



W.P.(MD)No.4973 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.12.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.4973 of 2020

and

W.M.P.(MD)Nos.4347 and 4348 of 2020

Pon.Balasubramanian

... Petitioner

Vs.

1. The Inspector General of Police,
Railways,
No.8, Varadharajulu Street,
Chennai.

2. The Additional Inspector General of Police,
Railways,
No.8, Varadharajulu Street,
Chennai.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records of the impugned order passed by the first respondent vide proceedings in RC.No.A2/2565/2017 O.O.No.110/2017 dated 13.09.2017 and C.No.B1/2578/2017 O.O.No.115/2017 dated 23.09.2017, quash the same and allow the petitioner to retire from service and settle the retirement benefits within a time stipulated by this Court.



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For Petitioner : Mr.D.Selvanayagam
For Respondents : Mr.S.P.Maharajan
Special Government Pleader

ORDER

This Writ Petition has been filed to call for the records of the impugned orders passed by the first respondent vide proceedings in RC.No.A2/2565/2017 O.O.No.110/2017, dated 13.09.2017 and C.No.B1/2578/2017 O.O.No.115/2017, dated 23.09.2017, quash the same and allow the petitioner to retire from service and settle the retirement benefits.

2. The case of the petitioner is that the petitioner was selected to the post of Police Constable and posted in Railway Police by Join Service on 12.06.1981 and he was promoted to the post of Police Constable Grade-I in the year 1995. After subsequent promotions, he was promoted to the post of Regular Sub-Inspector in the year 2014. On 30.09.2017, he attained the age of superannuation. On a month before that, he was placed under suspension, vide order, dated 13.09.2017 and he was not allowed to retire from service. Challenging the same, the present Writ Petition.



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3. The learned counsel appearing for the petitioner would submit that the petitioner had allegedly issued Indian Passport Missing Certificates to 31 persons, for which, the Department has initiated disciplinary proceedings against the petitioner under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955 and passed suspension order by issuing charge memo, dated 18.11.2016. After conducting enquiry, the punishment of postponing of increment for two years without cumulative effect was imposed on 30.05.2017, against which, the petitioner preferred a statutory appeal on 12.07.2017. The first respondent instead of disposing of the appeal referred the matter for criminal action in view of the pending FIR No.128 of 2017. He further submitted that mere pendency of the FIR would not be a bar for the Appellate Authority to conclude the disciplinary proceedings either to discharge the petitioner from the punishment or confirm the punishment imposed by the Appellate Authority. The issue that arises in the present Writ Petition is no longer *res integra* and the same was decided by the Hon'ble Division Bench of the Principal Seat of this Court in the case of ***S.Subramanian vs. The Commandant Office of the DIGP Group Center***



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and others in **W.A.No.1114 of 2017**. He also relied upon the decision of the Principal Seat of this Court in the case of **D.Narayanan vs. The District Revenue Officer, Virudhunagar, Virudhunagar District and others** in **W.P.No.28847 of 2004** and the relevant portion of the order is extracted hereunder:

"16. In the present case, it was open to the departmental authorities to initiate department proceeding, which they did. It was also open to them to conclude the departmental proceedings even before the conclusion of the criminal trial. In the departmental proceeding, after the delinquent was found guilty, certain punishment was imposed. The charge in the criminal case was on the basis of very same allegation of temporary misappropriation. Even though the petitioner had already been subjected to a punishment on the very same allegation of temporary misappropriation, after the conclusion of the criminal case, the department has thought it fit to impose a second punishment of dismissal from service by taking resort to the procedure contemplated under Rule 17(c)(i) of TNCS (D&A) Rules."



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4. The learned Special Government Pleader appearing for the respondents would submit that the charge sheet was filed and the same was not taken on file. However, mere pendency of the criminal case would not be a bar for the Appellate Authority to conclude the disciplinary proceedings in the manner known to law.

5. Heard the learned counsel appearing for the parties and perused the materials placed before this Court.

6. It is undisputed fact that the petitioner has suffered with a punishment which was taken before the Appellate Authority and the same is pending on the ground of criminal case. The departmental proceedings and the criminal case are two separate proceedings. Even the criminal case ended in acquittal, there is no bar for the Department to conclude the disciplinary proceedings. However, the issue that arises in the present Writ Petition is no longer *res integra* and the same was decided by the Hon'ble Division Bench of the Principal Seat of this Court in the case of ***S.Subramanian vs. The Commandant Office of the DIGP Group Center***



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and others in *W.A.No.1114 of 2017*. The relevant portion of the judgment reads as under:

"18.The legal position relates to whether departmental proceedings and the criminal case can go simultaneously. The difference between the departmental proceedings and the criminal proceedings was elaborately discussed by the Hon'ble Apex Court in various cases.

