

218

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-9384-2018

Date of decision: 01.12.2023

Naresh Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Karamveer Singh Banyana, Advocate for the petitioner.

Mr. Amandeep Joshi, DAG, Haryana.

VIKAS BAHL, J. (ORAL)

1. This is a Civil Writ Petition filed under Article 226 of the Constitution of India for the issuance of a writ in the nature of certiorari for quashing the order dated 14.06.2017 (Annexure P-2) vide which a regular departmental enquiry has been ordered. Prayer has also been made to quash the list of allegations dated 30.06.2017 (Annexure P-6) issued to the petitioner in the departmental proceedings. Further prayer has been made for the issuance of a writ in the nature of mandamus directing the respondents to keep the departmental enquiry proceedings in abeyance till the conclusion of the criminal trial in FIR No.279 dated 13.06.2017 (Annexure P-1).

2. Brief facts of the present case are that the petitioner had joined

the services in Haryana Police as Constable on 05.08.1992 and in the year 2014, he was working as EASI (Exempted Assistant Sub Inspector). On 08.09.2016, the petitioner was posted as Incharge of Judicial Malkhana, Ambala when FIR No.279 dated 13.06.2017 under Sections 120-B and 409 of IPC was registered on the complaint of SI Sushil Kumar against the present petitioner and Head Constable-Gurdeep Singh on the allegations that the petitioner and Head Constable-Gurdeep Singh, while being posted at Judicial Malkhana, had embezzled an amount of Rs.13,08,613/- as per the register available in the Malkhana from various cash heads of different Police Stations situated in District Ambala. Charge sheet dated 04.12.2017 (Annexure P-5) was framed against the petitioner and the said Gurdeep Singh in the criminal trial in which the charges against the petitioner and said Gurdeep Singh were that they had hatched a criminal conspiracy to cheat the Government/Police Department by embezzling an amount of Rs.13,08,613/- and thus, had committed the offence under Section 120-B of IPC. It was further alleged that the petitioner along with the said Gurdeep Singh was entrusted with cash amount of Rs.13,08,613/- in the Malkhana and the same had been misappropriated by them and thus, the offence under Section 409 of IPC was committed by them. Charges under Sections 201, 467, 471 and 420 of IPC were also framed against the petitioner and the said Gurdeep Singh. Vide order dated 14.06.2017 (Annexure P-2), the Superintendent of Police, Ambala, suspended the petitioner and Gurdeep Singh and ordered regular departmental inquiry against them and the same was entrusted to Mr. Anil Kumar, DSP/Barara, who was directed to complete the departmental enquiry by holding day to day proceedings. The list of

allegations dated 30.06.2017 (Annexure P-6) was issued by the Inquiry Officer i.e., Deputy Superintendent of Police, Ambala Cantt in the departmental proceedings in which, it was alleged that the petitioner along with Gurdeep Singh, has misappropriated an amount of Rs.13,08,613/- while being posted at Judicial Malkhana. In the criminal case, out of 15 witnesses, two witnesses have been examined whereas on account of the stay order passed by a Coordinate Bench of this Court vide order dated 19.04.2018, no further proceedings have taken place in the departmental proceedings.

3. Learned counsel for the petitioner has submitted that in the present case, there are four common witnesses and has prayed that till the time the said four common witnesses are not examined in the criminal case, the departmental proceedings be kept in abeyance inasmuch as in case the said witnesses are examined in the departmental proceedings then the defence of the petitioner would be disclosed while cross-examining the said witnesses in the departmental proceedings. In support of his arguments, learned counsel for the petitioner has relied upon a judgment of the Hon'ble Supreme Court in case titled as "**Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd.**", reported as **1999(3) SCC 679**.

4. Learned counsel for the petitioner has further pointed out that the four common witnesses are SI Sushil Kumar, ASI Sanjay Kumar, ASI Dharampal and Sena Clerk, Office of Superintendent of Police, Ambala. It is further submitted that it is the co-accused Gurdeep Singh who is responsible for the alleged misappropriation and not the present petitioner.

