

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5744 OF 2023

Shiva Shankar Mamidi
Age 49 years,
S/o Sh M Esawaraiah
Address: Regional Office Bhopal
Res. Add: 13, Dwarkapuri Colony
Sultanabad, Bhopal – 462 003.

....Petitioner

V/S

1 Union of India
through Secretary,
Ministry of Labour,
Shram Shakti Bhavan,
Rafi Marg, New Delhi – 110 001.

2 Central P.F. Commissioner
Bhavishya Nidhi Bhavan
14, Bhikaji Cama Place,
New Delhi – 110 066

3 Satish Chandra Dubedi
Inquiry Officer
64 A Pocket D Deep EnclavePhase 3
Ashok Vihar, New Delhi – 110 052
Bhavishya Nidhi Bhawan
14, Bhikaji Cama Place

....Respondents

...

Mr. Rajeev N. Kumar a/w Mr. Amey Kanse and Mr. Chagan Thakkar
for the Petitioner.

Mr. Gunjan Chaubey for Respondent No.2-CPF.

CORAM : ...
DHIRAJ SINGH THAKUR &
SANDEEP V. MARNE, JJ.
RESERVED ON : JULY 10, 2023
PRONOUNCED ON : JULY 26, 2023.

JUDGMENT (*Per – Sandeep V. Marne, J.*):

Rule. Rule made returnable forthwith. With the consent of the Ld. counsels for the parties, Petition is taken up for hearing.

2. Stay of departmental enquiry during pendency of criminal trial is often sought by delinquent employees on the ground that conduct of departmental enquiry before criminal trial discloses his/her defence thereby causing prejudice in the criminal trial. This is yet another case where Petitioner seeks such stay. Petition arises out of challenge to the interim order dated 27 March 2023 passed by the Central Administrative Tribunal (**Tribunal**) thereby rejecting prayer for stay of departmental enquiry during pendency of Original Application No.122 of 2023. In his Original Application, Petitioner has sought the final relief of stay of departmental enquiry during pendency of criminal trial.

3. Petitioner is functioning as Data Processing Assistant in the Employees Provident Fund Organization. The employer has

unearthed some fraudulent transactions in the matter of settlement of fictitious claims thereby causing huge financial loss to the corpus of the Fund. It suspects some of its officials and employees to be the perpetrators of such fraudulent activities. Therefore, an FIR came to be registered against Petitioner and others on 31 December 2021 for offences punishable under sections 420, 409, 468 and 471 of the Indian Penal Code and section 13(1)(a) of the Prevention of Corruption Act, 1988 for investigating cases of fraudulent withdrawals from EPF corpus. In the FIR, it is alleged *inter alia* that Petitioner while functioning as Data Processing Assistant at the Regional Office, Kandivali-II during the years 2019-2021 enabled settlement of fraudulent claims for provident fund in respect of 20 establishments causing loss of Rs. 21,68,88,663/- to the EPF corpus. It is further alleged that the settlements were done by opening PF accounts in the names of fraudulent and bogus members. Petitioner came to be placed under suspension with effect from 25 August 2021. After completion of investigations, Central Bureau of Investigation has filed Chargesheet (Final Report) on 10 May 2022 before the CBI Special Court at Rouse Avenue, New Delhi.

4. A Memorandum of Chargesheet for conducting departmental enquiry dated 25 June 2022 came to be served on Petitioner alleging four charges. In the first charge, it is alleged that Petitioner while

functioning as DPA at Regional Office, Kandivli (East) during the years 2019 to June 2021, deliberately misused the functionality of Pole-Mapping and Task-Mapping in EPFO Application Software by assigning different roles of SS/AD/APFC to various officials/officers including outsourced DEOs with ill-conceived motive of facilitating insertion of non-bonafide persons as members with zero balance. This facilitated settlement of large number of fictitious claims in respect of various establishments. In second charge, it is alleged that Petitioner deliberately shared his login credentials with outsourced DEOs with motive to facilitate insertion of non-*bona fide* members as members with zero balance. In the third charge, it is alleged that Petitioner unauthorizedly endorsed certain physical claim forms with *malafide* intention to facilitate receipt entry of fictitious claims and its settlements. In the fourth charge, it is alleged that Petitioner was found to be in unauthorized possession of two DSC-Dongles pertaining to certain PF covered establishments and could not offer any convincing explanation.