19.It is useful to refer few judgments of Hon'ble Apex Court hereunder:

*(i) The principles underlined in **Capt M. Paul Anthony v. Bharat Gold Mines Ltd. and another**, reported in 1999 (3) SCC 679, at Paragraph 22, are extracted 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.



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(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."*

13. Whether the disciplinary proceedings should be kept in abeyance. Legal position has been made clear by the Hon'ble Supreme Court in the decision reported in 2004 (7) Supreme Court Cases 27 [State Bank of India and others v.



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R.B.Sharma]. In paragraph 8, the Supreme Court held as follows:-

"8.The purpose of departmental enquiry and of prosecution are two different and distinct aspects. 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



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 Indian Evidence Act, 1872 (in short "the Evidence Act"). Converse is the case of departmental enquiry. The enquiry in a departmental proceeding 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. 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."

(ii) The above said principle has been reiterated in a subsequent decision reported in 2005 (10) Supreme Court Cases 471 (Hindustan Petroleum Corporation Ltd., and others v. Sarvesh Berry).

“8.The purposes of departmental enquiry and of prosecution is two different and distinct aspects.



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provisions of the Indian Evidence Act 1872 (in short 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. Under these circumstances, what is required to be seen is whether the department 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.”

(iii) In 2007 (5) CTC 632 (Indian Overseas Bank, Anna Salai and Another Vs. P.Ganesan and Others), the Hon'ble Supreme Court, having regard to the legal position that there is no need for automatic stay in the departmental proceedings, has observed that the discretionary Writ jurisdiction under Article 226 of the Constitution of India should be exercised, keeping in view of the conduct of the parties, stage of the criminal case and whether it would expose the defence of the delinquent, if he is constrained to acquiesce himself to the departmental enquiry, pending disposal of the trial before the Court of



competent jurisdiction. Relevant portion is as follows:

“26. Furthermore the discretionary writ jurisdiction under Article 226 of the Constitution of India should be exercised keeping in view the conduct of the parties. Respondents made a representation that in the event the order of suspension is revoked, they would cooperate with the Enquiry Officer. They kept on filing applications for extension of time which were allowed. They took benefit thereof. Without, however filing show cause, they moved the High Court. Furthermore before the Enquiry Officer also, as noticed hereinbefore, although they had appointed the defence counsel, did not cross-examine the witnesses examined on behalf of the Management. A large number of witnesses had already been examined on behalf of the appellants. The disciplinary proceedings, as we have noticed hereinbefore, have proceeded to a great extent. In such a situation we are of the firm view that the discretionary jurisdiction should not have been exercised in favour of Respondents 1 to 4 by the High Court.”

(iv) In the decision reported in (2007) 10 SCC 385 (Noida Entrepreneurs Association Vs. Noida and others), the Hon'ble Supreme Court has held as follows:

“16.The standard of proof required in departmental



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proceedings is not the same as required to prove a criminal charge and even if there is an acquittal in the criminal proceedings the same does not bar departmental proceedings. That being so, the order of the State Government deciding not to continue the departmental proceedings is clearly untenable and is quashed. The departmental proceedings shall continue.”

20. Since the petitioner is in the uniformed disciplined service, the authority is expected to perform his duty as per the Rules. When the petitioner is alleged to have committed misconduct, the respondents have no other choice except to proceed with the departmental enquiry and they need not wait for the decision of the criminal court. The department need not wait for the decision of the law enforcing agency.”

7. In view of the said judgment (*supra*), this Court is inclined to issue a direction to the first respondent to conclude the appeal filed by the petitioner within a period of six weeks from the date of receipt of a copy of this order. Apart from the disciplinary proceedings, any benefits granted to the petitioner is subject to the result of the criminal case pending before the



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Criminal Court. However, liberty is granted to the petitioner to initiate the proceedings, if the criminal case ended in conviction against the petitioner in terms of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955.

8. Accordingly, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

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Index : Yes / No

Speaking Order : Yes / No

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