

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 10th August, 2020.**

+ **W.P.(C) 5074/2020**

AKSHAY KUMAR SINGH **Petitioner**

Through: Mr. Alok Bhachawat, Mr. Pawan
Kumar Ray and Mr. Rit Arora, Adv.
versus

UNION OF INDIA & ORS. **Respondents**

Through: Mr. Piyush Beriwal, Mr. Neeraj, Mr.
Sahaj Garg and Mr. Ankit Raj, Advs.
for R-1 to 4.

AND

+ **W.P.(C) 5166/2020**

RAJESH KUMAR **Petitioner**

Through: Mr. Alok Bhachawat, Mr. Pawan
Kumar Ray and Mr. Rit Arora, Adv.
versus

UNION OF INDIA & ORS. **Respondents**

Through: Mr. Piyush Beriwal, Mr. Neeraj, Mr.
Sahaj Garg and Mr. Ankit Raj, Advs.
for R-1 to 4.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

CM APPL. 18592/2020 in W.P.(C) 5166/2020.

1. Allowed, subject to just exceptions and as per the extant rules.
2. The application is disposed of.

W.P.(C) 5074/2020 & W.P.(C) 5166/2020.

3. W.P.(C) No.5074/2020 impugns the order dated 16th December, 2019 of the Directorate General of Central Industrial Security Force (CISF), Ministry of Home Affairs of rejection of the request of the petitioner “for *de novo* inquiry/fresh inquiry in view of order of acquittal dated 1st January, 2019 passed by the Trial Court at Gandhi Dham in Criminal Case No.1381/2005” as well as, (i) order dated 30th November, 2005 passed by the Commandant, CISF, being the Disciplinary Authority of CISF; (ii) order dated 3rd March, 2006 of the DIG, CISF, being the Appellate Authority of CISF; and, (iii) order dated 30th June, 2006 of the IG, CISF, being the Revisional Authority of CISF, and seeks mandamus for re-instatement of the petitioner in the service of CISF, with payment of service period arrears and other appropriate benefits of service and appropriate compensation.

4. W.P.(C) No.5074/2020 came up before this Court first on 7th August, 2020, when adjournment was sought by the counsel for the petitioner stating that another petition entailing identical facts and arising from the same incident was scheduled to be listed on 10th August, 2020 and both the petitions be taken up together on 10th August, 2020.

5. However in the cause list for today, the connected petition stated to have been listed for today was not found listed; just before the Court commencement hours, a supplementary cause list has been circulated and electronic file of W.P.(C) No.5166/2020 received. The counsel for the petitioner however reiterates that the facts in the two petitions are identical and that he would be arguing with reference to W.P.(C) No.5074/2020

only.

6. It is the case of the petitioner in W.P.(C) No.5074/2020, (i) that he was appointed as a Constable in the respondents CISF in the year 2000; (ii) that in the year 2002, he was posted at Kandla Port, in the Crime and Intelligence Wing (CIW) of the respondents CISF; (iii) that between 17th November, 2004 and 3rd December, 2004 there was a theft of 13 tonnes of copper scrap from the Kandla Port; (iv) on 23rd December, 2004 First Information Report (FIR) of the said theft was lodged by the owner of the copper scrap and the Police arrested several persons in this regard and recovered some stolen goods; (v) that the accused persons, while in the custody of the Police Authorities, stated that they have committed the theft with the help of CISF personnel; (vi) on such statement, an identification parade was conducted by the Police Authorities, wherein on 5th February, 2005, before the Executive Magistrate Gandhi Dham, one of the accused persons identified the petitioner; (vii) thereafter the Police called the petitioner for further investigation on 23rd February, 2005 and arrested the petitioner under Sections 461, 380, 409 and 120B of the Indian Penal Code; (viii) the respondents CISF, on 23rd March, 2005 served the petitioner with memorandum of two charges; firstly that the petitioner had failed to keep watch on criminal activities when he was deployed on CIW duty at north gate and surrounding area, from 17th November, 2004 to 3rd December, 2004 and that the petitioner had failed to collect information of the theft of 13 tonnes of copper scrap from the container, showing gross negligence and indiscipline and secondly, that the petitioner was identified by one of the thieves, in an identification parade conducted before the Executive Magistrate on 5th February, 2005, whereby the image of the CISF personnel

