

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7719 OF 2022**

Sachin Subhash Bhosale

...Petitioner

V/s.

Union of India, through
Secretary & Ors.

...Respondents

Dr. Abhinav D. Chandrachud with Mr. Sachin B. Thorat
for the petitioner.

Mr. Shreeram Shirsat with Mr. Amandeep Singh Sra,
Ms. Nishi Singhvi, Mr. Madhur Salkar and Mr. Shekhar
Mane for the respondent (Union of India).

**CORAM: DIPANKAR DATTA, CJ. &
MADHAV J. JAMDAR, J.**

**RESERVED ON : SEPTEMBER 16, 2022
PRONOUNCED ON : SEPTEMBER 28, 2022**

JUDGMENT: [per the Chief Justice]

FACTS:

1. The petitioner is a member of the Railway Protection Force (hereafter "Force", for short) and employed as a Constable. He is facing a disciplinary proceeding initiated under rule 153 of the Railway Protection Force Rules, 1987 (hereafter "RPF Rules", for short).

2. The memorandum of charge-sheet dated June 4, 2022 reveals the following charges drawn up against the petitioner:

Charge – I

1. Shri Sachin Bhosle, constable RPF Thana Kurduwadi, established constant contact with the wanted accused in the Railway Property (Unlawful Possession) Act case and did not give any information about it to his higher officials.

This act of Mr. Sachin Bhosale constable RPF Thana Kurduwadi shows irresponsible gross negligence and unfaithful conduct in performing duty as a member of the force. In this way, the said constable has violated Rule 146.2(i), 146.3(i), 146.4, 147(i)(ii)(iii) of the RPF Rules, 1987."

Charge – II

2. Mr. Sachin Bhosale constable RPF Station Kurduwadi has informed the wanted accused persons in the Railway Property (Unlawful Possession) Act case about their arrest and during the investigation misled the investigating officers and administration. This act of Mr. Sachin Bhosale constable R.S.B., Kurduwadi, being a member of the force, shows irresponsible gross negligence and unfaithful conduct in the performance of duty. In this way, rules 146.2(i), 146.3(i), 146.4, 147(i)(ii)(iii) of the RPF Rules, 1987 have been violated.

3. The statement of allegations in support of each of the above charges read as follows:

1. Preliminary inquiry officer and Inspector RPF/Passenger Security, Solapur vide its Letter no. Niri/Sola/PS/CON/2022 dated 25.05.2022, submitted preliminary inquiry report and suggested that a preliminary inquiry was conducted against the suspended constable Sachin Bhosale police station Kurduwadi. In which according to the statements of the witnesses, Mr. Sachin Bhosale constable resub. Police station Kurdwadi was in constant touch with accused Rahul Shinde on 07.05.2022, 12.05.2022 and 13.05.2022. Mr. Sachin Bhosale constable R.S.B. Kurdwadi did not inform his higher officials about the contact with the accused. This act of constable Sachin Bhosale has failed to maintain complete integrity and has tarnished the image of the force.

2. Preliminary investigation report has been submitted by the Primary Inquiry Officer and Inspector RPF/Passenger Safety Solapur under the letter Niri/Sota/PS/CON/2022 dated 25.05.2022, in which it has been informed that the preliminary investigation against the constable Sachin Bhosale Thana Kurduwadi. According to the statement of the witnesses, Mr. Sachin Bhosale

Constable RPF Thane Kurduwadi was in constant touch with accused Rahul Shinde 07.05.2022, 12.05.2022 and 13.05.2022. By being in constant touch with the accused, he was giving suggestions to avoid arrest and tried to mislead the Investigation officials and the administration during the investigation. This act of constable Sachin Bhosle is unethical, which shows unfaithful conduct and has tarnished the image of force.

PETITIONER'S CONTENTIONS:

4. Incidentally, the petitioner stands arraigned as an accused in a criminal proceeding bearing C. R. No. 08/2022 dated 08/05/2022 under sections 3(a) and 4 of the Railway Property (Unlawful Possession) Act, 1966 (hereafter "RPUP Act", for short).

5. According to Dr. Chandrachud, learned advocate for the petitioner, the short questions which arise for decision in the present case are:

- (i) What are the circumstances in which a departmental proceeding initiated against a delinquent employee can be stayed pending an ongoing criminal trial? and
- (ii) Are such circumstances present in the instant case?

6. Dr. Chandrachud contended that in a series of judgments, the Supreme Court of India has indicated factors which must be considered while deciding whether a departmental proceeding ought to be stayed pending a criminal trial. The legal principles flowing from several decisions, as summarized by him, are as follows:

- 1. The case against the delinquent employee must be of a grave or serious nature in order to warrant a stay of the

departmental proceedings. [**Delhi Cloth and General Mills v. Kushal Bhan**, AIR 1960 SC 806 (paragraph 3); **Tata Oil Mills Co. Ltd. v. Workmen**, AIR 1965 SC 155 (paragraph 9); **State of Rajasthan v. B.K. Meena**, (1996) 6 SCC 417 (paragraph 14); Depot Manager, **A.P. State Road Transport Corporation v. Mohd. Yousuf Miya**, (1997) 2 SCC 699 (paragraph 8); **Capt. M. Paul Anthony v. Bharat Gold Mines**, (1999) 3 SCC 679 (paragraph 22); **State Bank of India v. R.B. Sharma**, (2004) 7 SCC 27 (paragraph 8); **Hindustan Petroleum Corporation v. Sarvesh Berry**, (2005) 10 SCC 471 (paragraph 8); and **Stanzen Toyotetsu India Pvt. Ltd. v. Girish V.**, (2014) 3 SCC 636 (paragraphs 13 and 16)].

