

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-14185-2020

(Heard through VC)

Date of decision: 04.02.2021

L/ASI Seema

....Petitioner

V/s.

State of Haryana and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

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

Mr. Pankaj Middha, Addl.A.G., Haryana.

Ritu Bahri, J. (Oral)

The petitioner is seeking writ of certiorari for quashing impugned order dated 04.03.2020 (Annexure P-2) vide which regular departmental inquiry has been ordered by respondent No. 3 and chargesheet dated 10.04.2020 (Annexure P-3) vide which respondent No. 4 has initiated the departmental inquiry on the basis of FIR No. 218 dated 01.03.2020, under Section 7/13 of Prevention of Corruption Act, 1988 registered at Police Station Model Town, Panipat (Annexure P-1).

The brief facts of the case are that the petitioner joined the services of the respondent department on 23.02.2002 as lady Constable and was promoted as Head Constable on 08.05.2012 and was further promoted as ASI on 28.10.2016. She was working under respondent No.3-Superintendent of Police, Panipat. There was no adverse entry against the petitioner in her entire service record of 18 years except one censure which was given on account of delay in submitting the charge-sheet. However, one FIR No. 218 dated 01.03.2020 under Section 7/13 of the Prevention of

Corruption Act, 1988 was registered at Police Station Model Town, Panipat (Annexure P-1) against her.

The allegation in the said FIR (Annexure P-1) is that petitioner had demanded Rs.5,000/- from Rakesh Kumar for exonerating his mother from the FIR got registered by his wife. The petitioner was placed under suspension vide order dated 04.03.2020 (Annexure P-2) and thereafter regular departmental inquiry was initiated against her by respondent No.3. She was reinstated in service vide order dated 24.07.2020 w.e.f. 22.07.2020. She was issued charge-sheet dated 10.04.2020 (Annexure P-3). In this backdrop, writ petition has been filed.

On notice of this petition, written statement dated 13.10.2020 has been filed by respondents No. 1 to 4 and the stand taken by the respondents is that trial for criminal offence and a department inquiry do not stand on the same footing. The degree of proof required in the departmental proceedings is not the same as it is in a criminal case. The petitioner is deliberately delaying the proceedings of departmental inquiry and there is no bar for continuation of departmental inquiry alongwith criminal case and both can be initiated simultaneously. Further in para 2 of the written statement, it is highlighted that on 01.03.2020 the petitioner was apprehended red handed by Shri Satish Vats, HPS, Deputy Superintendent of Police, Headquarters, Panipat after constituting raiding team of Shri Anil Kumar Kaushik, Naib Tehsildar, Panipat and Rajesh Kumar Kanungo as shadow witnesses. The petitioner was apprehended while taking bribe of Rs.5,000/- from one Rakesh in lieu of removing the name of his mother from case FIR No. 1107 dated 31.12.2019 under Sections 313/376/506 IPC registered at Police Station Model Town, Panipat. Subsequently an FIR No.

218 dated 01.03.2020 under Sections 7/13 of Prevention of Corruption Act, 1988 was registered against the petitioner and as per report submitted by Shri Satish Vats, HPS, DSP/Hqrs, Panipat, the petitioner was arrested as per law after registration of FIR No. 218 dated 01.03.2020.

Learned counsel for the petitioner has referred to the judgments passed by Supreme Court in ***Capt. M. Paul Anthony V/s. Bharat Gold Mines Ltd.*** 1999(3) SCC 679 and ***State Bank of India and others V/s. Neelam Nag and another*** 2016(4) S.C.T. 805 on the preposition that participation of petitioner in departmental proceedings during the pendency of criminal trial, would prejudice the defence in the criminal case and departmental proceedings should be stayed till the criminal trial concludes.

Learned counsel for the State has argued that the judgment of ***State Bank of India's case (supra)*** is not applicable to the facts of the present case as the Supreme Court was examining the case of an employee of a bank and in this case there was memorandum of settlement dated 10.04.2002 which protected the employee of bank from necessary departmental proceedings until completion of trial in the criminal case and the Supreme Court in view of Clause 4 of the memorandum of settlement, disposed of Civil Appeal filed by State Bank of India by giving direction to the trial Court to decide the trial within one year and respondent was to extend full cooperation to the trial Court for early disposal. In ***Capt. M. Paul Anthony's case (supra)***, there is no complete bar to go ahead with the disciplinary proceedings alongwith criminal trial.

