

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

(115)

CWP-25797-2023

Date of Decision: - 17.11.2023

Sahab Singh

....Petitioner

Vs.

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Dr. Pankaj Nanhera, Advocate, and
Mr. Rahul Gautam, Advocate
for the petitioner.

Ms. Palika Monga, DAG, Haryana.

VIKAS BAHL, J. (ORAL)

1. Present writ petition has been filed under Article 226/227 of the Constitution of India for the issuance of a writ in the nature of certiorari for quashing of the impugned order dated 03.03.2023 (Annexure P-2) and substance of allegation dated 12.04.2023 (Annexure P-3), vide which departmental inquiry has been initiated against the petitioner. Further, prayer has been made for the issuance of a writ in the nature of mandamus directing respondents No.3 and 4 not to take any further action on the departmental proceedings/inquiry till the pendency of the criminal trial arising out of FIR No.5 dated 01.03.2023 (Annexure P-1), under Section 7 of the Prevention of Corruption Act, registered at Police Station Vigilance

Bureau, Ambala, Haryana.

2. Brief facts of the case, as emanates from the averments made in the present writ petition and documents annexed with the petition, are that the petitioner was posted as Sub Inspector at Police Post Shahabad, Kurukshetra and a complaint was filed by one Kuldeep Singh, son of Surjit Singh, resident of Rawa, District Kurukshetra, stating that he had taken the Knight Rider Hotel, Barara Road, Shahabad Markanda on rent in December, 2022 and the present petitioner was In-charge of the Police Post Shahabad City and he had been constantly harassing the complainant by calling/meeting him and by threatening the complainant that he would have to pay Rs.10,000/- after 15 days of every month to the petitioner failing which he would not be allowed to run the hotel. It is further stated in the complaint that being upset, the complainant gave Rs.4,000/- to the petitioner as bribe on 09.02.2023 and the petitioner further demanded an amount of Rs.6,000/- to which the complainant replied that he can only pay Rs.4,000/- and the complainant recorded a video/audio in his mobile phone of the incident. On the basis of the said allegations, FIR No.5 dated 01.03.2023 was registered against the petitioner. The Superintendent of Police, Kurukshetra, vide order dated 03.03.2023 (Annexure P-2) suspended the petitioner and initiated a departmental inquiry which was entrusted to the Deputy Superintendent of Police, Ladwa, District Kurukshetra and directed the DSP to conduct the same by holding day-to-day proceedings expeditiously. In pursuance of the same, the inquiry officer initiated the proceedings and in the said proceedings, the petitioner was made aware of the substance of allegations (Annexure P-3) leveled against him. The petitioner was released on bail, vide order dated 11.07.2023 (Annexure P-

4), passed by the Additional Sessions Judge, Kurukshetra. During the course of arguments, it has been brought to the notice of this Court that as far as the FIR is concerned, report under Section 173 Cr.P.C. has not been submitted and with respect to the departmental proceeding, out of 6 PWs, 3 PWs have been examined. It is the case of the petitioner in the present petition that the complainant has been examined in the departmental proceedings and he has not supported the case of the department/prosecution although the said statement is not annexed with the present petition. It is in the said background the present writ petition has been filed.

3. Learned counsel for the petitioner has submitted that there are two common witnesses i.e., the complainant Kuldeep Singh and Inspector Sumesh, who is the Investigating Officer in the present case. It is further submitted that the complainant has not supported the case of the prosecution and the said Sumesh, who is the investigating officer, be not examined in the departmental proceedings till the time he is examined in the criminal proceedings as the same would prejudice the petitioner, inasmuch as, the defence of the petitioner would be disclosed in case the said witness is examined/cross-examined. In support of the said argument, 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** and also upon a judgment of the Single Bench of this Court in **CWP-17558-2023** titled as "**Ashish Kapoor Vs. State of Punjab and another**", **decided on 24.08.2023**. It is prayed that on the basis of the said submissions, the said investigating officer be not examined in the departmental proceedings till the time he is examined in the criminal

proceedings.

4. This Court has heard learned counsel for the petitioner 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.

5. 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 any stay of departmental proceeding is granted, with respect to the issue in hand, is as to whether the case involves complicated question 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 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 department proceedings, the same can be resumed and proceeded with.

6. 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.

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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.**

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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 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.

7. 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 as to 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 as to 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.*

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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.

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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.....”

8. 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.