2. The case against the delinquent employee must involve complicated questions of fact or law, i.e., the case against the employee must not be a “simple” one, in order to merit a stay of the departmental proceedings. [**Delhi Cloth and General Mills** (supra) (paragraph 3); **B.K. Meena** (supra) (paragraph 14); **Mohd. Yousuf Miya** (supra) (paragraph 8); **R.B. Sharma** (supra) (paragraph 8); **Hindustan Petroleum Corporation** (supra) (paragraph 8); **Stanzen Toyotetsu India (P) Limited** (supra) (paragraphs 8 and 13); and **Eastern Coalfields Ltd. v. Rabindra Kumar Bharti**, (2022) SCC Online SC 445 (paragraph 11)].
3. In order to merit a stay of the departmental proceeding, the Court ought to be satisfied that if the departmental proceeding is not stayed pending the criminal trial, there

is an imminent danger of the delinquent employee suffering a prejudice by being forced to disclose his defence. [**Tata Oil Mills** (supra) (paragraph 9); **B.K. Meena** (supra) (paragraph 14); **Mohd. Yousuf Miya** (supra) (paragraph 8); **R.B. Sharma** (supra) (paragraph 8); **Hindustan Petroleum Corporation** (supra) (paragraph 8); and **Stanzen Toyotetsu India (P) Limited** (supra) (paragraphs 8 and 16)]

4. The departmental proceeding and the criminal trial must be based on identical or a similar set of facts in order to merit a stay of the departmental proceeding. [**Kusheshwar Dubey v. Bharat Coking Coal Ltd.**, (1988) 4 SCC 319 (paragraph 8); **Capt. M. Paul Anthony** (supra) (paragraph 22); **R.B. Sharma** (supra) (paragraph 7); and **Hindustan Petroleum Corporation** (supra) (paragraph 7)].
5. The evidence in the departmental proceeding and the criminal trial must be common [**R.B. Sharma** (supra) (paragraph 7); **Hindustan Petroleum Corporation** (supra) (paragraph 7); **Indian Overseas Bank v. P. Ganesan**, (2008) 1 SCC 650 (paragraph 18); and **Eastern Coalfields** (supra) (paragraph 11)].
6. If the criminal trial is being unduly delayed, then the departmental proceeding must be resumed even though it had previously been stayed [**B.K. Meena** (supra) (paragraphs 14 and 17); and **Stanzen Toyotetsu India (P) Limited** (supra) (paragraph 13)].

7. Stay of disciplinary proceeding should not be a matter of course [**B.K. Meena** (supra) (paragraphs 14 and 17)].
8. The charges against the delinquent employee in the criminal case and the departmental proceeding must be similar. If there are additional charges in the departmental proceeding, it should not be stayed [**P. Ganesan** (supra) (paragraphs 18 and 24); **Eastern Coalfields** (supra) (paragraph 11)].
9. The above factors do not constitute a strait-jacket formula, and each case must be decided on the basis of its own facts [**B.K. Meena** (supra) (paragraph 14); and **State Bank of India v. Neelam Nag**, (2016) 9 SCC 491 (paragraph 18)].

7. In the light of the above principles and as applicable to the facts of the instant case, Dr. Chandrachud submitted that the factors like 'gravity of the case' and 'complicated questions of fact and law' warrant a stay of the departmental proceeding pending the criminal trial against the petitioner.

8. On 'gravity of the case', it has been contended that:

- a. The charge against the petitioner is grave and serious for more reasons than one.

First, in both the criminal trial and the disciplinary proceeding, the petitioner has been implicated in a case under sections 3(a) and 4 of the RPUP Act. Though the ordinary punishment for theft under the Indian Penal Code,

1860 ("IPC") extends to 3 (three) years, the RPUP Act provides an enhanced punishment of 5 (five) years and a minimum punishment of 1 (one) year for the first offence and 2 (two) years for the second offence.

Secondly, in **Stanzen Toyotetsu India (P) Limited** (supra) (paragraph 17), the Supreme Court held that even simple IPC offences that are punishable with imprisonment of up to 3 (three) years are grave in nature. In the instant case, the offences under sections 3(a) and 4 of the RPUP Act are punishable with 5 (five) years' imprisonment, with minimum sentences for the first and subsequent offences.

Thirdly, under section 6 of the RPUP Act, persons who are accused of offences under the RPUP Act can be arrested without a warrant from a magistrate.

Fourthly, since investigating officers who conduct the investigation under the RPUP Act are, strictly speaking, not considered to be "police officers", confessional statements made to them are considered admissible in evidence and are not governed by section 162 of the Code of Criminal Procedure, 1973 [**Srilal Shaw v. State of West Bengal**, (1975) 1 SCC 336 (paragraph 5); and **State of Bihar v. Chandra Bhushan Singh**, (2001) 2 SCC 241 (paragraph 8)].

Fifthly, the Supreme Court in as many words has held that the offence under Section 3 of the RPUP Act is "*serious in nature*" [**State of Bihar v. Baidnath Prasad**, (2002) 1 SCC 465 (paragraph 9)].

9. It has next been contended that complicated questions of

fact and law arise in the instant case. In **Delhi Cloth and General Mills** (supra) (paragraph 3), the Supreme Court explained that when questions of fact or law arise that are “not simple”, then this is a factor to be taken into account for granting a stay of the disciplinary proceedings pending a criminal trial. The instant case is certainly not a simple one, and complicated questions of fact and law, as indicated below, arise herein.

First, there is not a single independent eyewitness in this case who has personally seen the petitioner commit theft or abet the commission of theft of railway property.