Learned counsel for the State has referred to Supreme Court judgment passed in ***State Bank of India V/s. R.B. Sharma*** 2004(3) SCT 833, Division Bench judgments passed by this Court in ***Prem Singh V/s.***

State of Haryana and others, 2006(12) SCT 398 and *Ved Parkash V/s. State of Haryana and others, 2007(4) SCT 423*, on the preposition that even as per the judgment of Supreme Court passed in *Capt. M. Paul Anthony's case (supra)*, if the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings can be resumed so that if the employee is found not guilty his honours may be vindicated and in case he is found guilty, administration may get rid of him at the earliest.

Heard learned counsel for the parties.

The judgment passed by Supreme Court in *State Bank of India's case (supra)* cannot be applied to the present case as the respondent-Neelam Nag was an employee of a bank and there was a memorandum of settlement dated 10.04.2002 which protected the employees of bank from necessary departmental proceedings until completion of trial in the criminal case. The Supreme Court directed the trial Court to decide the trial within one year and respondent was to extend full cooperation to the trial Court for early disposal and if the trial is not completed within one year, the disciplinary proceedings against the respondent shall be resumed by the enquiry officer concerned.

In the present case, reference can be made to judgment passed by this Court in *CWP-10657-2020* titled as *Suresh Kumar V/s. State of Haryana and others*, decided on 28.07.2020 in which petitioner Suresh Kumar was facing trial under Section 7 of the Prevention of Corruption Act, 1988 as well as regular departmental inquiry. After referring to the judgment of Supreme Court in *Capt. M. Paul Anthony's case (supra)*, writ petition was disposed of by giving direction to the trial Court to examine

common witnesses in the criminal proceedings and thereafter the department could proceed to conclude departmental proceedings and the trial Court shall make endeavour to examine common witnesses first.

Reference can be made to the judgment passed by Supreme Court in *Civil Appeal-5424-2004* titled as *State Bank of India and others V/s. R.B. Sharma*, 2004(3) SCT 833 in which reference of *Capt. M. Paul Anthony's case (supra)* was given and the guidelines laid down therein are reproduced hereunder:-

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

The respondents in aforesaid case had taken a plea before the Supreme Court that the employee was delaying the criminal trial and he was taking undue advantage of long pendency of the criminal case. The Supreme Court allowed the Civil Appeal and the matter was remanded back to the High Court to dispose of the matter afresh.

The Division Bench of this High Court in **CWP-9999-2006** titled as ***Prem Singh V/s. Stae of Haryana and others*** observed that petitioner was a member of disciplined force and had been charged for demanding Rs. 30,000/- as illegal gratification. The Division Bench, while referring to judgment of ***Capt. M. Paul Anthony's case (supra)*** held that departmental proceedings cannot be permitted to wait endlessly till the conclusion of criminal trial, which may take its own time and it would not be in the interest of respondent-department that a person like the petitioner who is charged with serious misconduct continued to be in service. With these observations, writ petition was dismissed.

Further in **CWP-6155-2007** titled as ***Ved Parkash V/s. State of Haryana and others***, 2007(4) SCT 423, the Division Bench of this Court was considering the case of an exemptee Head Constable seeking quashing of the charge-sheet and stay of the disciplinary proceedings during the pendency of the criminal trial in FIR No. 58 dated 22.09.2006 under Sections 7/13 of Prevention of Corruption Act registered at Police Station State Vigilance Bureau, Ambala City. The petitioner is shown to have been caught red handed while accepting the bribe. The Division Bench while referring the judgment of ***Capt. M. Paul Anthony's case (supra)***, held that disciplinary proceedings should not be stayed as a matter of course and the

writ petition was dismissed.

In the facts of the present case, the petitioner was working as ASI and an FIR No. 218 was registered on 01.03.2020. The challan has been presented as informed by learned counsel for the respondent-State. During the pandemic of COVID 19, the trial is likely to take some time to conclude. However the petitioner being part of the disciplined department, the departmental proceedings cannot be stayed to await decision of the criminal proceedings and even a direction cannot be given to trial Court to examine the witnesses expeditiously in the prevailing situation.

Hence, writ petition is dismissed.

04.02.2021**Divyanshi****RITU BAHRI
(JUDGE)****Whether speaking/reasoned:****Yes/No****Whether reportable:****Yes/No**