

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 2653 of 2021**

Narad Tamrakar S/o Late Shri Mohar Sai Tamrakar Aged About 40 Years R/o Near IB Rest House , Janjgir, Police Station And Tahsil Janjgir , District Janjgir Champa Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Its Secretary , Department Of Home/ Police , Mahanadi Bhawan , Mantralaya , Police Station And Post Rakhi, Atal Nagar, New Raipur, District Raipur Chhattisgarh.
2. Inspector General Of Police (IGP) Office Of Inspector General Of Police , Bilaspur Range, Near Nehru Chowk, District Bilaspur Chhattisgarh
3. Superintendent Of Police (SP) Office Of Superintendent Of Police (SP), Janjgir Champa , District Janjgir Champa Chhattisgarh.

---- Respondents

For Petitioner	:	Mr. Abhishek Pandey, Advocate along with Ms. Deepika Sannat, Adv.
For State	:	Ms. Sunita Jain, G.A.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****21/06/2021**

1. Aggrieved by the decision of the respondents in initiating a disciplinary proceedings and also ordering for conducting of a departmental inquiry the present writ petition has been filed.
2. The brief facts relevant for the adjudication of the present writ petition is that the petitioner is working under the respondents as a Constable (Trade). On 16.03.2020 an F.I.R. was lodged against the petitioner for the offence punishable under Sections 506 & 509 (B) of Indian Penal Code and Section 67(A) of the I.T. Act. Subsequently, the matter has been put to trial and the charge-sheet also has been filed before the

concerned trial Court. Now the Department has vide charge-sheet dated 05.03.2021 (Annexure P/3)) has been issued.

3. The counsel for the petitioner submits that perusal of the contents of the charge-sheet and on perusal of the allegations leveled in the F.I.R., the contents are same. He further drew the attention of this Court to the list of witnesses cited in the criminal case as also in the departmental enquiry and submitted that the main witnesses before the two proceedings also are the same. According to the petitioner, since in the departmental enquiry the witnesses to be examined in the criminal case are same and in case if their statements are recorded in the departmental enquiry ahead of the evidence being recorded in the criminal case, the very defense of the petitioner before the Criminal Court would get disclosed and it may have an adverse bearing to the criminal case and which can also be detrimental to the interest of the petitioner. He thus prayed for stay of the departmental enquiry pending the criminal case. The counsel for the petitioner relied upon a couple of orders passed by this Court in WPS No. 8018/2018 decided on 05.12.2018 and also in WPS No. 5252/2020 decided on 14.12.2020.
4. The State counsel on the other hand opposing the petition submitted that a plain reading of the nature of allegations itself would show that the charges leveled against the petitioner are quite serious and squarely falls within the ambit of a misconduct under the service regulations and therefore irrespective of the pendency of the criminal case the disciplinary proceedings also simultaneously go on. According to the State counsel, there is no embargo as such totally prohibiting the two proceedings to go on simultaneously and it would

all depend upon the facts of each case and as such there cannot be a straight jacket formula for staying the entire disciplinary proceedings. The counsel for the State relied upon the judgment of the Hon'ble Supreme Court in the case of “**Divisional Controller, Karnataka State Road Transport Corporation v. M.G. Vittal Rao**” 2012(1) SCC 442 to support her contention.

5. As regards, the law as laid down by the Hon'ble Supreme Court which is by now well settled proposition of law that there is no legal bar for continuation of the two proceedings, one under the departmental enquiry and other under the criminal trial. However, the Hon'ble Supreme Court has repeatedly reiterated the fact that even though there is no legal bar but in the event of the question of facts and the nature of evidences to be adduced in the two proceedings are the same. To avoid unnecessarily further complications, the departmental enquiry should be deferred till the conclusion of the criminal case.
6. In the instant case, if we look into the allegations leveled against the petitioner in the criminal case and the charges leveled against the petitioner in the disciplinary proceedings, it would clearly reflect that the allegations are the same that are leveled in the criminal case as well. Perusal of the documents enclosed along with the writ petition, particularly the F.I.R. and the list of witnesses in support of the prosecution before the trial Court and the list of witnesses enclosed along with the departmental charge-sheet for the departmental enquiry would show that most of witnesses are common in the two proceedings.
7. As early as in the case of **Capt. M. Paul Anthony V. Bharat Gold**

