



W.P.No.35273 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.35273 of 2019
and
W.M.P.No.36071 of 2019

K.Kumar

...Petitioner

Vs.

1.The Chairman,
Chennai Port Trust,
No.1, Rajaji Salai, Chennai – 600 001.

2.Mr.V.Subramanyam

..Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Mandamus, forbearing the respondents from proceeding any further in the Disciplinary Proceedings vide No.V4/264/2017/Vig dated 25.07.2019 against the petitioner until conclusion of the criminal prosecution vide CC.No.5 of 2019 on the file of XIV Additional Special Judge for CBI Cases, Madras.

For Petitioner : Mr.K.Ravi Anantha Padmanaban

For R1 : Mr.P.M.Subramaniam

For R2 : Mrs.Madhuri Donti Reddy



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ORDER

The relief sought for in the present writ petition is to forbear the respondents from proceeding any further in the Disciplinary Proceedings vide No.V4/264/2017/Vig dated 25.07.2019 against the petitioner until conclusion of the criminal prosecution vide CC.No.5 of 2019 on the file of XIV Additional Special Judge for CBI Cases, Madras.

2. The petitioner was working as Senior Deputy Materials Manager in Chennai Port Trust and on account of certain allegations, departmental disciplinary proceedings were initiated against the writ petitioner. He was placed under suspension and a charge memo was issued to him in proceedings dated 25.07.2019.

3. With reference to the departmental disciplinary proceedings, the petitioner filed the present writ petition, to keep the proceedings in abeyance. Till such time, the criminal proceedings initiated against the petitioner is disposed of.



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4. The petitioner states that the simultaneous proceedings are impermissible and he relied on the judgment of the Hon'ble Supreme Court of India in the case of ***M.Paul Anthony Vs. Bharat Gold Mines Limited and another, reported in 1999 (3) SCC 679.***

5. The judgment rendered by the Apex Court in ***M.Paul Anthony's case (cited supra)*** was reviewed subsequently by the Hon'ble Supreme Court of India and several judgments were passed by the Hon'ble Supreme Court of India, holding that simultaneous proceedings are permissible and there is no impediment for the Disciplinary Authority to proceed with the departmental disciplinary proceedings even during the pendency of the criminal case.

6. The procedures to be followed in a Criminal Case and departmental disciplinary proceedings are distinct and different. High standard of proof is required to convict a person under criminal law. However, no such strict proof is required to punish an employee under the Discipline and Appeal Rules. Preponderance of probabilities are enough to punish an employee and therefore, the procedures to be adopted for Criminal Case cannot be compared with the departmental disciplinary proceedings.



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7. As far as the simultaneous proceedings are concerned, this Court has already been considered the principles of simultaneous proceedings in W.P.(MD) No.25269 of 2019 dated 25.04.2022 and the relevant paragraphs are extracted here under:

“5. This Court is of the considered opinion that the Hon'ble Supreme Court of India in unequivocal terms held that there is no bar for continuance of departmental disciplinary proceedings during the pendency of the criminal case. In other words, pendency of the criminal case cannot be a ground to keep the departmental disciplinary proceedings in abeyance. Simultaneous proceedings are permissible in all circumstances, if the Authorities are in possession of the materials for the purpose of conducting the departmental disciplinary proceedings. This Court has elaborately considered the principles of simultaneous proceedings in W.P.(MD) No.17378 of 2019 on 21.02.2022 which reads as under:-

- (i) It is a settled law that criminal case and the departmental disciplinary proceedings may be initiated simultaneously as the case may be;*
- (ii) An order of suspension, if required, may be issued in the prescribed format as per the rules;*
- (iii) If the records and evidences are available with the disciplinary authority, then without any loss of time, charge memorandum shall be issued and the disciplinary*



proceedings may go on;

(iv) The question to be considered is whether simultaneous proceedings may go on or not?;

(v) The departmental domestic enquiry and the criminal trial shall proceed simultaneously and the decision in the criminal case would not materially affect the outcome of the domestic enquiry;

(vi) The nature of both proceedings and the test applied to reach final conclusion in the matter are entirely different.

(vii) If the case involves complicated questions of fact and law and the disciplinary authority is not in possession of the required materials for the purpose of conducting enquiry, then administrative decision may be taken to keep the departmental proceedings in abeyance. till the disposal of the criminal case. However, the advisability and desirability has to be determined considering the facts of each case by the authority concerned. Therefore, it would be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible.

(viii) There is no legal bar for both proceedings to go on simultaneously.

(ix) Acquittal by a criminal Court would not debar an employer from exercising power in accordance with service rules and regulations in force. The two proceedings, criminal and departmental are entirely different.



They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on offender, the purpose of departmental enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with service rules.

(x) In the criminal case, the burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond reasonable doubt', he cannot be convicted by a Court of law. In departmental enquiry, on the other hand penalty can be imposed on the delinquent officer on a finding recorded on the basis of 'preponderance of probability'. To convict a person under criminal law, high standard of proof is required. Even the benefit of doubt would be a benefit for the

accused in a criminal case. However, no such strict proof is required in a departmental disciplinary proceedings. Therefore, there is absolutely no bar for the respondents to continue the departmental disciplinary proceedings and conclude the same and pass final orders.