9. It would be relevant to note that even in the judgment of Co-ordinate Bench of this Court in ***Ashish Kapoor’s case (supra)***, relied upon by learned counsel for the petitioner, the judgment of ***Capt. M. Paul Anthony’s case (supra)*** has been referred to in paragraph 6 of the said judgment and thus, apart from the other factors, one of the primary factor which the Court is to consider before even considering as to whether the stay of departmental proceeding 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 present case is a case in which the issue which is required to be considered is as to whether the petitioner had sought bribe from the complainant of Rs.10,000/- for permitting him to run the hotel smoothly and as to whether he had taken Rs.4,000/- and was demanding balance of Rs.6,000/- regarding which as per the case of the complainant there was a video/audio recording. In the said circumstance, 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. It would also be relevant to note that in the present case, the departmental proceedings have made much progress, inasmuch as, out of 6 witnesses, 3 witnesses including the complainant have already been examined. The questions, which the petitioner wanted to put to the complainant, have already been put as his evidence is completed. It would be relevant to note that counsel for the petitioner has prayed that the examination of Sumesh, who as per the version of the petitioner is the investigating officer and is a common witness in the departmental proceeding as well as in the criminal case be kept in abeyance in the departmental proceeding. A perusal of the list of witnesses (Annexure P-3), which has been annexed at page 25 of the paper-book, would show that there is no person shown as Sumesh in the said list of witnesses. Learned counsel for the petitioner during the course of arguments has stated that the witness shown at No.4 is actually Sumesh although there is no pleading to the said effect. Moreover, since the challan in the present case has not been presented, thus, it cannot be ascertained that the said Sumesh would also be a witness in the criminal proceeding. At any rate, there is no complicated question of law or fact involved in the present

case as has been detailed hereinabove. 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 are that he had taken Rs.4,000/- and was demanding Rs.6,000/- more as bribe.

10. Before parting, it would be relevant to make a note of the judgments of the Hon'ble Division Bench of this Court which are relevant in the present case.

11. The Hon'ble Division Bench of this Court in ***LPA-239-2022*** titled as "**Paramjit Kaur Vs. Punjab and Sind Bank and others**" decided **on 24.03.2022** had held as under:-

"2. The learned Single Judge, after taking into consideration the facts of the case as well as the decision of the Supreme Court, relied upon by the appellant, in *Captain M. Paul Anthony Vs. Bharat Gold Mines, 1999(3) SCC 679*, dismissed her petition, upon reaching a conclusion that decision in Captain M. Paul Anthony (supra) does not lay down any absolute principle of law that in all those cases where a criminal trial is pending, the departmental proceedings must be kept in abeyance. Rather, the question, whether, in the given situation, the departmental proceedings are required to be stayed, would be determined taking into account multiple factors: if the departmental proceedings and criminal trial are based on similar set of facts; the charge in the criminal trial against the delinquent employee is of a grave nature and involved complicated questions of law and fact. Whereas, upon due consideration of the matter in issue, the learned Single Judge recorded that it was not the case in the matter at hands. It was observed that the charges against the appellant in the departmental proceedings were that she had been siphoning off the funds/amount from the accounts of the bank's customers in the name of her own relatives since 2005. Further, upon being confronted with this fact, she has made three deposits refunding certain amount. And, significantly, the learned Single Judge also recorded that the entire material that was to be relied upon and produced against the appellant was documentary in nature and was either prepared by her or under her supervision, being Manager of the branch.

5. Upon being pointedly asked, if the charges have been framed in the criminal trial against the appellant and, if yes, whether the charge sheet was produced/placed before the learned Single Judge? Learned counsel fairly concedes that though charges have already been framed but the charge sheet was not placed before the learned Single Judge. In such circumstances, it is evident that the contention of the appellant that basis of the departmental proceedings and criminal trial is the same, is neither substantiated nor established. Even otherwise, as indicated above, the charges against the appellant are based on record and do not involve any complicated questions of law and facts, least a charge that could be termed as grave.”

A perusal of the above judgment would show that the charges/charge sheet in the criminal case was not placed before the learned Single Judge and that thus, the contention of the appellant therein that the basis of the departmental proceedings and criminal trial were the same, was neither substantiated nor established. It was also observed that in the said circumstances, no complicated questions of law and facts were involved.

12. In the present case also, as has been stated herein-above, since the investigation is not completed and neither the report under Section 173 Cr.P.C. has been submitted nor the charges have been framed, thus, the principle of law as laid down in the above-said judgments would also apply in the present case.

13. 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).

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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 observed that the cases registered under the Prevention of Corruption Act, 1988 are to be proved by the prosecution during the course of trial and thus, there is no

justification for staying the disciplinary proceedings. The SLP i.e., SLP no.8279 of 2021 filed against the said judgment was dismissed as withdrawn on 17.10.2022.

14. Keeping in view the abovesaid facts & circumstances and the law laid down in the above-said judgments of the Hon’ble Supreme Court and the Division Bench of this Court, the present writ petition deserves to be dismissed and is accordingly dismissed.

November 17, 2023.

naresh.k

(VIKAS BAHL)
JUDGE

Whether speaking / reasoned
Whether reportable

Yes
No