5. The Disciplinary Authority appointed an Enquiry Officer vide order dated 15 September 2022 for conducting enquiry in the Memorandum of chargesheet dated 25 June 2022. The Enquiry Officer scheduled the enquiry on 21 October 2022. Petitioner appointed Defence Assistant vide letter dated 18 November 2022. It

appears that enquiry commenced and the stage of inspection of documents was underway. At this stage, Petitioner filed representation dated 13 February 2023 seeking stay of departmental proceedings on the ground of pendency of criminal case. He filed Original Application No.122 of 2023 before the Tribunal on or about 17 February 2023 seeking stay of departmental proceedings during pendency of Special Case No.35 of 2022 pending on the file of Special Judge Rouse Avenue, New Delhi. Petitioner also sought interim relief of stay of disciplinary proceedings during the pendency of Original Application.

6. The Tribunal considered the prayer of the Petitioner for grant of interim relief during the course of hearing on 27 March 2023 and was pleased to reject the same by its order dated 27 March 2023. Petitioner is aggrieved by the order dated 27 March 2023 passed by the Tribunal refusing to grant interim stay to the enquiry and has accordingly filed present Petition.

7. Appearing for Petitioner, Mr. Rajiv Kumar the learned counsel would submit that the charges levelled against Petitioner in the departmental enquiry and in the criminal case are essentially identical. That both the proceedings emanate out of same set of facts. That the departmental proceedings and criminal case are based on identical and

similar set of facts and the charge in the criminal case against the Petitioner is of grave nature involving complicated questions of law and fact. He would therefore submit that if the Petitioner is made to reveal his defence in the departmental proceedings, the same will prejudice him in the criminal trial. He would rely upon the judgment of the Apex Court in ***Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. & Anr.*** (1999) 3 SCC 679.

8. Mr. Rajeev Kumar would further submit that the Tribunal erred in holding that the departmental charges levelled against the Petitioner are not about involvement in criminal case resulting in institution of criminal proceedings. He would submit that the order of the Tribunal proceeds on an erroneous assumption that enquiry can be stayed only in cases where the charge in departmental enquiry is about involvement in a criminal case. Relying on ***Stanzen Toyotetsu India Pvt. Ltd. vs. Girish V. & Others*** (2014) 3 SCC 636, he would submit that this Court can expedite the trial in the criminal case by staying the departmental enquiry in the meantime. Reliance in this regard is also placed on judgment in ***SBI v. Neelam Nag***, (2016) 9 SCC 491. He would also rely upon orders of Division Bench of this Court in ***K. Vijaya Rama Rao vs. Union of India & Ors.***, Writ Petition No.2311 of 2021 (Writ Petition (Stamp) No.4534 of 2021) passed on 11 March 2021 and 3 July 2021 in support of his contention that this Court had

stayed departmental enquiry under similar circumstances by expediting the criminal trial. He would further rely on the order of Division Bench of this Court, Bench at Nagpur, in ***Sudhanshu Shrivastava vs. Coal India Limited***, Writ Petition No.7073 of 2022 decided on 10 March 2023 to urge that this Court can stay enquiry by expediting the criminal trial.

9. Mr. Chaubey, the learned counsel appearing for Respondent No.2-Central Provident Fund Commissioner would oppose the Petition submitting that the criminal case is not restricted to Petitioner alone as the same is lodged against 10 accused. That in the chargesheet filed in the criminal case, 24 different witnesses are proposed to be examined in support of the allegations levelled therein. He would submit that neither charges nor evidence in both the set of proceedings are identical. That there are no complicated questions of law or facts involved in the criminal case. He would rely upon the judgment of the Apex Court in ***State of Rajasthan vs. B.K. Meena & Ors.*** (1996) 6 SCC 417 in support of his contention that the purpose of conducting disciplinary proceedings are entirely different than the one for prosecuting an accused. He would submit that under the Office Memorandum dated 21 July 2016 issued by the Department of Personnel & Training, there is no bar in conducting simultaneous criminal and departmental proceedings. That since Petitioner is

involved in serious misconduct of fraud involving over Rs.21 crores of the Trust money, the Department must be permitted continue the proceedings. He would pray for dismissal of the Petition.

