

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

2023:PHHC:166869

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CWP-1472-2023 (O&M)
DECIDED ON: 02.12.2023

JAGMAL SINGH

... PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Ravinder Malik (Ravi), Advocate
for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

Mr. Puneet Jindal, Sr. Advocate with
Mr. Amandeep Singh Meho, Advocate
for respondents No. 2 to 4.

SANDEEP MOUDGIL, J.

1. The jurisdiction of this Court under Articles 226 and 227 of the Constitution of India has been invoked for issuance of a writ in the nature of *Mandamus* directing the respondents especially respondent No.5 not to take further action on departmental proceedings/enquiry/charge-sheet dated 10.06.2022 (Annexure P-4) pending before respondent No.5, till the pendency of the criminal proceedings/trial arising out of FIR No. 109, dated 08.09.2022, under Sections 34, 120-B, 201, 409, 420, 467, 468, 471 of the Indian Penal Code, 1860 and Section 13 of the Prevention of Corruption Act, 1988.

2. The case of the petitioner-Jagmal Singh is that he is a permanent employee of the respondent-Uttar Haryana Bijli Vitran Nigam(hereinafter referred to as "UHBVN") and was posted as Deputy Superintendent in the office of UHBVN, Jagadhari, District Yamunanagar, Haryana when one FIR

No.109 dated 08.02.2022 was registered and the petitioner was arrested in the said FIR on 28.10.2022 and challan/final report under Section 173 Cr.P.C. dated 30.11.2022 (Annexure P-2) stands presented. Thereafter vide order dated 11.01.2023 passed by learned Additional Sessions Judge, Panipat, the petitioner was enlarged on regular bail and on 10.06.2022, a charge sheet was served upon the petitioner along-with list of charges, allegations and documents on the similar set of facts and charge of the criminal case pending before the trial Court.

3. It has been contended on behalf of the petitioner that the issue in the FIR and the report under Section 173 Cr.P.C. is the same as that in the departmental proceedings and has further submitted that the case is of grave nature. It is further contended that the summary of charges in the departmental proceedings/enquiry and the report under Section 173 Cr.P.C. would show that the proceedings are based on similar facts and evidence. In support of the said arguments, a reference has been upon the summary of charges as well as the report/challan.

4. Reliance has been placed upon the judgment of the Apex Court in the case of “Capt. M Paul Anthony vs. Bharat GoldMines Ltd.”;1999(3) SCC 679, wherein, it has been held that in case the departmental proceedings and the criminal case are based on similar and identical facts and the charge in the criminal case against the delinquent employee is of grave nature which involves complicated questions of law and fact, then it would be desirable to stay the departmental proceedings till the conclusion of the criminal case. Specific reference has been to paragraph 22 of the said judgment.

5. Further reliance has been placed upon the judgment of the Hon’bleSupreme Court of India in “State Bank of India and Ors. vs. Neelam

Nag and Anr”; 2016(9) SCC 491 wherein, the Apex Court while relying upon the judgment of “**Karnataka SRTC vs. M.G. Vittal Rao**”; (2012)1 SCC 442 has observed that 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 and the said ground would be available in case there are complicated questions of facts and law involved. It is submitted that in case the departmental proceedings are not stayed, then it will cause serious prejudice to the case of the petitioner as he would have to disclosed his defence while cross-examining the witnesses of the management and the same would prejudice his defence in the criminal trial.

6. It is further submitted that in case, the petitioner chooses to lead defence evidence in the departmental proceedings, then the same would also expose the defence of the petitioner in the criminal proceedings. It is argued that in the present case, FIR was registered on 08.02.2022 on the basis of a written complaint made by Suresh and although the charge-sheet in the departmental proceedings has been issued on the basis of an internal audit but the said internal audit was also conducted subsequent in point of time to the registration of the FIR as it is by virtue of the registration of the FIR that the alleged scam in question was brought to light. It is further argued that the question whether the petitioner was negligent, had committed a mistake or an error and whether the same is culpable or not would involve complex question of facts and thus, the ingredient, which was required to be met as per the judgment of the Hon’ble Supreme Court in **Capt. M. Paul Anthony’s** case (supra), is met in the present case. It is submitted that the controversy in both the criminal case as well as the departmental proceedings revolves around the lack of due procedure followed by the petitioner and his duty resulting in the

alleged loss caused to the UHBVN and thus, it is submitted that it cannot be stated that the allegations in the departmental proceedings are different from the allegations in the FIR/report under Section 173 Cr.P.C. It is argued that the petitioner would not like to divulge his defence as the same would prejudice his rights in the criminal case.