5. Learned State Counsel, on the other hand, has opposed the

present writ petition and has submitted that it is a matter of settled law that criminal proceedings and the departmental proceedings can proceed simultaneously as there is no bar in their being conducted simultaneously though separately. It is contended that the stay order has been continuing since the last more than 5 years and 7 months and the Department cannot wait indefinitely till the time the criminal case is finally adjudicated. It is further contended that neither the evidence in the criminal case is to be relied in the departmental proceedings nor evidence in the departmental proceedings is to be relied in the criminal case and thus, the apprehension of the petitioner is misplaced. It is also submitted that in the present case, report under Section 173 Cr.P.C. has already been filed in the criminal case and the statements of the witnesses under Section 161 Cr.P.C. have already been recorded and thus, the plea raised by the petitioner to the effect that the State would improve their case after the cross-examination of the common witnesses in the departmental proceedings is also misconceived. It is also contended that no complicated question of law and facts arise in the present case and thus, prays that the present writ petition be dismissed and the interim order dated 19.04.2018 be vacated so as to enable the Department to proceed with the departmental proceedings. It is further submitted that all the pleas raised by the petitioner on merits would be considered in the said departmental proceedings and the same cannot be adjudicated by a Writ Court exercising its powers under Article 226 of the Constitution of India.

6. This Court has heard learned counsel for the parties and has perused the paper-book and finds that the present writ petition is meritless and deserves to be dismissed for the reasons which have been detailed

hereinafter.

7. Before considering the facts of the present case, it would be relevant to refer to the judgment of the Hon'ble Supreme Court in **Capt. M. Paul Anthony's case (supra)**, which has been relied upon by the learned counsel for the petitioner. In the said judgment and also in various other judgments of the Hon'ble Supreme Court, it has been repeatedly held that one of the necessary ingredients for the Court to consider before staying departmental proceedings, with respect to the issue in hand, is whether the case involves complicated questions of law and facts or not. Paragraph 22 of the judgment in **Capt. M. Paul Anthony's case (supra)** is reproduced hereinbelow:-

“22. 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 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, administration may get rid of him at the earliest.”

A perusal of the above judgment would show that the Hon’ble Supreme Court after considering various judgments had drawn the conclusion which was given in the abovesaid paragraph. It was held that the departmental proceedings and the proceedings in the criminal case can proceed simultaneously as there was no bar in their being conducted simultaneously. It was further held that departmental proceedings and criminal proceedings if based on identical and similar set of facts and also in case the charge in the criminal case against the delinquent employee is of grave nature which involves complicated questions of law and fact, then in such circumstances, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case. Thus, all the ingredients i.e., averments/ allegations being identical, based on similar set of facts and

the charge being of grave nature involving complicated questions of law and fact are required to be met so as to consider the case of the employee for grant of stay. In sub clause (iii), reference has been made that the evidence and the material collected during investigation or as reflected in the charge sheet is to be taken into consideration for the purpose of considering as to whether the nature of charge in the criminal case is grave in nature and complicated questions of law and fact are involved in the case or not. Importantly, as per sub clause (iv) even in a particular case where it is found that ingredients of sub clause (ii) and (iii) do exist, even then the same cannot be considered in isolation, to stay the departmental proceedings, but further regard has to be given to the fact that the departmental proceedings cannot be unduly delayed. Sub clause (v) specifically provides that if the criminal case does not proceed or its disposal is being unduly delayed, then even in case stay has been granted, with respect to the departmental proceedings, the same can be resumed and proceeded with.

8. Similarly, in the judgment of the Hon'ble Supreme Court of India in "**Indian Overseas Bank, Anna Salai and Anr. vs. P.Ganesan and others**", **reported as 2008(1) SCC 650** it had been specifically observed that the High Court was apart from other considerations also required to consider as to whether the matter involves complicated questions of law. The relevant portion of the said judgment is reproduced hereinbelow:-

"11. Writ appeals preferred by the appellants against that order were disposed of by a Division Bench of the Court by reason of the impugned judgment opining :-

14. In the instant case, there is no dispute that the criminal action and the disciplinary proceedings are

founded upon the same set of facts. In fact, the disciplinary proceedings are solely based upon the criminal complaint lodged by the president of a rival union, who is also facing prosecution with regard to the same incident. It has been conceded before us that the bank had not conducted any independent enquiry before initiating the impugned departmental proceedings.