10. Rival contentions of the parties now fall for our consideration.

11. Petitioner is aggrieved by non-grant of interim relief of stay of disciplinary enquiry during pendency of his Original Application, in which the final prayer is to stay the same till conclusion of the criminal trial. Petitioner's Original Application is still pending before the Tribunal. In ordinary course, we could have requested the Tribunal to decide the Original Application finally rather than deciding the issue on merits. However since exhaustive submissions are made by both the sides on the issue of stay of enquiry during criminal trial, we deem it appropriate to decide whether grant of such stay is warranted in the present case.

12. It is Petitioner's case that the disciplinary enquiry and criminal proceedings are based on same set of facts and the evidence sought to be produced is also identical. Stay of disciplinary enquiry is sought on the ground that the Petitioner's defence would be revealed if the disciplinary enquiry is conducted before conduct of criminal trial. It must be observed at the very outset that there is no hard and fast rule that every disciplinary enquiry must be stayed during pendency of

criminal trial. By now it is well established law that there is no bar on simultaneous conduct of both the proceedings. The purpose of conducting the two proceedings is entirely different. Disciplinary enquiry is conducted for enforcing discipline amongst the government servant, on the other hand the purpose of lodging criminal prosecution is to punish the accused for commission of an offence. The difference in proposed conduct of the two set of proceedings is aptly described by the Apex Court in *Depot Manager, A.P. SRTC v. Mohd. Yousuf Miya*, (1997) 2 SCC 699 in following words:

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 Evi-

dence 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.

13 It is equally well settled that the burden of proof in the two set of proceedings is entirely different. While it is necessary to prove guilt of an accused beyond reasonable doubt in a criminal trial, the test for proof of charges in disciplinary proceedings is preponderance of probability. Reference in this regard can be made to the judgment in ***NOIDA Entrepreneurs Assn. v. NOIDA***, (2007) 10 SCC 385 in which it is held as under:

16. The standard of proof required in departmental 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.

14. Following the above principles, the Apex Court has repeatedly held that there is no bar for simultaneous conduct of disciplinary enquiry and criminal trial. However, in extremely limited cases, it is permissible to stay disciplinary proceedings for a duration if it is proved that both the set of proceedings are based on on similar set of facts and the charge in criminal trial is serious involving complicated questions of fact and law and where the criminal court is about to conclude the trial. The Apex Court, in its judgment in ***Capt. M. Paul Anthony*** (supra) has deduced following conclusions based on its various past decisions:-

“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 the 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 vindicate and in case he is found guilty, administration may get rid of him at the earliest.”

15. In ***B. K. Meena*** (*supra*) the Apex Court has held that the interest of administration demand that undesirable elements are thrown out and any charge of misdemeanor is inquired into promptly. It is held as under:

“It must be remembered that interests of administration demand that the undesirable elements are thrown out and any charge of misdemeanor 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 misdemeanor should be continued in office indefinitely, i.e., for long periods awaiting the result of criminal proceedings.”

16. Even in *Stanzen Toyotetsu* (supra) relied upon by Petitioner, the Apex Court has highlighted need for expeditious completion of disciplinary proceedings which cannot be suspended or delayed indefinitely. The Apex Court held in para 12 and 13 as under -