had been tarnished; (ix) however the documents appended to the memorandum of charge served on the petitioner were in Gujarati and English language; the petitioner represented multiple times for the documents to be provided in Hindi so that he could file proper and effective reply; (x) the petitioner denied both the charges; (xi) it was the case of the petitioner that he had always conducted himself with honesty and integrity and that the charges against him were not sustainable; (xii) the petitioner, in his reply, stated that from 18th December, 2004 to 24th December, 2004 he was deployed at another place i.e. Oil Jetty and that he had regularly reported any crime which had come to his knowledge; (xiii) departmental inquiry was conducted against the petitioner on the charges aforesaid; (xiv) that on the same facts and charges the petitioner was also prosecuted before the Court of Judicial Magistrate Gandhi Dham; (xv) although prosecution failed to prove the charges against the petitioner, the departmental inquiry of the CISF held the petitioner guilty; (xvi) that the entire charge sheet in the departmental inquiry against the petitioner was framed on the basis of the Police report and merely on the statement of the accused persons and the charge sheet filed before the Court of the Judicial Magistrate Gandhi Dham; (xvii) that the statement of the accused persons, without any corroborative evidence, could not have been relied upon in the departmental proceedings; (xviii) no recovery of the stolen goods had been made from the petitioner; (xix) the accused persons also subsequently backtracked from their statement and stated before the Judicial Magistrate that they had signed the statements on the coercion of the Police and Custom officials; (xx) the Court of the Judicial Magistrate has already rejected the statement of the accused persons made in the Police custody; (xxi) that the

departmental inquiry held by the respondents CISF was only a smoke screen, to remove the petitioner from service, with a predetermined mind; (xxii) the Commandant CISF, being the Disciplinary Authority of the petitioner, after finding the petitioner guilty of charges, imposed punishment of removal from service on the petitioner; the defences of the petitioner in the departmental inquiry were not considered; (xxiii) the order dated 30th November, 2005 of the Commandant of CISF is illegal, arbitrary and unsustainable; (xxiv) aggrieved from the order dated 30th November, 2005 of removal from service, the petitioner preferred an appeal before the Appellate Authority, raising several important grounds going to the root of the matter; (xxv) however the Deputy Inspector General (DIG) of CISF, being the Appellate Authority, vide order dated 3rd March, 2006 dismissed the appeal; (xxvi) the petitioner filed a Revision before the Inspector General (IG), CISF; (xxvii) the IG, CISF, being the Revisional Authority, did not consider the contentions of the petitioner and dismissed the Revision Petition vide order dated 30th June, 2006; (xxviii) the petitioner preferred a further Revision Petition before the Director General (DG), CISF but the same was returned under cover of letter dated 1st May, 2007, stating the same to be not maintainable; (xxix) the orders dated 30th November, 2005, 3rd March, 2006 and 30th June, 2006 of the Disciplinary Authority, Appellate Authority and Revisional Authority respectively of CISF are illegal and arbitrary; (xxx) that being aggrieved therefrom, the petitioner filed Special Civil Application No.1910/2007 before the High Court of Gujarat at Ahmadabad; the High Court however vide order dated 28th August, 2014 rejected the Special Civil Application on the basis of the fact that the petitioner had been identified by one of the accused persons;

(xxxi) the petitioner has already been acquitted by the Court of the Judicial Magistrate vide order dated 1st January, 2019; (xxxii) the case of the prosecution before the Judicial Magistrate was that the accused persons in connivance and criminal conspiracy with the CISF personnel had committed theft of 13.70 MT of copper scrap worth Rs.11,00,000/- from the container loaded with 20 MT of copper scrap imported by the complainant; (xxxiii) that since the prosecution miserably failed to prove the said case, all the accused persons were acquitted from the charge of alleged offence; (xxxiv) the case of the prosecution before the Judicial Magistrate was that the theft had taken place with the help of the petitioner and other CISF officials who were responsible for the security of the Kandla Port; (xxxv) however this case was merely on the basis of statements of the accused persons but which statements were never produced in original during the trial before the Judicial Magistrate; (xxxvi) that in view of acquittal in the criminal case, the petitioner applied to the respondents CISF for *de novo* inquiry; and, (xxxvii) instead of considering the said application, the respondents CISF have rejected the same vide impugned order dated 16th December, 2019, on the ground that criminal proceedings have no bearing on the disciplinary inquiry.

7. The counsel for the petitioners states that the departmental proceedings against the petitioner in W.P.(C) No.5166/2020 emanated from the same incident of theft at Kandla Port and all the particulars of W.P.(C) No.5166/2020 are identical to that of W.P.(C) No.5074/2020. We thus do not deem it apposite to burden this judgment by repeating the facts with reference to W.P.(C) No.5166/2020.