7. Learned Senior counsel appearing for respondent-UHBVN has prayed for dismissal of the present writ petition stating that the departmental proceedings have been initiated against the petitioner after the special audit of transactions of payment for the period from 04.04.2018 to 05.05.2021 in the office of XEN, Sub Urban Division, UHBVN, Jagadhri, had been conducted by the Special Audit Team, deputed by the Chief Auditor UHBVN, Panchkula and an interim report had been received, as per which, it has been concluded that the petitione rhas not followed the necessary procedure with respect to maintenance of record of all gratuity payment orders for withdrawal of gratuity by making necessary entries in the gratuity ledger of the division office, issuance of cheques along with schedules/ cash voucher for payment containing names and particulars of bonafide pensioners/retirees. It is submitted that there is a specific charge against the petitioner to the effect that during the period from 09.09.2019 to till date, he was performing duties of Deputy Superintendent in O/o Xen OP Sub Urban Division, Jagadhari and he has been found guilty for handing over the cheques to Sh. Raghav Wadhawan-LDC, without having any authority to do so, which has resulted embezzlement to the tune of Rs.39.17 Crores during the financial year 2019-20, 2020-21, 2021-22.

8. It is further submitted that the petitioner gave a disclosure statement on 29.10.2022 wherein, he has admitted his involvement with other accused persons. He further admitted that out of the embezzled money he had

received an amount of Rs. 50 Lakhs and out of said amount, an amount of Rs.1.50 lakh is kept by him at his brother-Krishan's rented house at 'Radour hidden by him in a bed. Pursuant to the said disclosure statement, he got recovered the said amount. Reliance has been placed upon the judgment of a Division Bench rendered in the case of "Balwinder Kumar Sharma vs. Hon'ble Punjab and Haryana High Court"; CWP-7539-2021, decided on 28.05.2021, wherein, the judgment of Capt. M. Paul. Hindustan Petroleum Corporation Ltd. Vs. Sarvesh Berry, Prem Singh Vs. State of Haryana and Ved Parkash Vs. State of Haryana and others, were discussed, the Division Bench observed as under:-

"A perusal of the charges framed in criminal trial and Articles of Charge issued to petitioner in departmental enquiry would show that the petitioner has been implicated in both the criminal as well as departmental proceedings on similar set of facts. However, in our opinion this is bound to happen. When an employee is roped in a criminal offence, the disciplinary authority by taking cognizance of such initiation of criminal offence, proceeds with the departmental proceedings to take appropriate action as per the statutory rules governing the post an employee is holding. In case the offence is of serious nature, which may impute the integrity / character of an employee, then the department suspends the employee immediately and initiates further departmental proceedings. The reason for initiation and early conclusion of departmental proceedings in such cases seems to be three-fold:

- (i) To weed out an employee whose integrity / character has been put to doubt, prima facie, on account of some criminal proceedings having been initiated against him/her.*
- (ii) At the same time, when an employee is suspended, he/she is entitled to at least half of the pay that it was drawing before being suspended and thus, any inordinate delay in conclusion of departmental proceedings, where charges are*

of very serious nature, would unnecessarily entail burden on exchequer and thus will be against public interest.

- (iii) *The departmental proceedings is to maintain discipline in the service and efficiency of public service and thus, its initiation and conclusion as expeditiously as possible is in public interest*

In the present case, it is not disputed that challan was presented in the year 2019 and charges were framed on 31.01.2020 (P-11), however till date no progress has been made in the criminal trial on account of one reason or the other. Although, the delay in criminal trial cannot be attributed to the petitioner, at the same time, the department cannot be expected to wait endlessly for the trial to conclude as held in Capt. M. Paul Anthony's case (supra). The charges that have been framed against the petitioner are based upon the fact that question paper of HCS (Judicial Branch)-2017 was leaked by the petitioner on account of his intimacy with one Sunita who in turn had given it to other co-accused leading to parting of a sum of 1.5 Crore by the complainant. These allegations had led to framing of charges under Sections 409, 420, 120-B, 201 IPC and Section 8, 9, 13(1)(d) read with 13(2) of Prevention of Corruption Act, 1988. The petitioner, being a judicial officer holding the rank of Additional District Judge and posted as Registrar (Recruitment) was required to have the highest standards of propriety as well as moral conduct. One of the documentary evidence that has come on record is by way of call detail record of petitioner - Dr. Balwinder Sharma whereby 726 and 34 calls / SMSs have been made between him and accused-Sunita, who incidentally was a topper in the HCS (Judicial) Preliminary Examination. This prima facie reflects towards a conduct not befitting the post that Petitioner - Dr. Balwinder Sharma was holding. We have highlighted only one of the aspect that is glaring at our faces to only satisfy ourselves regarding the decision taken vide impugned order dated 06.11.2019 (P-9) to continue with departmental proceedings. We would like to refrain ourselves to further delve into the issue and make more comments,