“12. It is unnecessary to multiply decisions on the subject for the legal position as emerging the above pronouncements and the earlier pronouncements of this Court in a large number of similar cases is well settled that disciplinary proceedings and proceedings in a criminal case can proceed simultaneously in the absence of any legal bar to such simultaneity, It is also evident that while seriousness of the charge leveled against the employees is a consideration, the same is not by itself sufficient unless the case also involves complicated questions of law and fact. Even when the charge is found to be serious and complicated questions of fact and law that arise for consideration, the Court will have to keep in mind the fact that departmental proceedings cannot be suspended indefinitely or delayed unduly. In Paul Anthony (supra) this Court went a step further to hold that departmental proceedings can be resumed and proceeded even when they may have been stayed earlier in cases where the criminal trial does not make any headway. To the same effect is the decision of this Court in State of Rajasthan Vs. B. K. Meena and others, where this Court reiterated that there was no legal bar for both proceedings to go on simultaneously unless there is a likelihood of the employee suffering prejudice in the criminal trial. What is significant is that the likelihood of prejudice itself is hedged by providing that not only should the charge be grave but even the case must involve complicated questions of law and fact. Stay of proceedings at any rate cannot and should not be a matter of course. The following passage is in this regard apposite: 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, 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 enunciated in that behalf. The only ground suggested in the above questions as constitution 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. While it is not possible to enumerate the various factors, for and against the stay of disciplinary proceedings, we found it necessary to emphasize 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.... Indeed, in such cases, it is all the more in the interest of the charged officer that the proceedings are expeditiously concluded. Delay in such cases really works against him.

13. 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 defense 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 on-going 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."

17. Having set out the broad principles relating to stay of disciplinary proceedings during pendency of criminal trial, we now proceed to examine whether the Disciplinary Proceedings can be stayed in the present case during pendency of criminal prosecution.

18. In the Chargesheet issued for conducting disciplinary enquiry, Petitioner is facing the following charges:

Article I

That the said Shri Shiva Shankar Mamadi, DPA while working as such at Regional Office, Kandivali (East) during the period from 2019 to June, 2021 has deliberately misused the functionality of Role-Mapping and Task-Mapping in the EPFO Application Software by assigning different roles of SS/AO/APFC to various officials/officers including outsourced DEOs in the absence of written authorization from OIC/RPFC in blatant disregard of the hierarchy of ranks and roles with ill-conceived motive to facilitate insertion of non *bona-fide* members as members with zero balance, then insertion of fictitious amount through Appendix-E functionality and settlement of large number of fictitious claims in respect of various establishments.

Thus, by the aforesaid acts, Shri Shiva Shankar Mamadi, DPA failed to maintain absolute integrity, devotion to duty, maintain high ethical standard and honesty and acted in a manner unbecoming of an employee of CBT, EPF. Thereby, he violated Rule 3(1)(i), 3(1)(vi) & 3(1)(iii) of CCS (Conduct) Rules, 1964, which are mutatis mutandis applicable to the employees of CBT, EPF in terms of Regulations of 18 and 22 of the EPF (Officers and Employees 'Conditions of Services) Regulations, 2008.

Article II

That the said Shri Shiva Shankar Mamadi, DPA, while working as such at Regional Office, Kandivali (East) during the period from 2019 to June, 2021 deliberately shared his login credentials with

outsourced DeOs, apparently with III-conceived motive to facilitate insertion of non *bona-fide* members as members with zero balance, then insertion of fictitious amount through Appendix-E functionality and settlement of large number of fictitious claims in respect of various establishments.

Thus, by the aforesaid acts, Shri Shiva Shnakar Mamadi, DPA, failed to maintain absolute integrity, devotion to duty, maintain high ethical standard & honesty and acted in a manner unbecoming of an employee of CBT, EPF. Thereby, he violated Rule 3(1)(i), 3(1)(ii), 3(1)(vi) & 3(1)(iii) of CCS (Conduct) Rules, 1964, which are mutatis mutandis applicable to the employees of CBT, EPF in terms of Regulations of 18 and 22 of the EPF (Officers and Employees 'Conditions of Services) Regulations, 2008.

Article III

That the said Shri Shiva Shankar Mamadi, DPA, while working as such at Regional Office, Kandivali (East) during the period from 2019 to June, 2021 unauthorizedly endorsed certain physical claim forms with the remark "NO UAN, PL. CPAS" duly approving its entry through the Receipt Module in the Application Software in violation of Head Office circular No. WSU/2020/Claim Settlement without UAN-clarification dated 24/09/2020 instructing that in all cases UAN must be generated and Aadhar seeded and validated before processing of offline claims, apparently with a *mala fide* intention to facilitate receipt entry of fictitious claims and its settlement.