8. We have, at the outset only enquired from the counsel for the petitioners, whether not it is a settled principle of law that the scope and purport of disciplinary proceedings is different from that of criminal prosecution; while findings in the disciplinary proceedings are on the basis of preponderance of probabilities, as before a civil court, the findings in a criminal prosecution are only on proof beyond doubt; the two proceedings are separate and distinct and uninfluenced from each other.

9. The counsel for the petitioners, though not controverting, contends (i) that in the present case the charge framed in the disciplinary proceedings and in the criminal prosecution was the same; (ii) that the charge in the disciplinary proceedings, of the petitioners being in connivance with the alleged thieves, was on the basis of the alleged statement of the alleged thieves, during the course of investigation by the Police; (iii) once in the prosecution, the statements made by the accused persons, of connivance with the petitioners and other CISF personnel have not been proved, the charge in the disciplinary proceedings, of connivance and identification of the petitioners in the identification parade conducted by the Police having maligned the image of CISF, has to necessarily go, leaving only the charge of negligence; (iv) for the charge of negligence only, minor penalty could have been imposed and not major penalty of removal from service which was inflicted on the petitioners, only because of the petitioners having been found guilty of the charge of connivance with the thieves; (v) reference is made to ***Shankar Kumar Vs. Union of India*** 218 (2015) DLT 348 (DB) to contend that the punishment imposed therein of removal from service upon finding of guilt of the charge of negligence, was set aside and the petitioner therein reinstated; (vi) reliance is placed on ***M. Paul Anthony Vs. Bharat***

Gold Mines Ltd. (1999) 3 SCC 679, to contend that it has been held therein that where the departmental proceedings and the criminal case are based on identical and similar set of facts and same witnesses are examined in the prosecution and the departmental case, once the prosecution case is thrown out and the delinquent employee is acquitted by judicial pronouncement with the finding that the raid and recovery at the residence of the delinquent employee were not proved, it would be unjust, unfair and oppressive to allow the findings recorded in the *ex parte* departmental proceedings to stand; and, (vii) the same view was followed by the Division Bench of the High Court of Orissa in ***K. Gopal Vs. Union of India*** MANU/OR/0478/2010, in a case relating to the respondents CISF itself.

10. We have enquired from the counsel for the petitioners, whether not the departmental proceedings in the present case stood concluded as far back as on 30th June, 2006, with the dismissal of the Revision Petition i.e. 13 years prior to the outcome of the criminal case on 1st January, 2019, and what is the right of the petitioners for a *de novo* inquiry and to be reinstated in employment, for us to issue mandamus as sought. Without showing a right in the petitioners and obligation in the respondents, no mandamus can be sought or granted.

11. The counsel for the petitioners contends that the petitioners are not seeking reinstatement; they are only seeking consideration of their representation on merits, for a *de novo* disciplinary proceedings and are seeking right of reinstatement only subject to being not found liable to be punished with removal from service in the disciplinary proceedings.

12. Per contra the counsel for the respondents CISF in both the petitions, appearing on advance notice, has referred to ***Management of Bharat Heavy Electricals Ltd. Vs. M. Mani*** (2018) 1 SCC 285 contending, that it has been reiterated therein that where inquiry has been held independently of criminal proceedings, acquittal in criminal Court is of no avail and that even if a person stood acquitted by the Criminal Court, domestic inquiry can still be held – the reason being that the standard of proof required in a domestic inquiry and that in a criminal case are altogether different; in a criminal case, standard of proof required is beyond reasonable doubt while in domestic inquiry, it is the preponderance of probabilities. Reference is also made to ***Kulkarni Shashikant Bhavani Vs. Bombay Physical Culture Association*** 2019 SCC OnLine Bom 8371, contending that ***M. Paul Anthony*** supra was distinguished therein.

13. The counsel for the respondents CISF, with reference to the English translation filed with the petition of the judgment dated 1st January, 2019 of the Court of the Judicial Magistrate Gandhi Dham, has also contended that as evident therefrom, the prosecution of the petitioners failed owing to the cited witnesses having either not been found or having turned hostile and it has further been held therein that the statements of the accused persons, of connivance of the petitioners and other CISF officials, had not been produced; else it is contended that the petitioners in the departmental revisional remedy preferred by them had filed affidavits of the alleged thieves denying having identified the petitioners. It is further added that the Departmental Revisional Authority, in the order of dismissal of the Revision Petitions, held that the production, by the petitioners in the departmental proceedings, of the affidavits of the thieves, rather showed the

two to be acting in cahoots with each other and being known to each other. It is thus contended that acquittal in the prosecution did not entitle the petitioners to seek fresh disciplinary proceedings.