Secondly, the evidence of the prosecution in the instant case turns on the confessional statement of the co-accused Mr. Rahul Shinde [*Page 40A, of WP*], who has said that he was in constant contact with the petitioner. Ordinarily, such a statement would not have been considered to have evidentiary value under section 162 of the Code of Criminal Procedure, 1973. However, in view of the peculiar provisions of the RPUP Act discussed above, the said statement may be admitted in evidence against the petitioner.

Thirdly, the prosecution relies on an alleged phone call recording between the petitioner and the said Rahul Shinde. The veracity and authenticity of this call recording will have to be seriously tested.

Fourthly, though the petitioner is alleged to have been in contact with other co-accused, none of the other co-accused claim to have personal knowledge of the involvement of the petitioner in the instant case [*Pages 42F*

and 51B, of the WP].

Fifthly, there are two conflicting statements which have been recorded as far as the petitioner is concerned. In the first statement dated May 17, 2022, which is an unsigned statement [*Page 47A, of the WP*], the petitioner admits his guilt. However, in the second statement dated May 20, 2022 [*Page 46A, of the WP*], the petitioner denies his involvement in the case.

Sixthly, the prosecution contends that the petitioner was in contact with other co-accused by means of a SIM card which did not belong to him at all, but which he allegedly obtained by coercing a cleaning employee of the railways. Further, the prosecution in the departmental proceeding does not rely on any call detail records involving the said SIM card and the other co-accused.

10. Moving further, Dr. Chandrachud's contention has been that if the departmental proceeding is not stayed, the petitioner will suffer prejudice since he will be forced to disclose the defence that he is likely to take in the criminal trial. Though the petitioner would be entitled not to take the stand in the disciplinary proceeding at all, it would be far too risky a proposition for him to do so, particularly when his entire career in the Force and reputation is at stake. In view of the material that has been gathered against him, the petitioner will have to take the stand in the disciplinary proceeding and disclose his positive defence. This will prejudice his case in the criminal trial since the prosecution will be aware of his defence.

11. Additionally, Dr. Chandrachud has contended that the facts and evidence in both the disciplinary proceeding and the criminal trial are common. Both proceedings proceed on the premise that the petitioner abetted the theft of diesel on May 7, 2022. Both cases surmise that the petitioner was in constant touch with the accused, prior to and after the commission of the offence.

12. Next, it was pointed out that the witnesses in the departmental proceeding [*Page 32G, of the WP*] are all common to the criminal proceeding. They include Mr. Gokul Sononi, the primary investigation officer, and Mr. Satish Vidhate, the officer who filed the remand report dated May 18, 2022 before the Judicial Magistrate, First Class, Railway Court, Daund [*Page 25A, of the WP*]. Moving further, it was shown that the documents the prosecution seeks to rely upon in the departmental proceeding [*Page 32H, of the WP*] are statements of co-accused and other statements, which would also be relied upon by the prosecution in the criminal trial.

13. Stressing on the point that the respondents' interest can be protected by expediting the criminal trial, Dr. Chandrachud referred to the law laid down by the Supreme Court in **Stanzen Toyotetsu India (P) Limited** (supra) (paragraph 13) and submitted that a direction could be issued that the inquiry must be resumed at the end of one year if the criminal trial has not come to an end. This, according to him, is also the view that has found favour with this Court in various decisions that have been annexed to the writ petition [*Pages 69, 102 and 105, of the WP*].

14. The final contention has been that the charges in the disciplinary proceeding and criminal trial are broadly similar. In any event, they are not required to be identical. The allegation

against the petitioner in the criminal trial is that he abetted the commission of theft of railway property under section 4 of the RPUP Act read with section 3(a) thereof. In other words, the allegation against the petitioner in the criminal trial is not that he personally committed the theft but that he aided and abetted those that committed the theft by being in constant contact with them both before and after the theft. To a very large extent, this is precisely the subject matter of the charge against the petitioner in the disciplinary proceeding. Though the charges in the disciplinary proceeding and the criminal trial may not be identical, there is a broad zone of similarity between the two proceedings and the charges.

15. While summing up, Dr. Chandrachud contended that apart from the decisions of the Supreme Court in **P. Ganesan** (supra) and **Eastern Coalfields** (supra), no other decision of the Supreme Court, including decisions of three learned judges of the Supreme Court in **Tata Oil Mills** (supra) and **Mohd. Yousuf Miya** (supra), hold that the charges must be identical in the disciplinary proceedings and the criminal trial. In most cases, the Supreme Court has held that the facts and the evidence must be common. It was submitted that it is not a hard and fast rule that the charges in both the disciplinary proceeding and the criminal proceeding must be identical in order to warrant a stay of the disciplinary proceeding pending the criminal trial. Resting on the aforesaid contentions, he submitted that the disciplinary proceeding against the petitioner ought to be stayed pending the criminal trial, at least for a reasonable period of time.

RESPONDENTS' CONTENTIONS:

16. *Per contra*, Mr. Shreeram Shirsat, learned advocate for the

respondents contended that there cannot be any automatic stay of a disciplinary proceeding only because the charged member of the Force is facing criminal prosecution. Referring to **B.K. Meena** (supra), it has been contended that the purpose of the two proceedings are completely different. In any event, the charges in both the proceedings are not similar. The petitioner is charged with dereliction of duty unbecoming of a member of the Force, which has no nexus with the charge(s) in the criminal proceeding. Neither does the case involve any complex question of fact or law, nor would the petitioner be prejudiced in any manner if he participated in the inquiry. In the criminal proceeding, even cognizance of the offence has not been taken. Relying on the decision of a coordinate bench of this Court in **Anupama Naik v. Standard Chartered Bank**, 2007 SCC OnLine Bom 524, he prayed for dismissal of the writ petition.