(xi) An order of conviction if any passed in the criminal case or in criminal appeal, after disposal of the disciplinary proceedings, then if necessary the Head of the department or the Government may exercise the power of review as the case may be under the relevant rules.



(xii) *Order of acquittal if at all passed in the criminal case or in criminal appeal, the same would not affect the final orders already passed in the departmental disciplinary proceedings based on the domestic enquiry conducted, in view of the fact that acquittal in a criminal case cannot be a ground for seeking exoneration from the departmental disciplinary proceedings.*

(xiii) *If the criminal case was registered under the Prevention of Corruption Act, 1988 and if the original records are seized by the investigating agency, then the disciplinary authority may obtain the true copies of the documents and proceed with the departmental disciplinary proceedings.*

(xiv) *As far as the departmental corruption allegations are concerned, it is not necessary that the disciplinary authority should wait for the final disposal of the criminal case registered under the Prevention of Corruption Act, 1988.*

6. The Hon'ble Supreme Court of India in the case of *State of Karnataka and another vs. Umesh* reported in 2022 Live Law (SC) 304 held as follows:-

13. The principles which govern a disciplinary enquiry are distinct from those which apply to a criminal trial. In a prosecution for an offence punishable under the criminal law, the burden lies on the prosecution to establish the ingredients of the offence beyond reasonable doubt. The accused is entitled to a presumption of inno-



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cence. The purpose of a disciplinary proceeding by an employer is to enquire into an allegation of misconduct by an employee which results in a violation of the service rules governing the relationship of employment. Unlike a criminal prosecution where the charge has to be established beyond reasonable doubt, in a disciplinary proceeding, a charge of misconduct has to be established on a preponderance of probabilities. The rules of evidence which apply to a criminal trial are distinct from those which govern a disciplinary enquiry. The acquittal of the accused in a criminal case does not debar the employer from proceeding in the exercise of disciplinary jurisdiction.

14. In a judgment of a three judge Bench of this Court in State of Haryana v. Rattan Singh⁵, Justice V R Krishna Iyer set out the principles which govern a disciplinary proceedings as follows:

“4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is



not necessary to cite decisions nor text books, although we have been taken through case-law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The 'residuum' rule to which counsel for the respondent referred, based upon certain passages from American Jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence — not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that



the evidence of Chamanlal, Inspector of the Flying Squad, is some evidence which has relevance to the charge levelled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground.” (emphasis supplied) These principles have been reiterated in subsequent decisions of this Court including State of Rajasthan v. B K Meena⁶; Krishnakali Tea Estate v. Akhil Bharatiya Chah Mazdoor Sangh⁷; Ajit Kumar Nag v. Indian Oil Corporation Ltd. ⁸; and CISF v Abrar Ali⁹.

7. This Court is of the considered opinion that for convicting an employee under criminal law, a strict standard of proof is required. However, no such strict proof is required to punish an employee under the Discipline and Appeal Rules. Even preponderance of probabilities is enough to punish an employee under the Discipline and Appeal Rules.

8. This being the scope of the departmental disciplinary proceedings, the procedures for conducting the criminal case and the procedures contemplated for the departmental disciplinary proceedings are different and distinct and cannot be compared. Thus, there is no impediment for the Authorities to continue the departmental disciplinary proceedings during the pendency of the criminal case. In the present case, the respondents are bound to continue the departmental disciplinary proceedings and dispose the same as expeditiously as possible by following the procedures as contemplated and by affording opportunity to the petitioner to defend his case in the manner prescribed.”



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8. That apart, the learned counsel for the respondents brought to the notice of this Court that the Central Vigilance Commission issued Circular No.1K/DSP/3 dated 03.02.1981, clarifying that there is no legal bar to initiate departmental disciplinary action, while criminal prosecution is in progress. Accordingly, the Central Vigilance Commission has clarified that the case of the writ petitioner is to be proceeded with, with reference to the allegations of financial loss caused to the Port Trust. Since the allegations against the writ petitioner are grave in nature, mere pendency of the criminal case cannot be a bar to continue the departmental disciplinary proceedings, which is to be conducted by following the procedures as contemplated and by affording opportunity to the charged official. There is no impediment for the Disciplinary Authority to consider the issues independently based on the documents and evidences available on record.

9. In view of the principles now being followed based on the judgment of the Hon'ble Supreme Court of India, the relief as such sought for in the present writ petition cannot be granted. The respondents are at liberty to continue the departmental disciplinary proceedings and conclude the same as



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expeditiously as possible, since long pendency would cause prejudice to the interest of the employees also.

10. The petitioner is directed to co-operate for the early disposal of the departmental disciplinary proceedings. In the event of any non co-operation on the part of the petitioner, the same may be recorded in the minutes and in such circumstances, he is not entitled to seek any relief merely on the ground of delay in completing the departmental disciplinary proceedings.

11. With these directions, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

02.12.2022

Index : Yes
Speaking order: Yes
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To

The Chairman,
Chennai Port Trust,

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No.1, Rajaji Salai,
Chennai – 600 001.

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S.M.SUBRAMANIAM, J.

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