14. It is also the contention of the counsel for the respondents CISF that the petitioners, though residents of Gujarat, earlier sought to make a challenge to the departmental proceedings before the Gujarat High Court and in which they failed. It is contended that the invocation of jurisdiction of this Court now is akin to forum shopping.

15. The counsel for the petitioners, in rejoinder has drawn attention to the English translation of the judgment of acquittal of the Court of Judicial Magistrate Gandhi Dham to show how the aspect of an identification parade has been dealt with by the Judicial Magistrate.

16. On conclusion of hearing, after we had conveyed to the counsel for the petitioners that we are not impressed and do not find a case for issuing notice, the counsel for the petitioners stated that he be permitted to withdraw the petitions from this Court with liberty to file the same before the High Court of Gujarat.

17. We find the aforesaid conduct of the petitioners, of after invoking the jurisdiction of this Court and after fully arguing the petition and on failing to satisfy the Court, wanting to take a chance before another Court, to be in abuse of judicial proceedings and the petitioners cannot be permitted to so vex High Court after High Court, upon failing to make out a case for admission before one High Court. The said conduct is but to be deprecated and the permission as sought is denied.

18. Though the petitioners in their pleadings have mixed up the dates and events, so as to convey that the disciplinary proceedings and the prosecution to have been underway simultaneously, but cannot hide away from the fact that the petitioners were found guilty by the Disciplinary Authority of the respondents CISF, as far back as on 30th November, 2005 and meted out punishment of removal from service. Even the departmental remedies availed of by the petitioners, concluded on 30th June, 2006, we reiterate, more than 14 years prior thereto. The petitioners were acquitted in the prosecution, after 13 years from dismissal of service.

19. Moreover, in the present cases, the orders of dismissal of the petitioners from service attained finality with the challenge thereto before the Gujarat High Court failing on 28th August, 2014, also more than four years prior to the judgment dated 1st January, 2019 of acquittal in prosecution.

20. The application sought by the petitioners, of the dicta in *M. Paul Anthony* supra, to the facts of the present cases has to be seen in the aforesaid light.

21. In *M. Paul Anthony* supra, (a) the question for determination was, whether departmental proceedings and proceedings in a criminal case launched on the basis of the same set of facts can be continued simultaneously; (b) a raid had been conducted by the Police at the house of the employee and in which raid gold was recovered; thereafter on the same day, FIR was lodged and the employee was placed under suspension and disciplinary proceedings commenced; (c) the employee sought postponement of the disciplinary proceedings till the conclusion of the

criminal proceedings against him; (d) though the disciplinary proceedings continued but the employee could not attend the same on account of his ill health and financial difficulties and for the reason of having shifted to his hometown; (e) vide order dated 7th June, 1986 of the Disciplinary Authority, the employee was dismissed from service; vide judgment dated 3rd February, 1987 i.e. within seven months of the order of dismissal from service, the employee was acquitted, with a categorical finding that the prosecution had failed to establish its case; (f) the departmental appeal preferred by the employee was dismissed on 22nd July, 1987 i.e. after the judgment of acquittal of the employee; and, (g) the employee i.e. M. Paul Anthony filed a petition under Article 226 challenging his dismissal and which petition was allowed for the reason of the employee having been acquitted; the Division Bench of the High Court however set aside the judgment of the Single Judge. The matter reached the Supreme Court so.

22. Supreme Court set aside the judgment of the Division Bench and restored the judgment of the Single Judge of the High Court reinstating the employee, reasoning/holding that (i) there is a consensus of judicial opinion that proceedings in a criminal case and the departmental proceedings can proceed simultaneously; (ii) the basis is, that proceedings in a criminal case and the departmental proceedings operate in distinct and different jurisdictional areas; whereas in the departmental proceedings charge relating to misconduct is investigated and the factors operating in the mind of Disciplinary Authority may be many such as enforcement of discipline and integrity of the staff; (iii) the standard of proof required in disciplinary proceedings is also different than that required in a criminal case; while in a departmental proceedings the standard of proof is one of preponderance of

