

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CWP-22036-2023 (O&M)
Date of Decision:- 3.10.2023

Baljit Pal

... Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. R.S. Bains, Senior Advocate with
Surinder Singh Kaliramna, Advocate for the petitioner.

GURVINDER SINGH GILL, J.

1. The petitioner assails show cause notice alongwith inquiry report dated 22.7.2023 (Annexure P-11) issued to him by respondent No. 3 – Senior Superintendent of Police, Bathinda vide which the petitioner has been asked to show cause as to why the petitioner be not dismissed from service.
2. The petitioner had been appointed as a Constable on 30.3.1985 and had subsequently received promotions, the last being of Sub-Inspector (LR). FIR No. 20 dated 29.12.2022 under Section 7 of the Prevention of Corruption Act was lodged at Police Station Vigilance Bureau, Bathinda against the petitioner by one Rakesh Kumar son of Hans Raj, alleging therein that the petitioner had demanded an amount of Rs. 30,000/- from the complainant so as to spare him from being implicated in an earlier FIR i.e. FIR No. 133 dated 20.12.2022 which had been registered against brother and brother-in-

law of aforesaid complainant Rakesh Kumar for offences under Sections 420/120-B IPC at Police Station Maur, Bathinda.

3. A trap was laid and the petitioner was caught red-handed leading to lodging of the aforesaid FIR No. 20. Pursuant to lodging of the aforesaid FIR against the petitioner, departmental proceedings were initiated against the petitioner and a summary of allegations (chargesheet) was served upon the petitioner on 30.12.2022 (Annexure P-3) and Inquiry Officer was appointed to conduct a regular inquiry.
4. During the pendency of the departmental proceedings, the petitioner approached this Court by way of filing CWP 8179 of 2023 with a prayer that the proceedings of the departmental inquiry be kept at abeyance till the conclusion of the prosecution evidence in respect of FIR No. 20 dated 29.12.2022. A co-ordinate Bench of this Court disposed of the said petition vide order dated 20.4.2023 (Annexure P-4) directing the respondent-authority to consider the prayer made by the petitioner by passing a speaking order.
5. In compliance of aforesaid directions issued by this Court vide order dated 20.4.2023 (Annexure P-4), the prayer of the petitioner for staying the departmental proceedings was considered by respondent no. 3 - Senior Superintendent of Police, Bathinda but was declined by way of passing a speaking order dated 26.5.2023 (Annexure P-6).
6. The Inquiry Officer conducted the enquiry proceedings and submitted his report to the Senior Superintendent of Police, Bathinda. The Senior Superintendent of Police, Bathinda, upon receipt of said report, perused the same and furnished a copy of the same to the petitioner and while forming an

opinion that the petitioner deserves to be dismissed from service, issued show cause notice dated 22.7.2023 (Annexure P-11) asking the petitioner to submit his reply to the same and to also appear for personal hearing within a period of 10 days failing which it was to be presumed that the petitioner does not have anything to say.

7. The learned counsel representing the petitioner assails the aforesaid show cause notice dated 22.7.2023 (Annexure P-11) as well as the inquiry report conveyed to the petitioner alongwith the said show cause notice mainly on the ground that the petitioner stands prejudiced as the inquiry proceedings were required to be stayed on account of pendency of a criminal case based on the same allegations against the petitioner, particularly in view of a judgment of Hon'ble Supreme Court rendered in AIR 1999 SC 1416 – Capt. M.Paul Anthony vs. Bharat Gold Mines Ltd. And another. It has been submitted that although this Court while appreciating the contentions of the petitioner to this effect in CWP-8179-2023 had directed the respondent-authority to consider the request of the petitioner for stay of departmental proceedings vide order dated 20.4.2023 (Annexure P-4), but the respondent did not choose to keep the departmental proceedings in abeyance. The learned counsel, in order to hammer forth his aforesaid submission places reliance upon the following judgments :-

(1993) 4 SCC 727 Managing Director, Ecil, Hyderabad vs. Karunakar etc.

(2009) 2 SCC 570 Roop Singh Negi vs. Punjab National Bank and others

1998 (1) RCR (Civil) 536 The State of Haryana vs. Suresh Chand and others

(2022) 12 SCC 390 Eastern Coalfields Limited vs. Rabindra Kumar Bharti

(2022) AIR (SC) 4176 The State of Rajasthan and others vs. Phool Singh

(1996) 6 SCC 417 State of Rajasthan vs. B.K. Meena and others

8. This Court has considered the submissions addressed before this Court and has also perused the judgments pressed into service by learned counsel for the petitioner.
9. As far as the question regarding continuation of parallel proceedings i.e. the criminal trial as well as departmental proceedings arising out of the same occurrence is concerned, the law in this regard is fairly well settled. Hon'ble Supreme Court has dealt in detail the aforesaid issue and while referring to a plethora of judgments including State of Rajasthan Vs. B.K.Meena 1996(6) SCC 417 has drawn the following conclusions in Capt. M. Paul Anthony's case (Supra):

“21. 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 separated.
- (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.”