CONSIDERATION:

17. We have heard learned advocates for the parties and perused the materials on record. The decisions cited by the parties have also been considered.

18. On the date this writ petition was heard first, even the charge-sheet had not been submitted before the relevant magistrate. Therefore, there was no judicial proceeding pending against the petitioner on that date. Grant of interim protection to the petitioner by staying the inquiry was certainly not proper. However, Dr. Chandrachud has informed us that the charge-sheet has since been submitted, and the Court is now entitled to take into consideration such subsequent event without the petitioner seeking any alteration of the relief claimed in the writ petition. We accept such submission.

19. Moving on to the merits of the rival contentions, we require to answer the questions as formulated by Dr. Chandrachud and noted at the beginning of this judgment in paragraph 5.

20. There is an unsigned statement dated May 17, 2022 of the petitioner on record, where he admitted his guilt. However, in the second statement given by him dated May 20, 2022 [*Page 46A of the WP*], which bears his signature, he retracted and proceeded to answer questions put to him by the officer holding preliminary inquiry. It would be appropriate to quote below such of those questions which are considered relevant and the petitioner's answers thereto for the present decision:

"Question-1. You were in contact through mobile with accused Rahul Shinde of theft of diesel on 07.05.2022. Give the explanation regarding this.

Answer: I was never in contact through mobile.

Question-2. As per the say of Rahul Shinde he has saved your mobile number 8793296062 in the name of Raje and this was being used by i. What you want to say about this?

Answer: This mobile no. is not belonging to me and I was not using the said mobile number.

Question-3. The absconding accused Vikas Sathe is also in touch with you on mobile. What you want to say about this?

Answer: Prior to incidence said Vikas Sathe was in touch with me as my informer.

Question-6. As per say of Rahul Shinde and audio clip of 12.05.2022 and 13.05.2022 you are telling him to not take your name and how to defend themselves and and make false accusation. What you want to say about this?

Answer: With this regard I have to say that I never had talk with Rahul Shinde.

Question-7. Give explanation regarding, why the other arrested accused are taking you name time and again?

Answer: They must have some trouble from me, that's why they may have taken my name."

21. From the above answers, *prima facie*, it seemed to us that the petitioner had disclosed his defence and the bogey of suffering prejudice at the criminal trial, if he were to disclose his defence, was put forth to avoid the rigours of disciplinary action.

22. When queried on this aspect, Dr. Chandrachud conceded that the petitioner has revealed some part of his defence in his second statement, but hastened to add that he has not revealed his entire defence in such statement. Thus, prejudice will be caused to the petitioner if he is required to take the stand in the disciplinary proceeding pending the criminal trial. Further, even assuming that the petitioner has disclosed his entire defence in the said statement (though this is not the case), the prejudice caused to the delinquent employee of disclosing his defence is only one of several factors that are to be taken into account while deciding whether or not to stay a departmental proceeding pending a criminal trial. We propose to deal with this submission a little later.

23. At this stage, we may ascertain from the precedents relied on by Dr. Chandrachud in which of the cases the disciplinary proceeding was stayed and on what ground. **Kusheshwar Dubey** (supra), **Capt. M. Paul Anthony** (supra), **Stanzen Toyotetsu India (P) Limited** (supra) and **Neelam Nag** (supra) appear to fall in that category.

24. In **Kusheshwar Dubey** (supra), the appellant had allegedly assaulted his supervising officer for which he was subjected to a disciplinary proceeding as also a criminal prosecution. The order of injunction granted by the civil court was reversed by the Patna High Court, which was in turn reversed by the Supreme Court. The Court was urged to settle the law in a strait-jacket formula as judicial opinion was conflicting on the point as to whether parallel proceedings - criminal proceeding and departmental proceeding - could run or not. The argument was repelled by observing that hazarding such a step would create greater hardship and individual situations may not be available to be met and thereby injustice is likely to ensue. After considering the decisions in **Delhi Cloth & General Mills Ltd.** (supra), **Tata Oil Mills Co. Ltd.** (supra) and **Jang Bahadur Singh v. Baij Nath Tiwari**, AIR 1969 SC 30, the Court ruled:

"7. The view expressed in the three cases of this Court seem to support the position that while there could be no legal bar for simultaneous proceedings being taken, yet, there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case. In the latter class of cases it would be open to the delinquent employee to seek such an order of stay or injunction from the court. Whether in the facts and circumstances of a particular case there should or 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. As we have already stated that it is neither possible nor advisable to evolve a hard and fast, strait-jacket formula valid for all cases and of general application without regard to the particularities of the individual situation. For the disposal of the present case, we do not

think it necessary to say anything more, particularly when we do not intend to lay down any general guideline.

8. In the instant case, the criminal action and the disciplinary proceedings are grounded upon the same set of facts. We are of the view that the disciplinary proceedings should have been stayed and the High Court was not right in interfering with the trial court's order of injunction which had been affirmed in appeal."

(emphasis ours)

25. Apart from the fact that in **Kusheshwar Dubey** (supra) the matter had reached the Supreme Court when the trial was yet to begin, the Court by the last sentence of paragraph 7 made it clear that it did not intend to lay down any general guideline. Dr. Chandrachud is, however, right that since both proceedings were grounded on the same set of facts, the Court upheld the injunction granted by the civil court.