15. In our opinion, in the peculiar facts and circumstances of the case on hand, fair play requires that postponing of the departmental proceedings till the criminal cases are decided. We are, therefore, of the view that the prayer made by the petitioners for deferring the departmental proceedings till the conclusion of the criminal trial has to be accepted and it is ordered accordingly.

xxx xxx xxx

18. Legal position operating in the field is no longer res integra. A departmental proceedings pending a criminal proceedings does not warrant an automatic stay. The superior courts before exercising its discretionary jurisdiction in this regard must take into consideration the fact as to whether the charges as also the evidence in both the proceedings are common and as to whether any complicated question of law is involved in the matter.

xxx xxx xxx

22. The issue came up for consideration yet again in T. Srinivas (supra) where this Court while analyzing B.K. Meena (supra) and Capt. M. Paul Anthony (supra) held that :-

“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.”

23. *The High Court, unfortunately, although it noticed some of the binding precedents of the Court failed to apply the law in its proper perspective. The High Court was not correct in its view in concluding that the stay of the departmental proceedings should be granted in the peculiar facts and circumstances of the case without analyzing and applying the principle of law evolved in the aforementioned decisions. It, therefore, misdirected itself in law. What was necessary to be noticed by the High Court was not only existence of identical facts and the evidence in the matter, it was also required to take into consideration the question as to whether the charges levelled against the delinquent officers, both in the criminal case as also the disciplinary proceedings, were same. Furthermore it was obligatory on the part of the High Court to arrive at a finding that the non stay of the disciplinary proceedings shall not only prejudice the delinquent officers **but the matter also the matter involves a complicated question of law.***

In the above-said case, the Hon’ble Division Bench of the High Court had disposed of the appeals on the ground that there was no dispute of the fact that the criminal action and the disciplinary proceedings were founded on the same set of facts and that disciplinary proceedings were solely based upon the criminal complaint lodged by the President of a rival union and that the Bank had not conducted any independent enquiry before initiating the impugned departmental proceedings and thus, the departmental proceedings were postponed till the time the criminal cases were decided. The said order was set aside by the Hon’ble Supreme Court

by making the observations which have been reproduced hereinabove.

9. The Hon'ble Supreme Court of India in "*Kendriya Vidyalaya Sangathan & Ors. Vs. T.Srinivas*", *reported as 2004(7) SCC 442*, had observed that there should be special facts in a case so as to persuade the Court to stay departmental proceedings and every case where departmental proceedings and criminal trial with regard to the same misconduct is pending, is not to be stayed. It was also observed in the said judgment that the approach and the objective of the criminal proceedings and the disciplinary proceedings are altogether distinct and different inasmuch as in the disciplinary proceedings, the question is whether the employee is guilty of such conduct as would merit his removal from service or a lesser punishment as the case may be, whereas in the criminal proceedings, the question is whether the offences which the employee is alleged to have committed, are established or not, and if so established the sentence to be imposed. It was further observed that the standard of proof, the mode of enquiry and the rules governing the enquiry and the trial in both the cases are distinct and different. In the said case, the Tribunal had come to the conclusion that two articles of charge in the criminal proceedings and the departmental proceedings were identical and the third charge was inter connected and accordingly, the Tribunal had stayed the departmental proceedings till the time the applicant therein disclosed his defence in the criminal trial. The writ petition against the said order was also dismissed and the Hon'ble Supreme Court after considering the law on the point, set aside the said orders and observed that the Tribunal and the High Court had proceeded on an erroneous principle to the effect that grant of stay of

disciplinary proceedings is a must in every case where there is a criminal trial on the same charges. The relevant portion of the said judgment is reproduced hereinbelow:-