Mines Ltd. And Anr. 1999 3 SSC 679 the Hon'ble Supreme Court in paragraph 22 had laid down certain guidelines and where it has been specifically held that in the event if the issue involves complicated question of law and facts, if the evidences are similar, if not identical, it would be desirable to stay the disciplinary proceedings. For ready reference paragraph No. 22 of the said judgment is reproduced here-in-under:-

“22. 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.”**

8. A similar stand has again been taken by the Hon'ble Supreme Court in the case of **Stanzen Toyotetsu India Private Limited vs. Girish V. & Ors (2014) 3 SCC 636** which has also been relied by the Counsel for the petitioner. The aforesaid view of the Supreme Court has further been reiterated again in the case of **State Bank of India & Ors. vs.**

Neelam Nag and Others reported in **2016 9 SSC 491**. In all these cases, the principle of law so far as stay of the departmental enquiry, in the event of the nature of allegations and the witnesses remained the same have not been diluted. The Courts have very emphatically held that for stay of the departmental enquiry, there can be no straight jacket formula which can be spelt out, it would all depend upon the facts of each case.

9. This Court also in a recent writ petition of similar nature has relied upon the judgments of the Hon'ble Supreme Court in the case of **Avinash Sadashiv Bhosle (Died) through LRs. vs. Union of India (2012) 13 SCC 142** wherein the Hon'ble Supreme Court dealing with the similar set of facts and issues has categorically held that the 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 evidences in preceding case are common. The said principle of law has been re-iterated by the Hon'ble Supreme Court in many other decisions previously and subsequently in the case of **State Bank of India & Ors. vs. Neelam Nag and Others 2016 9 SSC 491**.
10. A fact which needs to be kept in mind or that needs to be considered at this juncture is the set of witnesses cited by the Department in the departmental enquiry and the list of witnesses in the criminal case. A perusal of the two in the present case would reveal that the list of witnesses and evidences are similar and the nature of allegations in the criminal case as also in the charge-sheet are also same. In again a recent decision the Hon'ble Supreme Court in the case of **Shashi Bhushan Prasad vs. Inspector General of C.I.S.F in case no. C.A.**

No. 7130/2009, decided on 01.08.2019 has categorically held that the two proceedings can go simultaneously except where the witnesses and the evidences are same which in the instant case appears to be same.

11. Therefore, in the light of the aforesaid legal position as it stands for, this Court is of the opinion that in the present case also keeping in view the judgment of the Hon'ble Supreme Court referred to in the preceding paragraphs, since the witnesses in the two proceedings are similar if not identical, in the interest of justice it would be more appropriate, if the evidences in the departmental enquiry is deferred till the evidences or witnesses in the criminal case of those witnesses who have been cited in the departmental enquiry, are examined, which would include the recording of the statement of the delinquent himself who should not be compelled to depose in the departmental enquiry ahead of the evidence on behalf of the department in the criminal case is completed. It is ordered accordingly.
12. Given the aforesaid facts and circumstances of the case and also taking note of the judicial pronouncement as it stands, the present writ petition if taken into consideration, it would reveal that for proving the charges which have been leveled against the petitioner in the departmental charge-sheet, the witnesses if not all, most of them would be the same who are also the witnesses in the Criminal Court.
13. Under the circumstances, if the witnesses are permitted to be examined in the disciplinary proceedings before they are examined in the criminal Court, there is all likelihood of the evidences of the petitioner being adversely affected. Since the most of witnesses are

common in the two proceedings and in case if the witnesses who are common before the two proceedings are examined in the departmental enquiry ahead of their statements being recorded in the criminal case, undoubtedly the defense of the present petitioner (the accused in the criminal case) would get disclosed and can have an adverse bearing in the criminal case detrimental to the interest of the delinquent (the petitioner).

14. For all the aforesaid reasons, this Court is of the firm view that the writ petition as of now can be disposed of with a direction to the respondent-authorities to ensure that the disciplinary proceeding initiated against the petitioner be deferred till all the witnesses in the departmental enquiry who are also witnesses in the criminal case, are examined before the Trial Court in the criminal case against the petitioner and to proceed further with the disciplinary proceedings thereafter.
15. With the aforesaid observations the present writ petition stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

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