

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 01.03.2021

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.11069 of 2020
and W.M.P.No.13475 of 2020

Sri.Apurba Bauri

... Petitioner

-vs-

1. The Assistant Security Commissioner / RPF/TNPM & DA,
O/o.The Senior Divisional Security Commissioner,
Railway Protection Force / Chennai,
V Floor, NGO Complex,
Park Town, Chennai-600 003.

2. Enquiry Officer,
PC/MTMY,
RPF, Mylapore RPF Office,
Mylapore, Chennai-600 004.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of Mandamus, directing the Respondents to defer the Departmental Proceedings until the completion of the Criminal Case Pending against the petitioner in Sessions Case No.59 of 2020 on the file of the learned I Additional District Judge, Durgapur District, West Bengal State.

For Petitioner : M/s.V.Chethana
For M/s.D.Geetha

For R1 : Mr.P.T.Ramkumar, Standing Counsel

ORDER

This writ petition has been filed, seeking for a direction to the Respondents to defer the Departmental Proceedings until completion of the Criminal Case Pending against the petitioner in Sessions Case No.59 of 2020 on the file of the learned I Additional District Judge, Durgapur District, West Bengal State.

2. The sum and substance of the issue on hand is that, the petitioner joined the services of the Railway Protection Force

(RPF), Chennai in the year 2015 as Constable and he obtained 40 days LAP for the purpose of his marriage with one Tanushree on 29.07.2019. When he was in his native place after marriage, he was arrested by Durgapur Women Police on 10.12.2019 and was remanded to judicial custody on 11.12.2019 on the complaint given by one Sujata Bauri alleging that the petitioner, on the false promise of marrying her, had sexual intercourse with her on several times. Pursuant to his arrest, he was placed under deemed suspension by the 1st Respondent by order dated 18.12.2019 and as a later development, a charge sheet was laid by the Sub-Inspector of Police, Durgapur Women Police Station before the learned Additional Chief Judicial Magistrate, Durgapur, West Bengal.

3. The petitioner submitted that on 04.02.2020, the 1st Respondent issued him a charge memo with an intimation that the 2nd Respondent was appointed as the Enquiry Officer to conduct the departmental enquiry. Since the initiation of departmental enquiry was based on the criminal case, there is every possibility of the Enquiry Officer, submitting a report against him, consequent to the arrest of the petitioner and his remand and in that case, he would be denied the opportunity of proving his innocence before the Criminal Court. Therefore, the petitioner is before this Court, seeking for the aforesaid direction.

4. The 1st Respondent contended that the petitioner was placed under suspension and thereafter, a charge memo was issued on 04.02.2020 and enquiry proceedings were also initiated. One Smt.R.Chitra was nominated as Enquiry Officer to enquire about the charge against the petitioner, which reads as follows:

"Charge: He was permitted to avail 40 days LAP from 13.11.2019 to 22.12.2019. While on leave, at about 13.35hrs on 10.12.2019, he was arrested for an criminal offence by Durgapur Women Police Station, Asansol Durgapur Police Commissionarate, West Bengal in Station Crime No.57/2019 dated 07.11.2019 and subsequently sent to judicial custody at Durgapur Correctional home by Hon'ble ACJM, Durgapur Court on 11.12.2019.

By the aforesaid act, he has tarnished the image of the force and thereby brought discredit to the reputation of the Force.

Thus has contravened Rule 146.1, 146.4., 147 (ii) of RPF Rules 1987 and Rule 3 (1) (iii) of Railway Services Conduct Rules, 1966."

5. According to the 1st Respondent, witnesses both in the criminal case and departmental enquiry are completely different,

except one Sub Inspector of Police and in the charge sheet, as many as 17 witnesses have been mentioned before the Trial Court and in the Departmental Enquiry, the list of witnesses are only six and except one Sub Inspector of Police, namely, Ms.Ananya Dey, as stated supra, others are different. It is stated by the 1st Respondent that the petitioner also participated in the enquiry on 25.02.2020 and in the first sitting, though the delinquent reported no objection for the appointment of R.Chithra Devi/PC/MTMY, subsequently, one Sri.Rameshwar Prasad Meena/PC/TNPM was appointed in the place of Chitra Devi. Unfortunately, the second Enquiry Officer was not able to conduct enquiry, as he was sanctioned leave on medical grounds and yet another person was appointed as Enquiry Officer, for which, the petitioner had no objection. It is further stated by the 1st Respondent that the petitioner, having participated in the enquiry and sought time to furnish the name of the friend to assist him, is now trying to protract the proceedings and the issue whether the petitioner has committed the criminal offence or not can be decided by the appropriate Forum and the petitioner cannot stall the proceedings, by merely citing the pendency of criminal case. Thus, it is prayed that the Writ Petition has got to be dismissed.