26. Strong reliance was placed on **Capt. M. Paul Anthony** (supra) by Dr. Chandrachud. Bare perusal of the facts reveals a raid at the residence of the appellant having been conducted on June 2, 1985 leading to recovery of a mining sponge gold ball weighing 4.5 grams and 1276 grams of "gold bearing sand", which led to his suspension on June 3, 1985. Since the appellant had allegedly committed theft of the company's property which he was entrusted to guard, he was viewed by his employer to have indulged in 'misconduct' and hence, a charge-sheet dated June 4, 1985 was issued against him. Simultaneously, criminal prosecution was launched. On receipt of the charge-sheet, the appellant pleaded innocence and prayed that the disciplinary proceeding be deferred on the ground that the raid conducted at his residence was the subject matter of the criminal proceeding.

The prayer was not accepted. Despite the appellant not having been paid subsistence allowance as well as reporting that illness was the ground for his inability to attend the enquiry, the same progressed. Ultimately, based on the findings of the enquiry officer, the appellant was dismissed from service. An appeal, presented thereagainst, proved abortive. On February 3, 1987, the criminal court acquitted the appellant holding that the prosecution had failed to establish its case whereupon the appellant prayed for his reinstatement few days later. It was declined on the ground that the appellant had been dismissed earlier. The writ petition before the Karnataka High Court succeeded, but the appellate court reversed the decision of the learned single judge. The Supreme Court finally granted relief to the appellant on the grounds that he was proceeded against in clear breach of the principles of natural justice as well as what was discussed in paragraph 34, reading as follows:

"34. There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, "the raid conducted at the appellant's residence and recovery of incriminating articles therefrom". The findings recorded by the enquiry officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by police officers and panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the enquiry officer and the enquiry officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the Court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was

acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the 'raid and recovery' at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex parte departmental proceedings to stand."

(emphasis ours)

27. The position is, therefore, pellucid that in the criminal trial the 'raid and recovery' at the appellant's residence could not be proved, which tilted the scales in favour of the appellant despite the enquiry officer having returned a contra-finding in the disciplinary proceeding.

28. While considering the civil appeal, the Supreme Court had the occasion to consider the decisions of the Supreme Court in **Delhi Cloth & General Mills Ltd.** (supra), **Tata Oil Mills Co. Ltd.** (supra), **Jang Bahadur Singh** (supra) and **Kusheshwar Dubey** (supra) as well as those in **Nelson Motis v. Union of India**, (1992) 4 SCC 711, **B.K. Meena** (supra) and **Mohd. Yousuf Miya** (supra). The conclusions deducible from the aforementioned decisions were summarized in paragraph 22, which is set out below:

"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, the administration may get rid of him at the earliest."

(emphasis ours)

29. The question arising for decision in **Stanzen Toyotetsu India (P) Limited** (supra) is found in paragraph 1, i.e., whether the Karnataka High Court so also the courts below were right in holding that the disciplinary proceeding initiated by the appellant against its employees (the respondents therein) ought to remain stayed pending conclusion of the criminal case instituted against the respondents in respect of the very same incident. Almost all the authorities on the point were considered and it was held in paragraph 16 as follows:

"16. Suffice it to say that while there is no legal bar to the holding of the disciplinary proceedings and the criminal trial simultaneously, stay of disciplinary proceedings may be an advisable course in cases where the criminal charge against the employee is grave and continuance of the disciplinary proceedings is likely to prejudice their defence before the criminal court. Gravity of the charge is, however, not by itself enough to determine the question unless the charge

involves complicated question of law and fact. The court examining the question must also keep in mind that criminal trials get prolonged indefinitely especially where the number of accused arraigned for trial is large as is the case at hand and so are the number of witnesses cited by the prosecution. The court, therefore, has to draw a balance between the need for a fair trial to the accused on the one hand and the competing demand for an expeditious conclusion of the ongoing disciplinary proceedings on the other. An early conclusion of the disciplinary proceedings has itself been seen by this Court to be in the interest of the employees."

(emphasis ours)

30. Paragraph 19 of this decision was also relied on by Dr. Chandrachud in support of the contention noted above that the criminal proceeding, which is still pending, may be directed by us to be expedited and only after the final decision therein the disciplinary authority should be permitted to decide whether there is any necessity to carry it forward.

31. For proper appreciation of the ratio of the decision, we consider it appropriate to reproduce paragraph 17 of the said decision, which reads:

"17. The charges levelled against the respondents in the instant case are under Sections 143, 147, 323, 324, 356, 427, 504, 506, 114 read with Section 149 IPC. These are no ordinary offences being punishable with imprisonment which may extend up to 3 years besides fine. At the same time seriousness of the charge alone is not the test. What is also required to be demonstrated by the respondents is that the case involves complicated questions of law and fact. That requirement does not appear to be satisfied in an adequate measure to call for an unconditional and complete stay of the disciplinary proceedings pending conclusion of the trial. The incident as reported in the first information report or as projected by the respondents in the suits filed by them does not suggest any complication or complexity either on facts or law."

(emphasis ours)

32. Paragraph 1 of the decision in **Neelam Nag** (supra) noted the question that required a decision of the Supreme Court, i.e., whether the High Court of Judicature at Bilaspur, Chattisgarh was justified in directing stay of the disciplinary proceeding initiated by the appellant against the respondent until the closure of recording of prosecution evidence in the criminal case instituted against the respondent, based on the same facts. The answer to this question was given by the Court in the affirmative (paragraph 27). Directions were also issued for expediting the trial within a year, failing which the enquiry officer was granted liberty to resume the disciplinary proceedings.

33. Once again, by citing this decision, Dr. Chandrachud prayed for a direction for completion of the pending criminal trial and for direction on the disciplinary authority to decide on the fate of the departmental proceeding based on its outcome.

