Addl.AG., Haryana

LISA GILL, J.

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

Notice of motion.

Mr. Ashish Yadav, Addl.AG., Haryana, accepts notice on behalf of the respondent-State. Advance copy of petition stands served.

This writ petition has been filed by the petitioner seeking quashing of order dated 03.01.2020 (Annexure P-2) vide which a regular departmental enquiry has been ordered by respondent no.3-Superintendent of Police, Karnal, while placing the petitioner under suspension. Charge sheet dated 19.03.2020 (Annexure P-3) has been served upon the petitioner. Departmental enquiry has been ordered on the basis of registration of FIR No. 002 dated 02.01.2020, against the petitioner, under Section 7 of Prevention of Corruption Act, 1988, Police Station Civil Lines, Karnal.

Learned counsel for the petitioner argues that an absolutely false and incorrect FIR has been registered against the petitioner. Moreover, departmental proceedings on the same allegations as are contained in the FIR, should not be carried out before conclusion of the trial in the FIR. She submits that manifest injustice shall be caused to the petitioner, in case, departmental proceedings are permitted to be continued in such a situation. It is further contended that there are as many as six witnesses who are common in the criminal case and the departmental proceedings. Continuance of departmental proceedings, would thus lead to clear cut prejudice to the petitioner. In case, the common witnesses are examined in the departmental proceedings prior to their examination in the criminal proceedings, the petitioner's defence would be seriously prejudiced. She relies upon the judgement of the Hon'ble Supreme Court in **Capt. M.Paul Anthony Vs. Bharat Gold Mines Limited, 1999(2) SCT 660** and decision dated 25.09.2009 passed in **CWP No. 23314 of 2019, titled as Katar Singh Vs. State of Haryana and others, decided on 11.09.2019** and **CWP No. 28815 of 2019, titled as Inspector Subhash Chand Vs. State of Haryana and others**, decided on 04.10.2019 attached as Annexures P-5 and P-6, respectively. No arguments have been raised challenging suspension of the petitioner. It is prayed that the present petition be allowed.

Learned counsel for the respondents has opposed this petition while submitting that continuation of the departmental enquiry simultaneously with criminal proceedings, is not barred. However, it is not denied that a number of witnesses in both the proceedings are common. It is prayed, that the present petition be dismissed.

I have heard learned counsel for the parties and have gone through the file with their assistance.

It is a settled position of law that continuation of departmental proceedings along with criminal proceedings, is not barred. Departmental proceedings, are clearly separate. The disciplinary authority in a given case is at liberty to proceed against the delinquent employee, even on his acquittal in the criminal case. The object of departmental enquiry, is to be find out whether the delinquent employee is guilty of misconduct for the purpose of determining whether he should be continued in service. Standard of proof in a departmental enquiry is different.

It is relevant to note, at this stage, that the Hon'ble Supreme Court in **Capt. M. Paul Anthony's case (Supra)**, has observed as under:-

“The conclusions which are deducible from various decisions of this Court referred to above are :

- (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 involves 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, administration may get rid of him at the earliest.

A Coordinate Bench in CWP No. 23314 of 2019 and CWP No. 28815 of 2019, has disposed of similar matters with a direction that the department would not examine the witnesses, who are common/identical to both the proceedings, prior to their examination in the criminal proceedings. The said decisions are stated to have attained finality.

In view of the facts and circumstances of the case, I do not find any ground whatsoever to quash order dated 03.01.2020 (Annexure P-2) or charge sheet dated 19.03.2020 (Annexure P-3), or even stay the proceedings of the departmental enquiry to await conclusion of the criminal trial. However, it is considered just and expedient to direct that the witnesses who are common/identical in both the departmental and criminal proceedings, be not examined in the departmental inquiry, until and unless they have been examined in the criminal proceedings.

However, at this stage, it is made clear that in case, the petitioner employs any kind of tactics leading to delay in the examination/cross-examination of the said common witnesses, in the criminal proceedings, this order shall not in any manner come in the way of the department to proceed with the examination of the said common witnesses and conclude the inquiry proceedings.

Learned trial Court in the criminal proceedings, shall endeavour to examine the

said common witnesses, first.

Mr. Ashish Yadav, Addl.AG., Haryana, does not raise any serious objection to such a direction.

Present writ petition is accordingly disposed of.

July 28, 2020.

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(**LISA GILL**)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No