6. Heard the learned counsel on either side and perused the material documents available on record.

7. The facts reveal that the petitioner was employed as Police Constable in the Railway Protection Force (RPF), Chennai in the year 2015 and a criminal case was registered against him in Crime No.57 of 2019 for offences under Sections 376(2)(C) and 417 IPC on the basis of the complaint of one Sujatha Bouri. Consequent to the registration of an FIR and the subsequent arrest and remand, he was deemed to be suspended from service with effect from 10.12.2019. In the meanwhile, a Charge Memo was issued against the petitioner and an Enquiry Officer was appointed to look into the charge levelled against him. In the present case on hand, the petitioner seeks for deferment of the Departmental Proceedings till completion of the Criminal Case pending against him in Sessions Case No.59 of 2020 on the file of the learned I Additional District Judge, Durgapur District, West Bengal State. As far as the Departmental Proceedings against him are concerned, except on Sub Inspector of Police, all other witnesses are different.

8. The main contention of the respondents is that the the petitioner brought disrepute to the Force, which is against the Code of behaviour for members of the Force, as adumbrated in Rule Nos.146.1 and 146.4 and the said Rules are extracted hereunder:

"146.1 - All members of the Force, irrespective

of their ranks, shall submit themselves to the requirement of the following code of behaviour, both on and off duty. It shall be incumbent upon all members of the Force to respect the code of behaviour and maintain an attitude of complete discipline and obedience to it. Any breach of these provisions on the part of any member of the Force shall constitute misconduct and shall be punishable under the Railway Servants (Discipline and Appeal) Rules, 1968 as applied to superior officers or, as the case may be, under section 9 or section 17.

146.4 - Discreditable conduct: No member of the Force shall act in any manner prejudicial to discipline or conduct himself in such a manner which is reasonably likely to bring discredit to the reputation of the Force."

9. The relief sought for by the petitioner cannot be granted in this case, as the Hon'ble Supreme Court in the case of Stanzen Toyotetsu India Private Limited vs. Girish v. and others, reported in (2014) 3 SCC 636, clearly laid down a dictum as under:

"19....Interests of justice would, in our opinion, be sufficiently served if we direct the Court dealing with the criminal charges against the respondents to conclude the proceedings as expeditiously as possible but in any case within a period of one year from the date of this order.

..... In case, however, the trial is not completed within the period of one year from the date of this order, despite the steps which the Trial Court has been directed to take the disciplinary proceedings initiated against the respondents shall be resumed and concluded by the Inquiry Officer concerned. The impugned orders shall in that case stand vacated upon expiry of the period of one year from the date of the order.

10. From the above proposition, it is clear that after the waiting period of one year, departmental enquiry shall be proceeded with, as laying of charge sheet in a criminal case will take a longer time, that itself will give benefit to the accused. Since a case under Sections 376 and 417 IPC has been booked against the petitioner, obviously, there will not be any eyewitnesses and only based on the circumstantial evidences, the Court will have to come to a conclusion. However, charges in the departmental proceedings should be established on the basis of preponderance of probabilities. It is needless to mention that if any departmental proceedings have been commenced or initiated, it is open to the 1st respondent to proceed with the

same so as to bring the proceedings to a logical end, de hors pendency of the criminal case, as both criminal proceedings as well as departmental proceedings can go on simultaneously. The respondents, while taking a decision, shall bear in mind the judgments of the Apex Court (supra) and this Court dated 06.01.2021 made in W.P.No.13 of 2021 especially Paragraph Nos.6 & 9.

11. It is made clear that the enquiry should not be stalled, citing the reason of non availability of documents. If the documents are taken by the DVAC or other Departments or filed before the Court, certified copies of those documents can be obtained by the Department and in the event of any such request made, other Departments are bound to furnish the same, in order to enable the concerned Department to proceed with the enquiry against the delinquent and DVAC or other Departments should not be a party for non-conduct of enquiry.

12. With the above observation and direction, the Writ Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

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To

1. The Assistant Security Commissioner / RPF/TNPM & DA,
O/o.The Senior Divisional Security Commissioner,
Railway Protection Force / Chennai,
V Floor, NGO Complex, Park Town, Chennai-600 003.

2.The Enquiry Officer,
PC/MTMY,
RPF, Mylapore RPF Office,
Mylapore, Chennai-600 004.

+1cc to Mr.P.T.Ramkumar, Advocate SR.No.12939

W.P.No.11069 of 2020

PMK (CO)
GMY (16/06/2021)