34. The Court in **Neelam Nag** (supra), paragraph 14, summed up what was previously held in **Karnataka SRTC v. M.G. Vittal Rao**, (2012) 1 SCC 442. We consider it proper to reproduce the same below:

“14. This Court in *Karnataka SRTC v. M.G. Vittal Rao* has summed up the same in the following words:

(i) *There is no legal bar for both the proceedings to go on simultaneously.*

(ii) The only valid ground for claiming that the disciplinary proceedings may be stayed would be to ensure that the defence of the employee in the criminal case may not be prejudiced. But even such grounds would be available only in cases involving complex questions of facts or law.

(iii) *Such defence ought not to be permitted to unnecessarily delay the departmental proceedings. The interest of the delinquent officer as well as the employer*

clearly lies in a prompt conclusion of the disciplinary proceedings.

(iv) 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 evidence in both the proceedings is common."

(italics in original)

35. We may now note what was held in **B.K. Meena** (supra), on which strong reliance has been placed by Mr. Shirsat, and other decisions having relevance in the present lis.

36. The respondent B. K. Meena was an IAS officer, who was charged with misappropriation of public funds in excess of a crore. The relevant tribunal having been moved, it stayed the disciplinary proceeding pending criminal trial. The Supreme Court having been approached by the State challenging the order of the tribunal, it had the occasion to consider all its previous decisions rendered on the point of advisability and desirability to proceed with a disciplinary enquiry when a criminal case is pending on identical charges. Paragraphs 14 and 17 contain instructive discussions and we feel tempted to quote the same below:

"14. It would be evident from the above decisions that each of them starts with the indisputable proposition that there is no legal bar for both proceedings to go on simultaneously and then say that in certain situations, it may not be 'desirable', 'advisable' or 'appropriate' to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. The staying of disciplinary proceedings, it is emphasised, is a matter to be determined having regard to the facts and circumstances of a given case and that no hard and fast rules can be enunciated in that behalf. The only ground suggested in the above decisions as constituting a valid ground for staying the disciplinary proceedings is that 'the defence of the employee in the criminal case may not be prejudiced'. This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving

questions of fact and law. In our respectful opinion, it means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, 'advisability', 'desirability' or 'propriety', as the case may be, has to be determined in each case taking into consideration all the facts and circumstances of the case. The ground indicated in *D.C.M* and *Tata Oil Mills* is also not an invariable rule. It is only a factor which will go into the scales while judging the advisability or desirability of staying the disciplinary proceedings. One of the contending considerations is that the disciplinary enquiry cannot be — and should not be — delayed unduly. So far as criminal cases are concerned, it is well known that they drag on endlessly where high officials or persons holding high public offices are involved. They get bogged down on one or the other ground. They hardly ever reach a prompt conclusion. That is the reality in spite of repeated advice and admonitions from this Court and the High Courts. If a criminal case is unduly delayed that may itself be a good ground for going ahead with the disciplinary enquiry even where the disciplinary proceedings are held over at an earlier stage. The interests of administration and good government demand that these proceedings are concluded expeditiously. It must be remembered that interests of administration demand that undesirable elements are thrown out and any charge of misdemeanour is enquired into promptly. *The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements.* The interest of the delinquent officer also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges, his honour should be vindicated at the earliest possible moment and if he is guilty, he should be dealt with promptly according to law. It is not also in the interest of administration that persons accused of serious misdemeanour should be continued in office indefinitely, i.e., for long periods awaiting the result of criminal proceedings. It is not in the interest of administration. It only serves the interest of the guilty and dishonest. While it is not possible to enumerate the various factors, for and against the stay of disciplinary proceedings, we found it necessary to emphasise some of the important considerations in view of the fact that very often the disciplinary proceedings are being stayed for long periods pending criminal proceedings. Stay of disciplinary proceedings cannot be, and

should not be, a matter of course. All the relevant factors, for and against, should be weighed and a decision taken keeping in view the various principles laid down in the decisions referred to above.

17. There is yet another reason. The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him under the Prevention of Corruption Act (and the Penal Code, 1860, if any) are established and, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. Staying of disciplinary proceedings pending criminal proceedings, to repeat, should not be a matter of course but a considered decision. Even if stayed at one stage, the decision may require reconsideration if the criminal case gets unduly delayed."

(italics in original)

37. The aforesaid opinion of the Bench comprised of two learned Judges was approved by a Bench of three learned Judges in **Mohd. Yousuf Miya** (supra). Paragraph 8 of this decision is worth quoting:

"8. We are in respectful agreement with the above view. The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as

expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public (*sic* duty), as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Evidence Act. Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. The enquiry in the departmental proceedings relates to the conduct of the delinquent officer and proof in that behalf is not as high as in an offence in criminal charge. It is seen that invariably the departmental enquiry has to be conducted expeditiously so as to effectuate efficiency in public administration and the criminal trial will take its own course. The nature of evidence in criminal trial is entirely different from the departmental proceedings. In the former, prosecution is to prove its case beyond reasonable doubt on the touchstone of human conduct. The standard of proof in the departmental proceedings is not the same as of the criminal trial. The evidence also is different from the standard point of the Evidence Act. The evidence required in the departmental enquiry is not regulated by the Evidence Act. Under these circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances. In this case, we have seen that the charge is failure to anticipate the accident and prevention thereof. It has nothing to do with the culpability of the offence under

Sections 304-A and 338, IPC. Under these circumstances, the High Court was not right in staying the proceedings.”