Thus, by the aforesaid acts, Shri Shiva Shnakar Mamadi, DPA, failed to maintain absolute integrity, devotion to duty, maintain high ethical standard & honesty and acted in a manner unbecoming of an employee of CBT, EPF. Thereby, he violated Rule 3(1)(i), 3(1)(ii), 3(1)(vi) & 3(1)(iii) of CCS (Conduct) Rules, 1964, which are mutatis mutandis applicable to the employees of CBT, EPF in terms of Regulations of 18 and 22 of the EPF (Officers and Employees 'Conditions of Services) Regulations, 2008.

Article IV

That the said Shri Shiva Shankar Mamadi, DPA, while working as such at Regional Office, Kandivali (East) during the period from

2019 to June, 2021, was found in unauthorized possession of two DSC-Dongles, bearing tags, (I) "ANUJA LANDGE" & (ii) PROXKey" bearing No. SPG0274342 'Watchdata', for which he had no convincing explanation as these were probably pertaining to certain PF covered establishments.

Thus, by the aforesaid acts, Shri Shiva Shnakar Mamadi, DPA, failed to maintain absolute integrity, devotion to duty, maintain high ethical standard & honesty and acted in a manner unbecoming of an employee of CBT, EPF. Thereby, he violated Rule 3(1)(i), 3(1)(ii), 3(1)(vi) & 3(1)(iii) of CCS (Conduct) Rules, 1964, which are mutatis mutandis applicable to the employees of CBT, EPF in terms of Regulations of 18 and 22 of the EPF (Officers and Employees 'Conditions of Services) Regulations, 2008.

19. The criminal prosecution, on the other hand, is lodged against
10 accused including Petitioner. The broad allegations in the
Chargesheet (Final Report) filed in the criminal case are as under -

17.29) Investigation conducted so far has revealed that prime accused andan Kumar Sinha hatched the criminal conspiracy in connivance with accused Shiva Shankar Mamadi, DPA, UttamTagaray, APFC and Ganesh Ghaywat, AO and middlemen private persons namely, Sh. Dhurender Rai (A-5S), Sh. Rahul Wadekar (A6), Sh. Shrikant Ulhas Palav (A-7), Sh. Sagar Bagadi (A-8), Ms. Shweta Kini (A-9) and Sh. Shubham Bhosle (A-10) in creating the fake member IDs of the bogus beneficiaries of the PF claims by first creating the PF claims in their bank accounts and then withdrawing the same from bank accounts of such fake beneficiaries. Investigatio,, lso revealed that accused Shiva Shankar Mamadi was functioning in the role of Supe, Admin of the EPFO application at RO Kandivali-II] and was changing roles of the - officials at receipt, verifier and approver very. frequently and without any administrative approval for the role allocation changes. His signature was found on majority of the bogus physical claims, He has verified physical claim form for UAN and allowed the claims of bogus beneficiaries through CPAS without ascertaining their signature and signature of authorized signatory on claim

forms. His actions as a Data Processing Assistant ignoring the standing rules and procedures of EPFO lead to the settlement of these claims fraudulently.

17.30) In view of the above facts and circumstances, investigation has revealed the role of accused Chandan Kumar Sinha, Sr. SSA, Shiva Shankar 'Mamadi, DPA, Uttam Tagaray, APEC and Ganesh Ghaywat, AO and other private persons who have acted as middleman namely Sh. Dhurender Rai (A-5), Sh. Rahul Wadekar (A-6), Sh. Shrikant Ulhas Palav (A-7), Sh. Sagar Bagadi (A-8), Ms. Shweta Kini (A-9) and Sh. Shubham Bhosle (A-10) in fraudulent withdrawal of the PF claims causing wrongful loss to the EPF corpus maintained at HO Delhi and corresponding wrongful gain to the accused persons.

