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W.P.(MD) No.12660 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.12660 of 2021

and

W.M.P. (MD) Nos.9874 & 9875 of 2021

P.Jawaharlal Pandian

... Petitioner

vs.

The District Collector
Theni District, Theni

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorari calling for the records of the respondent in connection with impugned charge memo issued by him in his proceedings in Na.Ka.No.30527/2017/A5 dated 20.11.2017 and the subsequent proceedings of the respondent dated 08.12.2020 in Rc.No.30527/2017/A5 appointing the 5th enquiry officer in a row and to quash the same as illegal.

For Petitioner : Mr.Ananthapadmanabhan.N.
For M/s.APN Law Associates

For Respondent : Mr.D.Sadiq Raja
Additional Government Pleader

O R D E R

The charge memo, dated 20.11.2017 and the subsequent proceedings of the respondent, dated 08.12.2020, issued by the respondent, are under challenge in this writ petition.

2. The petitioner was working as Tahsildar and a trap was organized and consequently, a criminal case was registered against the petitioner under the provisions of the Prevention of Corruption Act, 1988. Though the criminal case was ended with an order of acquittal, the State preferred a criminal appeal and the same is pending. The petitioner has filed this writ petition mainly on the ground that during the pendency of the criminal proceedings, the departmental disciplinary proceedings initiated against him cannot be proceeded with.

3. The learned counsel for the petitioner reiterated that till such time the criminal proceedings are concluded, the departmental disciplinary proceedings initiated against the petitioner are to be kept in abeyance.



4. Continuance of departmental disciplinary proceedings is not a bar for the Disciplinary Authority even during the pendency of the criminal proceedings. Simultaneous proceedings are permissible at all circumstances, except in exceptional cases where it is not possible for the Disciplinary Authority to continue the departmental disciplinary proceedings for want of relevant records or otherwise. The following principles in this regard have been elaborately formulated by this Court in W.P.(MD)No.14356 of 2019, by order dated 08.02.2022.

- (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



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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.

5. The above principles carved out by this Court have been affirmed by the Honourable Supreme Court in the case of **State of Karnataka and another vs. Umesh**, reported in **2022 LiveLaw (SC) 304**, wherein the Apex Court in Paragraph Nos.13 and 14 has 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 innocence. 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 Singh* [(1977) 2 SCC 491], 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



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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 Meena [(1966) 6 SCC 417]; Krishnakali Tea Estate v. Akhil Bharatiya Chah Mazdoor Sangh [(2004) 8 SCC 200]; Ajit Kumar Nag v. Indian Oil Corporation Ltd. [(2005) 7 SCC 764]; and CISF v Abrar Ali [(2017) 4 SCC 507].**

6. In view of the fact that there is no impediment for the Authorities to continue the departmental disciplinary proceedings, the respondent is directed to proceed with the departmental



disciplinary proceedings, if necessary, by collecting all relevant evidences from the Police Department or from the any other Departments and conclude the same as expeditiously as possible by affording due opportunity to the petitioner and by following the procedures as contemplated under the Discipline and Appeal Rules.

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7. The petitioner has to co-operate for the early disposal of the disciplinary proceedings and in the event of non-cooperation by the petitioner, the same shall be recorded in the proceedings itself and in such circumstances, the petitioner is not entitled for any relief on the ground of delay in disposal of the disciplinary proceedings.

8. With the above observations and directions, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (T&P)

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/ /2022

Sub Assistant Registrar(CS)

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To:

The District Collector,
Theni District, Theni.

+1 CC to M/s.APN LAW ASSOCIATES, Advocate (SR-14202[F] dated 24/03/2022)

+1 CC to M/s.SPL GP (SR-14242[F] dated 24/03/2022)

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MGJ(04.04.2022) 6P 4C