10. A perusal of the aforesaid extracted conclusions would indicate that while there is no absolute bar against departmental proceedings as well as proceedings of criminal case being conducted simultaneously, but at the same time some kind of balance is required to be maintained particularly when the allegations are grave and wherein the criminal trial may entail penal consequences in the shape of substantive sentence of imprisonment. The accused could stand prejudiced, in case material witnesses examined in the course of departmental proceedings happen to be cited as witnesses in the criminal trial as well and are yet to be examined therein as his defence would stand disclosed.

11. There is no absolute rule that the departmental proceedings cannot continue during the pendency of a criminal trial. As a matter of fact, the trial in respect of FIR in question has not even commenced inasmuch as it is stated to be at the stage of investigation. It is only once investigation is completed and charges are framed that the trial can be said to have commenced. The settled position of law, as is also discussed in Capt. M.Paul Anthony's case (supra) is that it should normally be ensured that the employee is not

prejudiced in defending himself in criminal trial. Such is not the case in hand. The judgments relied upon by the petitioner do not support the case of the petitioner in any manner. The same are being discussed briefly herein-under :-

(1993) 4 SCC 727 - Managing Director, Ecil, Hyderabad vs. Karunakar etc.

A perusal of the said judgment shows that the issues involved therein were as regards non-supply of the inquiry report to the delinquent. However, in the present case, the SSP, upon receipt of the inquiry report and while issuing show cause notice dated 22.7.2023 furnished the accused with a copy of the fact finding report. The said fact is specifically mentioned in show cause notice. In any case, the petitioner is not denying the said factum of receipt of inquiry report, as the copy of the same has also been annexed with the instant petition.

(2009) 2 SCC 570 - Roop Singh Negi vs. Punjab National Bank and others

The said case is a case where the petitioner had approached the Court after the disciplinary authority had passed the order of punishment of discharge and the petitioner therein had also availed of the statutory remedy of appeal, which had been dismissed and it was, thereafter, that the writ jurisdiction was invoked to examine the inquiry report. However, in the present case, the disciplinary authority is yet to pass an order pursuant to issuance of show-cause notice and even if any adverse order is passed, the petitioner would have remedy of statutory appeal. As such, at this stage, it is not appropriate for Court to pre-empt the disciplinary authority by showing indulgence in the matter particularly when the remedy of appeal in case of adverse order would also be available to the petitioner.

1998 (1) RCR (Civil) 536 - The State of Haryana vs. Suresh Chand and others

The said judgment is a judgment delivered while deciding Regular First Appeal wherein the amount of compensation awarded to claimants on account of acquisition of their land was under challenge. Obviously, the said judgment does not have any relation to the facts of the present case.

(2022) 12 SCC 390 - Eastern Coalfields Limited vs. Rabindra Kumar Bharti

In the cited case, although the question in issue to some extent was the propriety of holding parallel proceedings i.e. departmental proceedings as well as proceedings of criminal trial but the ratio of the said judgment is broadly to the effect that it is the criminal trial which under certain circumstances could be stayed to ensure that the defence of the employee in criminal trial is not revealed so as to prejudice such employee in criminal proceedings. The facts of the present case are rather contrary inasmuch as the statement of the accused has been recorded prior in time in the departmental proceedings whereas challan has not been filed in criminal case till date. As such, the said judgment would not be of any advantage to the petitioner.

(2022) AIR (SC) 4176 - The State of Rajasthan and others vs. Phool Singh

A perusal of the said judgment shows that the ratio of the same is rather contrary to the contention put forth by the petitioner inasmuch as Hon'ble the Supreme Court reversed the judgment of the High Court which had set aside the dismissal of the employee on account of his acquittal in the criminal case while observing that the acquittal of the employee was not an Hon'ble acquittal but an acquittal due to benefit of doubt. While holding so, the Hon'ble Supreme Court relied upon its earlier judgment rendered in

(2005) 7 SCC 764 Ajit Kumar Nag v. General Manager (PJ), Indian Oil

Corpon. Ltd., wherein it had been held as under :-

“11In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with Rules and Regulations in force. The two proceedings criminal and departmental are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with service Rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond reasonable doubt', he cannot be convicted by a court of law. In departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of 'preponderance of probability'.”