lest it would prejudice the case of petitioner either during criminal trial or during the disciplinary proceedings. Further, it is to be noted that charges under Sections 409, 420, 120-B and 201 IPC have been framed on the basis of documentary and other evidence collected by the SIT during the course of investigation. How the paper was leaked and the manner it was further supplied for prosecution / Department to prove, which otherwise is within the special knowledge of the accused. Therefore, there is no question of any disclosure of defence in the departmental proceedings.

Further, Charge 4 of Articles of Charge would show that the disciplinary authority has also charged the employee for immoral conduct and thereby violating the Government Employees (Conduct) Rules, 1966, Punjab as he had alleged developed intimate relations with Ms. Sunita. Further, petitioner has also been charged for failing to maintain absolute integrity as expected from a judicial officer and thus, has acted in a manner unbecoming of a judicial officer. These charges, by no stretch of imagination, can be gone into or enquired or punished by the Criminal Court. Hence, seen from this angle as well, we do not find any reason to stay disciplinary proceedings against the petitioner.

Another factor that has weighed on our mind is the inordinate delay by the Criminal Court in disposal of criminal case. FIR is of the year 2017, challan presented in the year 2019 and charged framed in January, 2020. We are in 2021 and there seems to be little progress in the case. As held in Capt. M. Paul Anthony's case (supra), where there is delay in the disposal of a criminal case, the departmental proceedings can be proceeded with so that the conclusion can be arrived at an early date. If ultimately the employee is found not guilty in criminal trial, his honour may be vindicated and in case he is found guilty, the employer's decision to get rid of him by way of disciplinary proceedings at the earliest is endorsed. In any case, the burden of proof and the manner in which allegations are to be proved, are different for criminal trial

and disciplinary proceedings. The petitioner has been drawing salary, being an employee under suspension and it is neither desirable nor advisable for any Court of law in view of nature and gravity of allegations, to force an employer to continue paying an employee which the establishment does not deem fit to continue as it's part by stalling the conclusion of departmental proceedings.

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In view of the above, we find no merit in the instant writ petition, therefore, the same is hereby ordered to be dismissed.

9. In view of the ratio of law as discussed by the Apex Court, it is patent that departmental proceedings can continue along-with criminal proceedings.

10. No other argument has been raised by either of the parties.

11. The issue arises for consideration in this case is whether pendency of a criminal case by itself would be a sufficient ground for stay of the departmental proceedings is the principal question.

12. **Capt. M. Paul Anthony's** case (supra) deserves to be noticed.

The Apex Court held that the departmental proceedings need not be stayed during pendency of the criminal case save and except for cogent reasons. The Court summarised its finding as under:-

"22. (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."

13. The afore-said issue came up for consideration yet again in the case of **"Kendriya Vidyalaya Sangathan & Ors. Vs. T. Srinivas"**(2004) 7 SCC 442; wherein the Apex Court while analysing **"State of Rajasthan vs. B.K.Meena & Ors."** (1996) 6 SCC 417 and Capt. M. Paul Anthony's case (supra) held as under:

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."

14. It is well settled that there is no legal bar to conduct the disciplinary proceedings and criminal trial simultaneously. However, no straight jacket formula can be spelt out and the Court has to keep in mind the broad approach to be adopted in such matters on case to case to basis.

15. Reliance can be placed upon the judicial pronouncement of the Apex Court in the case of **"Indian Overseas Bank, Annasalai and another vs.**

P. Ganesan and others”; (2008) 1 SCC 650; wherein, it has been held that 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 that of 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.

16. From the perusal of charge sheet dated 10.06.2022 (Annexure P-4) as well as the narration in the FIR, it is abundantly clear that the allegation against the petitioner is with regard to siphoning of money to the tune of Rs.39.17 Crores of the respondent-Nigam. Thus, the dictum of the law laid down by the Apex Court in the case of “Indian Overseas Bank Ltd.” (supra) is fully applicable to the facts and circumstances of the present case.

17. In view of the discussions made hereinabove and the afore-said judicial pronouncements, the present petition is allowed and the departmental proceedings initiated against the petitioner on account of issuance of charge sheet dated 10.06.2022 (Annexure P-4) shall remain stayed till the disposal of criminal proceedings.

18. Ordered accordingly.

02.12.2023
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(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No