

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP-26062-2023

Date of decision : 20.11.2023

Anand Bakshi

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Kushagra Beniwal, Advocate for the petitioner.

Ms. Rajni Gupta, Addl.A.G. Haryana.

VIKAS BAHL, J.(ORAL)

1. This is a civil writ petition filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of the order dated 31.08.2023 (Annexure P-3) passed by the Superintendent of Police, Kurukshetra-respondent no.2 whereby departmental enquiry against the petitioner has been ordered by holding day to day proceedings.

2. The brief facts of the present case, as emanates from the averments made in the petition and also the documents which have been annexed with the present petition, are that the petitioner is an employee in Haryana Police Department and is working on the post of Exemptee Assistant Sub Inspector (EASI) and was posted at Kurukshetra Highway as Incharge of Bolero no.3 and FIR no.22 dated 30.08.2023 was registered against the petitioner by the District Anti Corruption Bureau Haryana at Police Station ACB, Ambala under Section 7 of the Prevention of Corruption Act, 1988 on the allegation that one Sahib Singh had made a complaint that he was doing work of providing commercial vehicles to the businessmen from transporters and he used to take commission for

providing the said vehicles and that on 25.08.2023 at night, a vehicle which was taken on rent from the transporters by the complainant and was loaded with liquor, was stopped on the Pipli Highway, District Kurukshetra by the PCR Police deputed on the road and the driver of the said vehicle informed the complainant about the same and thereafter, the complainant sent his friend Sumit son of Ranbir to Kurukshetra where the Incharge of PCR-3 met him and told him that his name was Anand (petitioner) and the petitioner demanded Rs.15,000/- as bribe to set the vehicle free and that Sumit, the friend of the complainant, used his UPI from his mobile at Jai Filling Station, Kurukshetra and after getting hard cash, handed over bribe money to the PCR Incharge (petitioner). It is further alleged in the complaint that on the day of the complaint, the complainant and his friend Sumit were going to Ambala for personal work but they stopped at Prince Dhaba and the PCR Incharge (petitioner) met the complainant and asked him to give Rs.30,000/- as bribe for getting his overloaded vehicles pass through Highway and insisted on payment of the said bribe and since the complainant did not wish to give the said bribe, thus, he filed the complaint, on the basis of which, the FIR was registered. In the FIR, reference was made to the raid conducted and it is not in dispute before this Court that as per the case of the prosecution, petitioner was caught red handed while accepting bribe of Rs.30,000/-. The Investigation in the FIR is pending and the report under Section 173 Cr.P.C. has not been submitted as yet. It is further the case of the petitioner that vide order dated 31.08.2023 (Annexure P-3), the Superintendent of Police, Kurukshetra has initiated departmental enquiry against the petitioner and has also placed the petitioner under suspension and the said departmental enquiry has been entrusted to the DSP, Kurukshetra. The notice of accusation (Annexure P-4) has been

served upon the petitioner with respect to initiating the departmental proceedings against the petitioner.

3. Learned counsel for the petitioner has submitted that his limited prayer in the present petition is that the common witnesses in the departmental proceedings and the FIR be not examined in the departmental proceedings till the time they are examined in the criminal case as their examination would cause prejudice to the petitioner, 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 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*. Learned counsel for the petitioner has further referred to a list (Annexure P-5) to show that the witnesses from serial no. 6 to 9 in the departmental proceedings would be the common witnesses inasmuch as it is certain that the said witnesses would also be made as witnesses in the criminal proceedings although report under Section 173 Cr.P.C. has not been submitted in the Court till date.

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 proceedings 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 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 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.

Thus, a perusal of the above said judgments would show that apart from other factors, one of the primary factor 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 present case is a case in which the issue which is required to be considered is as to whether the petitioner had sought bribe of Rs.30,000/- from the complainant in lieu of letting the overloaded vehicles of the complainant pass through the highway and as to whether the raiding party had caught the petitioner red handed on the spot while accepting Rs.30,000/- as bribe money in the presence of witnesses. 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, in the present case as has been stated by learned counsel for the petitioner that the report under Section 173 Cr.P.C. has not been submitted in the Court, thus, the question as to whether witnesses 6 to 9 in the list (Annexure P-5) would also be the witnesses in the criminal case cannot be fully established. 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 allegations in the present case are that the petitioner was demanding bribe of Rs.30,000/- from the complainant Sahib Singh for letting his overloaded vehicles pass through the highway where the petitioner was posted and was also caught red handed for accepting bribe of Rs.30,000/-.

9. 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.

10. 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.

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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.

11. 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.

12. 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.

13. 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.

(VIKAS BAHL)
JUDGE

November 20, 2023.

Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No