20. A comparison of the charges levelled in the disciplinary proceedings and the accusations in the criminal trial would indicate that certain additional charges are levelled in the disciplinary proceedings such as unauthorised possession of two DSC-Dongles pertaining to PF covered establishments and inability on the part of Petitioner to offer convincing explanation.

21. In addition to some difference in the nature of allegations, the evidence sought to be produced in both set of proceedings also appears to be completely different. In the disciplinary proceedings, following 04 witnesses are proposed to be examined-

1. Shri. Rajesh Kumar, Hindi Translator, RO, Kandivali-East
2. Shri Nilanjan Gupta, AD (V) ZVD/West Zone.
3. Shri P. K. Tiwari, RPFC-1
4. Shri R R Kurup, Assistant Director (Vigilance)

22. As against this, following 24 witnesses are sought to be examined in the criminal case:

**List of Witnesses in RC 220 2021 E
0012/CBI/EOU-VI/EO-II/New Delhi**

- 1) Ms. Kavitha N. George, Additional Central PF Commissioner (Vigilance), EPFO
- 2) Shri Ankesh Srivastava, RPFC-II, EPFO
- 3) Shri Yogesh Kumar, Enforcement Officer/Accounts Officer, EPFO
- 4) Smt. Rajshree Prashant Naik w/o Shri Prashant Naik, Branch Manager
- 5) Shri Dhyandeo A. Pansare S/o Shri Appa Hanumant Pansare, Manager
- 6) Smt. Monalisa Faria W/o Shri Sizar Dmello, Branch Operation Manager
- 7) Varsha Harshad Chaudhari W/o Shri Harshad Vasudeo, Branch Manager
- 8) Shri Akash Mishra S/o Shri Ramkumar Mishra, Assistant Manager
- 9) Ms. Prajakta Ravindra Muley D/o Shri Panduran Patil, Sr. Manager
- 10) Shaibhadrao Classic-A 100 Feet, Vasai-C Link Road, Nallsopara East
- 11) Ms Reena Meera W/o Shri Rajeev Meena, Sr. Manager
- 12) Smt. Komal Kamalakar Kini, W/o Shri Kamalakar Kini, Asha Worker
- 13) Ms. Fatima Sattar Chougale D/o Late Shri Abdul Sattar Hassan Chougale W/o. Shri Abhijit Onekar, Housemaker
- 14) Shri Pankaj Kumawat S/o Shri Ratan Lal Kumawat
- 15) Shri Javed Aziz Shikalgar S/o. Shri Aziz Shikargar
- 16) Shri Vishal Vinod Kakade S/o Shri Vinod Mohan Kakade
- 17) Shri Vivek Shrikant Palav, S/o Shri Shrikant N. Palav
- 18) Shri Utpal Shivaji Ardalkar S/o Shri Shivaji Ardalkar, Civil Engineer
- 19) Smt. Ankita Anil Mestry D/o Late Shri Babban Rahasab Panchan W/o Shri Anil Vaman Mestry, Housemaker
- 20) Shri Shabbir Ahmed Masumdar S/o Shri Ahmed Masumdar, Driver

- 21) Smt. Minal Ramakant Patil W/o Shri Ramakant Kamalkar Patil, Nagar Sevika
- 22) Shri H. S. Jangir, Dy. SP, CBI
- 23) Shri S. K. Sharma, SP, CBI
- 24) Shri Sudhir N. Ganvir, RPFC-I, RO

Thus, none of the 04 witnesses cited in the disciplinary charge sheet are proposed to be examined in the criminal case.

23. Thus, this is case where not only there is some degree of difference in the nature of allegations, but the evidence sought to be produced in both the set of proceedings is also entirely different.

24. Since Petitioner is going to cross-examine 4 witnesses in the disciplinary enquiry, who are not listed as witnesses in the criminal case, no prejudice would be caused to Petitioner if conduct of enquiry precedes the criminal trial. This is not a case where same witnesses are sought to be examined in both the set of proceedings. Therefore entire theory of prejudice sought to be put forth by the Petitioner is totally baseless.