38. The next decision in line for consideration by us is **P. Ganesan** (supra). There, the principal question that emerged for decision was, whether pendency of a criminal case by itself would be a sufficient ground for stay of the departmental proceedings. Paragraph 18 of the decision being relevant, is quoted below:

“18. Legal position operating in the field is no longer res integra. A departmental proceedings pending a criminal proceedings does not warrant an automatic stay. The superior courts before exercising its discretionary jurisdiction in this regard must take into consideration the fact as to whether the charges as also the evidence in both the proceedings are common and as to whether any complicated question of law is involved in the matter.”

39. The Court then considered various decisions, viz. **Delhi Cloth and General Mills Ltd.** (supra), **Tata Oil Mills Co. Ltd.** (supra), **B.K. Meena** (supra), **Capt. M. Paul Anthony** (supra) and quoted paragraph 10 from the decision in **Kendriya Vidyalaya Sangathan v. T. Srinivas**, (2004) 7 SCC 442, reading as follows:

“10. From the above, it is clear that the advisability, desirability or propriety, as the case may be, in regard to a departmental enquiry has to be determined in each case taking into consideration all facts and circumstances of the case. This judgment also lays down that the stay of departmental proceedings cannot be and should not be a matter of course.”

40. In paragraph 24 of the decision in **P. Ganesan** (supra), we also find the following observation:

"24. The standard of proof in a disciplinary proceedings and that in a criminal trial is different. If there are additional charges against the delinquent officers including the charges of damaging the property belonging to the Bank which was not the subject-matter of allegations in a criminal case, the departmental proceedings should not have been stayed."

41. What follows from the decisions noted above is that although there is no bar in continuing parallel proceedings - departmental and criminal - on more or less same charges or even identical charges, the disciplinary authority ought to proceed with care and caution so that by insisting upon the charged employee to submit his written statement of defence to the departmental charge-sheet, he is not exposed to the risk of disclosing his defence in the criminal trial. This appears to us to be the paramount consideration which, according to the Supreme Court, every court ought to bear in mind. Every human being would cherish living a life with dignity. It is axiomatic that even if an employee loses a job as part of a disciplinary action (for good reasons or even where there is lack of it), he does not forfeit his right to live with dignity. He might get employment elsewhere and earn a living. However, if taking advantage of a prior disclosure of defence in the departmental proceedings the prosecution is allowed to build up its case to its convenience and to the detriment of the employee/accused before the criminal court, ultimately leading to a conviction being recorded and award of even the minimum sentence, not only could it amount to transgression of the imperative of a free and fair trial, an essence of the Right to Life entrenched in Article 21 of the Constitution, but could also result in the accused to carry on his forehead the indelible mark of a 'convict' for the rest of his life (if

such conviction were either not appealed against or reversed). On a comparative scale, the punishment that might be imposed by way of disciplinary action for any slip in the performance of official duty does not measure anywhere near a punishment that the State through its machinery could impose upon an accused after launching a criminal prosecution for commission of offences against the society. It is for such reason, we are minded to hold, that the Supreme Court [in **Delhi Cloth & General Mills** (supra), **B.K. Meena** (supra) since approved in **Mohd. Yousuf Miya** (supra), **P. Ganesan** (supra), **Stanzen Toyotetsu India (P) Limited** (supra) and **Neelam Nag** (supra)] has insisted upon a scrupulous guarding of the accused's fundamental right guaranteed by the Constitution, though express reference to it is not made, coupled with the condition that the case must involve complicated questions of fact and law.

42. There is one other significant aspect attracting us to deliberate upon, though it does not arise from the present set of facts. If an individual is alleged to have committed a crime punishable under the penal laws, it is the State which prosecutes him/her. It is invariably the State machinery that comes into play and it conducts proceedings as the prosecutor. The *de facto* complainant does not have much role to play. The police, which have the duty to maintain law and order as well as to investigate crimes, are expected to work in an organised and dedicated manner. More often than not, the failure of the State machinery, particularly the police, is noticeable. Either the police investigation is inefficient or flawed, or vital witnesses retract when present in Court to testify. Compromises made by the State machinery when it is required to deal with those having

money power or unholy nexus with the power corridor are also discernible. In a criminal case, all the ingredients of the offence in question have to be proved in order to secure the conviction of the accused. In view of the standard of proof applicable in a criminal trial and regard being had to the gradually increasing trend noted above, the courts find it difficult to hold the prosecution case to have been established beyond reasonable doubt resulting in the acquittal of the accused for want of evidence. In the process of justice dispensation, the State is a pivotal stakeholder but rarely does one find proceedings being taken to its logical end efficiently and flawlessly leading to convictions. The rate of conviction in this country is abysmally low, several factors being responsible for contributing to such low rates of conviction. It is, therefore, essential that the trust of the citizenry in the State machinery is rebuilt.

43. Be that as it may, reference to the aforesaid disturbing trend is only for emphasizing that an employer, who complains of a crime having been committed by its employee in the official course of duty, is left high and dry if the police falter to bring him to book. The employer may have evidence for proving charges relating to violation of the service rules which, by application of preponderance of probabilities, might lead to recording of guilt in a duly constituted disciplinary proceeding. Is it, therefore, the requirement of law that pendency of a proceeding before a criminal court would preclude the employer from initiating disciplinary action against an employee who is *prima facie* remiss in discharging official duty and against whom there is evidence to proceed therefor? There is sufficient judicial authority to draw appropriate guidance from to answer this question. However, it