4. *The respondent herein challenged the said decision of the appellants to hold a departmental enquiry while a criminal trial on identical facts was pending against him before a competent court. This challenge was made before the Central Administrative Tribunal, Hyderabad Bench at Hyderabad. The tribunal by its order dated 2.7.2003 came to the conclusion that the first two Articles of charges are identical to the charge levelled against the petitioner before the special court under the provisions of the Prevention of Corruption Act and the third Article of charge though not a subject matter of the trial is an inter-connected charge with charges 1 and 2, hence it allowed the application of the respondent and directed the appellant that proceedings pursuant to the charge memo be stayed till the applicant discloses his defence in the pending criminal trial. It, however gave permission to the appellant to proceed with the disciplinary proceedings after the disclosure of the defence by the respondent which in effect would mean that the disciplinary proceedings will stand stayed almost till the disposal of the trial before the criminal court.*

xxx xxx xxx

11. *In the instant case, from the order of the tribunal as also from the impugned order of the High Court, **we do not find that the two forums below have considered the special facts of this case which persuaded them to stay the departmental proceedings.** On the contrary, reading of the two impugned orders indicates that both the tribunal and the High Court proceeded as if a departmental enquiry had to be stayed in every case where a criminal trial in regard to the same*

misconduct is pending. Neither the tribunal nor the High Court did take into consideration the seriousness of the charge which pertains to acceptance of illegal gratification and the desirability of continuing the appellant in service inspite of such serious charges levelled against him. This Court in the said case of State of Rajasthan (supra) has further observed that the approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. It held that in the disciplinary proceedings the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him are established and, if established, what sentence should be imposed upon him. The court in the above case further noted that the standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are distinct and different. On that basis, in the case of State of Rajasthan the facts which seems to be almost similar to the facts of this case held that the tribunal fell in error in staying the disciplinary proceedings.

xxx xxx xxx

14. *We are of the opinion that both the tribunal and the High Court proceeded on an erroneous legal principle without taking into consideration the facts and circumstances of this case and proceeded as if the stay of disciplinary proceedings is a must in every case where there is a criminal trial on the very same charges.....”*

10. The Hon’ble Supreme Court in “**State Bank of India and Ors. vs. Neelam Nag and Anr., reported as 2016(9) SCC 491**, had observed as under:-

“13. We have heard the learned counsel for the parties at some length. The only question that arises for consideration, is no more res-integra. It is well-settled that there is no legal bar to the conduct of 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 basis. The contour of the approach to be adopted by the Court has been delineated in a series of decisions.

14. This Court in Karnataka SRTC vs. M.G.Vittal Rao (2012) 1 SCC 442 has summed up the same in the following words:

“(i) There is no legal bar for both the proceedings to go on simultaneously.

*(ii) 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. **But even such grounds would be available only in cases involving complex questions of facts or law.***

(iii) Such defence ought not to be permitted to unnecessarily delay the departmental proceedings. The interest of the delinquent officer as well as the employer clearly lies in a prompt conclusion of the disciplinary proceedings.

(iv) Departmental proceedings can go on simultaneously to the criminal trial, except where both the proceedings are based on the same set of facts and the evidence in both the proceedings is common.

(emphasis supplied)”

In the above judgment, apart from reiterating the fact that it is a matter of settled law that there is no legal bar on conducting the disciplinary proceedings and criminal trial simultaneously, reliance was also placed upon the judgment of Hon’ble Supreme Court in ***Karnataka SRTC vs. M.G. Vittal Rao***, in which it was observed that the ground for seeking stay would

be available only in cases involving complex questions of law and facts and where the departmental proceedings were not being unnecessarily delayed.