25. Faced with the position that witnesses listed in the departmental chargesheet are not included in the Chargesheet of criminal case, Mr. Rajeev Kumar would submit that while cross-examining those 4 witnesses in enquiry, Petitioner is bound to disclose his defence. In his submission, witnesses in both proceedings need not be same for stay of enquiry. That even if different witnesses are examined in two

proceedings, the employee is bound to disclose his defence while cross examining a witness in enquiry, on account of which the other witnesses in the criminal trial would know in advance what the employees defence is. We find these submissions to be totally baseless. It is elementary that for seeking stay of departmental enquiry, the employee must prove that the evidence sought to be produced in the two proceedings is same. In ***Capt. M. Paul Anthony*** strenuously relied upon by Mr. Rajiv Kumar, one of the factors that weighed with the Apex Court for stay of departmental enquiry was similarity of evidence in both proceedings. This is clear from following findings:

35. Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case.

(emphasis and underlining supplied)

26. Since evidence sought to be produced in both the proceedings is different, no case is made out for stay of departmental enquiry during pendency of criminal trial.

27. We now proceed to apply the next yardstick of stage at which the criminal trial stands today. The criminal trial is at its nascent stage,

where the charges are yet to be framed. We are not aware as to how long it will take for conclusion of the criminal trial. It is not a case where the criminal trial has progressed substantially and the disciplinary enquiry can await for few months during conclusion of criminal trial. Considering law repeatedly expounded by the Apex Court that disciplinary enquiry cannot be suspended indefinitely during pendency of criminal trial, we find that this is not fit case where a disciplinary enquiry can be stayed during conclusion of criminal trial. As observed by the Apex Court, it is in the interest of Petitioner that the disciplinary enquiry is conducted promptly. Petition avers that Petitioner is under suspension since 25 August 2021 and as also faced a transfer to Bhopal. It is therefore in Petitioner's interest that the enquiry is conducted and concluded expeditiously.

28. We are therefore of the view that Petitioner did not make out any case for grant of interim relief of stay of disciplinary inquiry during pendency of his Original Application.

29. What remains now is to deal with is various Judgments/Orders relied upon by Mr. Rajeev Kumar:

- i) ***Capt. M. Paul Anthony*** (supra) is relied upon by Petitioner in support of his contention that since both set of proceedings emanate out of identical and similar set of facts, the disciplinary enquiry must be stayed. We have already

reproduced the conclusions deduced by the Apex Court in *Capt. M. Paul Anthony*. The Apex Court itself has held that the principles in paragraph No. (i) and (ii) cannot be considered in isolation to stay the disciplinary proceedings and regard has to be given to the fact that the disciplinary proceedings cannot be unduly delayed. In the present case, we have arrived at a conclusion that the nature of allegations levelled in both set of proceedings is not identical. The evidence sought to be relied upon is also different. The criminal trial is yet to commence, and we do not know as to how long will it take for conclusion of the same. Therefore applying the yardsticks laid down in *Capt. M. Paul Anthony*, we are of the considered view that disciplinary enquiry in the present case cannot be stayed during pendency of the criminal trial.

ii) *Stanzen Toyotestu (supra)* is relied upon in support of contention that this Court can expedite criminal trial and stay the disciplinary enquiry in the interregnum. In *Stanzen Toyotestu*, the facts were entirely different. The allegations arose out of ruckus created by the Respondents therein alongwith other Trade Unions functionaries resulting in damage of the property of the company and assault on senior managerial personnel. The criminal case was pending since

the year 2011. The Civil Court had granted interim injunction staying disciplinary enquiry till disposal of criminal case. The Appellate Court upheld the order of the Civil Court. The High Court dismissed Writ Petition filed by the company and this is how the proceedings reached the Apex Court. The Apex Court took note of the fact that the three Courts had consistently exercised their discretion in favour of staying disciplinary enquiry. In the light of those peculiar facts, the Apex Court felt that a direction can be issued to the Criminal Court to conclude trial expeditiously within a period of one year. The facts in *Stanzen Toyotetsu* thus are entirely different and the said judgment would have no application to the present case.