(1996) 6 SCC 417 - State of Rajasthan vs. B.K. Meena and others

A perusal of the said judgment would show that the ratio of the said judgment is to the effect that there is no absolute rule that the disciplinary proceedings must be stayed during the pendency of the criminal trial. Rather, in the said case, Hon'ble Supreme Court reversed a decision of the Central Administrative Tribunal, Jaipur which had stayed the conclusion of the criminal trial, the relevant extract from the said judgment are reproduced herein-under :-

16The conclusion of the criminal proceedings is nowhere in sight. (Each party blames, the other for the said delay and we cannot pronounce upon it in the absence of proper material before us.) More than six years have passed by. The charges were served upon the respondent about 4 years back. The respondent has already disclosed his defence in his elaborate and detailed statement filed on 9.2.93. There is no question of his being compelled to disclose his defence in the disciplinary proceedings which would prejudice him in a criminal case. The charges against the respondent are very serious. They pertain to misappropriation of public funds to the tune of more than Rupees one crore. The observation of the Tribunal that in the course of examination of evidence, new material may emerge against the respondent and he may be compelled to disclose his

defence is, at best, a surmise - a speculator reason. We cannot accept it as valid. Though the respondent was suspended pending enquiry in May, 1990, the order has been revoked in October 1993. The respondent is continuing in office. It is in his interest and in the interest of good administration that the truth or falsity of the charges against him is determined promptly. To wit, if he is not guilty of the charges, his honour should be vindicated early and if he is guilty, he should be dealt with appropriately without any avoidable delay. The criminal court may decide - whenever it does - whether the respondent is guilty of the offences charged and if so, what sentence should be imposed upon him. The interest of administration, however, cannot brook any delay in disciplinary proceedings for the reasons *State Of Rajasthan vs Shri B.K. Meena & Others* on 27 September, 1996.

17. There is yet another reason. The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. 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 offences registered against him under the Prevention of Corruption Act (and the Indian Penal Code, if any) are established and, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. Staying of disciplinary proceedings pending criminal proceedings, to repeat, should not be a matter of course but a considered decision. Even if stayed at one stage, the decision may require reconsideration if the criminal case gets unduly delayed.

18. We must make it clear that we have not cast, any reflection on the merits of either party's case. What we have said is confined to the question at issue, viz., the desirability or advisability of staying the disciplinary proceedings against the respondent pending the criminal proceeding/case against him.

19. For the above reasons, it must be held that the Tribunal was in error in staying the disciplinary proceedings pending the criminal proceedings against the respondent. The appeal is accordingly allowed with costs. The order of the Tribunal is set aside.....”

12. The cited judgments, briefly referred to above, evidently do not help the petitioner in the given set of facts. The present case is not such where it can be said that the defence of the petitioner stands disclosed on account of examination of the complainant in the departmental proceedings inasmuch as the statement of the complainant as has been annexed with the petition i.e. Annexure P-10 shows that he has made a very short statement therein which reads as under :-

“ Stated that I am resident of above address and I am owner of medical store situated in Gandhi Market Bhatinda. That on my statement FIR No. 20 dated 29.12.2022 under Section 7 PC Act 1988 (as amended 2018) PS Vigilance Bureau, Bathinda was registered beside do not want to say any further statement recorded. I will submit my version in the Hon’ble trial Court. I have got recorded my statement and I have read it and also heard the same is correct.”

13. The said witness has not even been cross-examined by the petitioner and as such, it cannot be said that the defence of the petitioner which the petitioner is to take in criminal trial stands disclosed so as to prejudice his defence in the criminal trial. In any case, the said plea of prejudice, if any, on account of continuation of departmental proceedings would be available to him in the criminal trial and is not a ground for assailing departmental proceedings as the law is crystalized to the effect that the delinquent should not be prejudiced in defending himself in criminal trial. The proceedings of the inquiry, having already concluded and nothing having been shown to this Court to the effect that there is any illegality in the same, no interference is warranted.

14. Needless to mention, in case any adverse order is passed by respondent No. 3 – Senior Superintendent of Police, Bathinda, the petitioner can always have recourse to the statutory remedy of appeal against any such adverse order. It is further clarified that the aforesaid order is not to be construed to be any expression as regards the veracity of the allegations pertaining to misconduct against the petitioner.
15. The petition is sans merit and is hereby dismissed.

3.10.2023
kamal

(GURVINDER SINGH GILL)
JUDGE

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No