Thus, a perusal of the above said judgments would show that apart from other factors, one of the primary factors which the Court is to consider before even considering as to whether the stay of departmental proceedings is to be granted in a particular case or not or as to whether the evidence of the witnesses in the departmental proceedings is to be kept in abeyance till their examination in the criminal case, is to see as to whether complicated questions of law and facts are involved in the case or not. In the present case, no complicated question of law or facts, has been brought to the notice of this Court. The issue which arises for consideration in the criminal case is as to whether the petitioner along with Head Constable Gurdeep Singh while being posted at Judicial Malkhana, Ambala had misappropriated Government funds to the tune of Rs.13,08,613/- or not. In the said circumstances, it cannot be said that any complicated question of law or fact arises. Moreover, no judgment has been cited before this Court to show that in such a situation complicated question of law or fact would arise. Moreover, this Court has found that there are no special facts in the present case so as to persuade this Court to grant the relief sought, rather the allegations against the petitioner and Gurdeep Singh are that they had misappropriated an amount of Rs.13,08,613/- of Government funds. The argument raised by learned counsel for the petitioner on merits to the effect that it was Head Constable Gurdeep Singh who had misappropriated the money and not the present petitioner and all the other pleas raised by the petitioner or Gurdeep Singh would be considered during the course of

departmental proceedings as the departmental proceedings have not proceeded further after issuance of charge sheet and it would be open to all the parties to raise all the pleas and lead evidence in support of the said pleas. Even argument of learned counsel for the petitioner to the effect that in case common witnesses are examined then prejudice would be caused to the case of the petitioner, is also misconceived inasmuch as in the present case, report under Section 173 Cr.P.C. has already been submitted and the statements of all the witnesses under Section 161 Cr.P.C. have already been recorded and a copy of the same has been given to the accused and the prosecution in order to prove the guilt, would have to rely upon the statements recorded under Section 161 Cr.P.C. and the report under Section 173 Cr.P.C. and thus, the question of prejudice does not arise. At any rate, as has been held above, there is no complicated question of law and facts involved in the present case.

11. The Hon'ble Division Bench of this Court in "**Dr. Balwinder Kumar Sharma vs. Hon'ble Punjab and Haryana High Court through Registrar General, CWP-7539-2021, decided on 28.05.2021**" has held as under:-

"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 atleast 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).

xxx xxx xxx

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. As far as the various provisions of [Prevention of Corruption Act, 1988](#) are concerned, most of the provisions are to be proved by the prosecution during the course of trial except the one concerning "known sources of income", which again is within the special knowledge of accused-petitioner. Hence, there seems to be no justification in the prayer made by petitioner for staying of disciplinary proceedings.

In the abovesaid judgment, the reasons for early conclusion of departmental proceedings have been highlighted and it has been further observed that the department cannot wait endlessly for the criminal trial to conclude irrespective of the fact that the delay in the criminal trial is attributed to the employee or not. It is further observed in the said case that an early conclusion of the departmental proceedings was necessary in order to weed out an employee whose integrity / character has been put to doubt on account of initiation of criminal proceedings and since the purpose of the said proceedings is to maintain discipline in the service and efficiency of public service. It was also observed that during the pendency of the said proceedings, since the employee is suspended, thus, the said employee would get some part of pay without doing work which would amount to unnecessarily entailing burden on the exchequer and would be against public interest.

12. The law laid down in the abovesaid judgment would also fully apply to the case at hand. In the present case, the departmental proceedings were initiated on 14.06.2017 and the charge sheet was issued on 04.12.2017 and no further proceedings have taken place in the same in spite of lapse of more than 6 years on account of interim stay granted by the Coordinate Bench of this Court vide order dated 19.04.2018. In such a situation, it would not be in the interest of justice to keep the departmental proceedings pending any further. It would also be relevant to note that the Hon'ble Supreme Court of India in the case of ***Capt. M.Paul Anthony's*** (supra), which has been relied upon by learned counsel for the petitioner, has in paragraph 22 sub clause (v), which has been reproduced hereinabove,

observed that in case the criminal case does not proceed, then departmental proceedings, even if they have been stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to be concluded at an early date and the same would be in the interest of all, inasmuch as in case the petitioners are found guilty, then the department should get rid of them as early as possible and in case they are not guilty then the honour of the petitioners should be vindicated at the earliest as well.

13. Keeping in view the abovesaid facts & circumstances and the law laid down in the above-said judgments, the present writ petition deserves to be dismissed and is accordingly dismissed.

01.12.2023*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:- Yes/No****Whether reportable:- Yes/No**