(iii) Neelam Nag relied upon by Petitioner, far from assisting his case, actually militates against him. In that case, the Apex Court came to the conclusion that since there was no substantial progress in the criminal case despite a direction by the High Court, the departmental enquiry could not be kept pending any longer. Following observations of the Apex court are relevant:

23. Notably, in the present case in spite of a peremptory direction of the Division Bench given on 28-6-2010 to the criminal court concerned to proceed with the trial on day-to-day basis, as noted above, no effective progress has been made in that trial

(except recording of evidence of three prosecution witnesses out of eighteen witnesses) so far. In the last six years, evidence of only two additional prosecution witnesses has been recorded. Respondent 1 has not pointed out any material on record to even remotely suggest that she had tried her best to dissuade the criminal court from adjourning the trial, in breach of direction given by the Division Bench of the High Court to proceed on day-to-day basis and to conclude the trial within one year from 28-6-2010. Pendency of criminal trial for around 10 years, by no means, can be said to be a reasonable time-frame to withhold the disciplinary proceedings. We are fortified in taking this view on the principle underlying the former part of the same clause, which envisages that if the Authority which has to start the prosecution refuses (read fails) to do so within one year from the commission of the offence, the departmental action can proceed under the provisions as set out in Clauses 11 and 12 of the settlement.

24. In the fact situation of the present case, it is possible to take the view that the first part of Clause 4 is attracted. In that, Respondent 1 has been put on trial in connection with the alleged offence, by framing of charges on 12-6-2007. That has happened after one year from the commission of the offence.

However, applying the ratio in *Stanzen*, the Apex Court directed the criminal case to be concluded in 1 year and stayed enquiry only for 1 year with a clear caveat that the enquiry would resume at the end of one year if criminal cases remained unconcluded. Those directions were issued considering the fact that three witnesses in criminal cases were already examined, which is not the case here. Therefore the

judgment in *Neelam Nag* is of little assistance to Petitioner's case.

iv) Orders passed by the Division Bench of this Court in ***K. Vijaya Rama Rao*** (supra) have been relied upon by the Petitioner. In that case, the disciplinary enquiry had remained pending since the year 2011 and by the time Division Bench of this Court considered the issue on March 11, 2021, the criminal trial had already commenced and examination of P.W.1 was closed and his cross-examination was in progress. In the light of these peculiar facts where the Disciplinary Enquiry was pending for more than 10 years, Division Bench of this Court issued directions to the Criminal Court to complete evidence of P.W.1 and P.W.2 in a time bound manner and stayed disciplinary enquiry in the meantime. The facts in the present case is entirely different where the charges in the criminal case are yet to be framed. The disciplinary enquiry has been initiated on June 25, 2022 and it cannot be said that it is pending for a long period of time. The orders passed by Division Bench of this Court in ***K. Vijaya Rama Rao*** would therefore have no application to the present case.

v) Order of Division Bench of this court, Bench at Nagpur in ***Sudhanshu Shrivastava*** (supra) is relied upon to seek stay of disciplinary enquiry. It appears that the facts of the case are

not discussed in the order dated March 10, 2023. However, it appears that the trial in that case was scheduled to be held on March 15, 2023. This Court therefore directed to Special Judge to frame charge on March 15, 2023 and to conclude trial within 09 months. Though this Court stayed disciplinary enquiry, the stay was restricted only for a period of 9 months. In the present case, petitioner is not a lone accused in the criminal trial. The same is being conducted before Criminal Court at New Delhi, over which Court does not exercise any supervisory jurisdiction. The charges are yet to be framed. Therefore, it would not be possible for this Court of issue directions to Criminal Court at New Delhi to conduct or conclude the criminal trial within any stipulated time. Therefore, the order passed by Division Bench of this court in *Sudhanshu Shrivastava* (supra) would be of little assistance to the Petitioner.

30 Resultantly, we are of the view that the Tribunal has not committed any error in declining stay of disciplinary enquiry during pendency of the Original Application. The Writ Petition is devoid of merits and is dismissed without any order as to costs. Rule is discharged.

SANDEEP V. MARNE, J.

DHIRAJ SINGH THAKUR, J.