probabilities, in a criminal case the charge has to be proved by the prosecution beyond reasonable doubt – the little exception may be where the departmental proceedings and the criminal case are based on the same set of facts and the evidence in both the proceedings is common, without there being a variance; (iv) though there is no legal bar for simultaneous proceedings being taken, yet there may be cases where it would be appropriate to defer disciplinary proceeding awaiting disposal of criminal case and it would be open to the delinquent employee to seek such an order of stay; (v) whether in the facts and circumstances of a particular case there should or there should not be such simultaneity of the proceedings, would then receive judicial consideration and the Court will decide in the given circumstances of a particular case as to whether the disciplinary proceedings should be interdicted pending criminal trial – no hard and fast straight-jacket formula, valid for all cases and of general application, without regard to the particularities of individual situation can be laid down; (vi) disciplinary proceedings should be stayed pending criminal trial where the charge is grave and the case involves complicated questions of law and fact; advisability, desirability, propriety of staying disciplinary proceedings has to be determined in each case, taking into consideration all facts and circumstances; (vii) interest of administration demand that undesirable elements are thrown out and any charge of misdemeanour is enquired into promptly; (viii) the disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied, by getting rid of bad elements; (ix) the interest of the delinquent employee also lies in a prompt conclusion of disciplinary proceedings; (x) stay of the disciplinary proceedings cannot be and should not be a matter of

course; (xi) if the criminal case is unduly delayed, that may itself be a good ground for going ahead with the disciplinary inquiry, even though the disciplinary proceedings were held over at an earlier stage – it would be in the interest of administration, that persons accused of serious misdemeanour should be continued in office indefinitely, awaiting the result of criminal proceedings; (xii) M. Paul Anthony had sought stay of the departmental proceedings against him which was declined; (xiii) M. Paul Anthony owing to reasons beyond his control, could not participate in the departmental proceedings which were conducted *ex parte*; he was not even being paid the subsistence allowance to which he was entitled in law; (xiv) in the facts of that case the criminal case as also the departmental proceedings were based on raid conducted at the residence of M. Paul Anthony and recovery of incriminating articles therefrom; the said charge in the departmental proceedings was proved by Police officials who had effected recovery; the same Police officials were examined in the prosecution also but which prosecution was thrown out reasoning that neither any search nor any recovery from the residence of M. Paul Anthony had been proved; and, (xv) in these circumstances it would be unfair, unjust and oppressive to allow the findings recorded in the *ex parte* departmental proceeding to stand.

23. As would be obvious from a reading of the above, ***M. Paul Anthony*** also does not lay down the law any differently than as understood by us and based whereon the query at the outset was made from the counsel for the petitioners. However what led the Supreme Court in ***M. Paul Anthony*** to set aside the departmental punishment meted out to M. Paul Anthony was that, (a) M. Paul Anthony had sought stay of departmental proceedings

which was denied by the department but which order of the employer the Supreme Court found fault with; (b) M. Paul Anthony was prevented from taking part in the departmental proceedings, by non-payment of subsistence allowance to which he was entitled in law; and, (c) the departmental proceedings were still pending by the time M. Paul Anthony was acquitted in the criminal prosecution.

24. As distinct therefrom, (i) the petitioners herein did not seek stay of departmental proceedings against them; (ii) the petitioners participated in the departmental proceedings; and, (iii) the departmental proceedings ended as aforesaid, 16 years prior to the acquittal of the petitioners herein in prosecution and the challenge thereto before the High Court of Gujarat also stood decided as aforesaid, nearly 4½ years prior to the judgment of acquittal of the petitioners in prosecution.

25. The reliance by the petitioners on *M. Paul Anthony* supra, but which turned on its own peculiar facts, is thus not apposite.

26. In fact today we do not even know, whether the order of acquittal of the petitioners by the Court of Judicial Magistrate Gandhi Dham, is final. Neither counsel has informed, whether any appeal thereagainst has been preferred or is being preferred.

27. The petitioners have no right in law to seek fresh disciplinary proceedings and there is no duty on the respondents CISF to conduct fresh disciplinary proceedings, especially after the challenge to the punishment meted out therein, before the High Court of Gujarat has also failed and after the judgment of the High Court of Gujarat has attained finality; thus no mandamus can be sought.

28. Once the law is unequivocal, that disciplinary proceedings and prosecution, can go on simultaneously, after order in one has attained finality, the result of another cannot be a ground for reopening the one which has attained finality. The same would be contrary to the principle of finality of judgments and render the judgment of the High Court of Gujarat, of dismissal of the challenge by the petitioners to the order of their dismissal of service, nugatory.

29. We may also mention that the counsel for the petitioners has neither pleaded nor argued which all witnesses examined in the prosecution and in the disciplinary proceedings were the same. For this reason also, the reliance on *M. Paul Anthony* is misconceived. It is not disputed that a theft did take place at the place which was secured by the petitioners; the petitioners, at no stage have furnished any explanation of the goods stolen.

30. There is no merit in the petitions.

31. Dismissed.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

AUGUST 10, 2020

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