has to be remembered that when a public employer, *prima facie*, loses confidence in any of its employees for alleged misconduct, yet, is precluded from taking disciplinary action because of a pending criminal trial, he may have to be placed under suspension; in such case the public exchequer would be drained without, however, any work being extracted from him. The facts of each particular case would require consideration as to whether the employee's right of not being compelled to disclose his defence in a departmental inquiry to avert suffering prejudice at the criminal trial would outweigh the employer's right to proceed for disciplinary action in a case where a stay would be a clog to maintenance of discipline. We are clear in our mind that having regard to the exposition of law in **B.K. Meena** (supra), **Mohd. Yousuf Miya** (supra) and **P. Ganesan** (supra), mere pendency of a criminal proceeding may not be sufficient for the accused/delinquent to avert a departmental action for maintaining discipline, more so in a service like the present, where the petitioner having the onerous duty of enforcement of law is himself charged with conduct unbecoming of a member of the Force. We repeat, for interference with a disciplinary proceeding based on pendency of a criminal case/trial, a fool-proof case has to be made out of the nature found in **Capt. M. Paul Anthony** (supra) or the delinquent must establish to the satisfaction of the Court that going ahead with the disciplinary proceeding is fraught with the imminent and genuine risk of disclosure of his defence, which would prejudice him to no end in the criminal trial. After all, as the Supreme Court has repeatedly observed, each case has to depend on its own peculiar facts and no strait-jacket formula is applicable.

44. Reverting to the facts of the present case, what we find is that the petitioner is alleged to have established contact with certain miscreants on the wrong side of law. It is immaterial that there is no eye-witness. Direct evidence, if not available, circumstantial evidence can be looked into and relied upon if trustworthy. In the present internet age, where even a seller and a buyer does not see eye to eye, the contention of there being no eye-witness is a contention which has been urged to be rejected. From the statement of the petitioner, which we have extracted above, it is clear that the petitioner has, in no uncertain terms, denied his involvement. His specific case is that, he was never in contact with Mr. Rahul Shinde, one of several accused, through mobile; that, the mobile number allegedly saved by the said Rahul Shinde does not belong to the petitioner; and that, he never had any talk with such person. This being the petitioner's stand, his defence stands disclosed in course of the preliminary inquiry. If the petitioner were to say 'yes' to question nos. 1, 2 and 6, that would have amounted to admission of the allegation levelled against him. The charge against the petitioner, we are inclined to the view, was drawn up after consideration of such reply. The petitioner, it is noted, did not submit his written statement after receiving the charge-sheet. He is at liberty not to so submit. Failure to submit a written statement denying and disputing the charges does not amount to an admission thereof. The burden would be on the prosecution to prove the charges. The onus might shift but basically the prosecution has to establish from the documents proposed to be led in evidence in course of the inquiry and from the oral evidence of its witnesses

that the petitioner did indulge in acts of omission/commission complained of in the charge-sheet.

45. It has been noted that the list of documents by which the charge against the petitioner is sought to be proved includes Call Detail Records (CDRs) of the cell phone subscribed by the petitioner and transcription from an audio clip which, allegedly, records conversation between the petitioner and Mr. Rahul Shinde. Such list further includes the CDRs of the said Rahul Shinde. Even if the petitioner were to maintain silence, the burden of proving the charge has to be discharged by the prosecution. Also, it has to be proved on preponderance of probabilities that versions of both the petitioner and the said Rahul Shinde, while they were allegedly in conversation in course of the calls, have been recorded without any tampering and that they are admissible in evidence in an inquiry of the nature being conducted. Hence, there being a denial of the petitioner of ever having been in contact mode with the miscreants, we do not consider the contention of Dr. Chandrachud (that the petitioner's full defence is yet to be disclosed) to be forceful enough to warrant continuation of the stay even for a day, not to speak of a year as was the direction in some of the decisions cited by him. It has to be realised that not only the reputation of the Force but the petitioner's reputation is also at stake and it is in the best interest of both that a logical conclusion is reached as early as possible.

46. Insofar as the contention that the charge in the criminal proceeding is serious and that complex questions of law and fact would be involved is concerned, we find little merit in it. We have not been shown that cognisance of the offence has been taken.

Question of framing of charge, thus, has not arisen. The allegation against the petitioner presently is that of abetting the commission of theft of railway property. Even if such charge is framed, we do not think it to be so grave or to involve such complex questions of law and fact that a stay of the inquiry would be warranted. The administrative machinery has to remain unsullied and the bad elements got rid of, to reinforce the faith and confidence of the people in the Force. The inquiry must, therefore, resume subject to the conditions laid down hereafter.

47. For the reasons aforesaid, we find no reason to interfere and/or to grant relief as claimed by the petitioner. The interim relief granted earlier by order dated 19th July 2022 stands vacated forthwith, with the result that the respondents shall be at liberty to proceed with the inquiry. Since this writ petition was pending on the file of this Court, we grant an opportunity to the petitioner to submit his written statement of defence to the charge-sheet by 14th October 2022. Thereafter, the inquiry shall resume and be taken to its logical conclusion in accordance with law as well as the relevant provisions of the RPF Rules upon granting reasonable and adequate opportunity to the petitioner.

48. We have found from the list of documents (Appendix 'D') forming part of the memorandum of charge-sheet that the confessional statement of Mr. Rahul Shinde dated 17th May 2022 is one of several documents which the prosecution would seek to rely on in the inquiry. We make it clear in view of the decision in **Bareilly Electricity Supply Co. Ltd. Vs. Workmen**, (1971) 2 SCC 617, that no statement of any witness, including the said Rahul Shinde, shall be looked into by the inquiry officer unless such witnesses, including the said Rahul Shinde, are produced in

the inquiry, confirm what have been recorded in the statements attributed to them and are offered for cross-examination by the petitioner.

49. On the aforesaid terms, the writ petition stands disposed of. There shall be no order as to costs.

(MADHAV J. JAMDAR, J.)

(CHIEF JUSTICE)

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