

CWP-28251-2023

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2023:PHHC:161107

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP-28251-2023

Date of decision : 15.12.2023

Rakesh Kumar

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Parvesh K. Saini, Advocate
for the petitioner.

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 the order dated 05.09.2023 (Annexure P-5) and notice dated 11.09.2023 (Annexure P-6) issued by the respondents for initiating the departmental enquiry against the petitioner. A prayer has made in the writ petition for directing the official respondents not to proceed with the departmental enquiry against the petitioner till the pendency of the criminal trial in FIR no.22 dated 24.08.2023 registered under Section 384 IPC and Section 7 of the Prevention of Corruption Act, 1988.

2. Brief facts of the present case are that the petitioner was working as Head Constable and was posted at Hisar when, on a complaint filed by Suresh Kumar, FIR no.22 dated 24.08.2023 under Section 384 IPC and Section 7 of the Prevention of Corruption Act, 1988 at Anti Corruption Bureau, Haryana (Annexure P-2) was registered against the petitioner on the allegations that there was a dispute between Suresh Kumar and Pardeep

on account of which, proceedings under Section 107, 151 Cr.P.C. had been initiated and on 23.08.2023, the said two persons were produced before the SDM, Hisar and thereafter on 24.08.2023, the petitioner, who was posted at Police Station Sadar Hisar, had told the complainant that he would implicate the complainant in a case of abduction and in case he pays the money to the petitioner then he will not register a case of abduction against him and in the evening, the petitioner made a phone call to the complainant asking him to pay him money and thereafter, the complainant called the petitioner to state that he has been able to get an amount of Rs.10,000/- and the remaining amount of Rs.15,000/- would be paid the next morning. It was further alleged that the petitioner had told the complainant that he would personally come to collect the money and that the petitioner was asking for bribe of Rs.25,000/-, failing which he was threatening the complainant that he would register an FIR against him with respect to the offence of abduction. It was stated in the FIR that the complainant had recorded the conversation with the petitioner. On the basis of the said allegations, FIR was registered and a raid was conducted. Challan under Section 173 Cr.P.C. has been filed, although the same is not annexed along with the present petition but a perusal of the order dated 10.11.2023 (Annexure P-3) vide which the petitioner was granted the concession of regular bail would show that the petitioner was caught red handed by the Anti Corruption Bureau, Hisar with Rs.10,000/- which he had demanded from the complainant. The plea of the Public Prosecutor to the effect that there were records of call detail and transcripts of conversation recorded between the complainant and the petitioner was also noticed. Learned counsel for the petitioner has pointed out that in the present case on 11.12.2023, charges have been framed in the criminal case although the said

order is not available yet. Vide order dated 05.09.2023, the Superintendent of Police, Hisar, had appointed DSP, Hisar as Enquiry Officer and directed him to conduct a regular departmental enquiry against the petitioner by holding day to day proceedings. The statement of allegations dated 11.09.2023 (Annexure P-6) in the departmental proceedings would show that there are serious allegations against the petitioner demanding bribe from the complainant Suresh Kumar for not implicating him in a false case and thus, the said act was stated to be a serious dereliction of his government duty.

3. Learned counsel for the petitioner has submitted that in the present case, till the time the common witnesses in the departmental proceedings and criminal proceedings are not examined, the departmental proceedings be kept in abeyance as in case the said witnesses are examined in the departmental proceedings, then the defence of the petitioner would be disclosed and the same would cause prejudice to the petitioner. 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**. Further reference has been made to the interim order 18.05.2023 (Annexure P-9) passed by a coordinate Bench of this Court and learned counsel for the petitioner has fairly submitted that as far as the interim order dated 13.08.2020 (Annexure P-8) passed by the coordinate Bench of this Court is concerned, the said writ petition has been withdrawn.

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 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.

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, apart from other considerations, was 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 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 regarding the fact that the criminal action and disciplinary proceedings were founded on the same set of facts and that the 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 the departmental proceedings and every case where departmental proceedings and criminal trial with regard to the same misconduct are pending, are 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.

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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 factors which the Court has to consider before 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 whether any 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 demanded bribe from the complainant for not implicating the complainant in a case of abduction and as to whether the petitioner was caught red handed by the Anti Corruption Bureau, Hisar with the said amount of Rs.10,000/- regarding which as per the case of prosecution, a recorded conversation is also there. In the said circumstances, it cannot be said that any complicated question of law or fact arises. 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

persuade this Court to grant the relief sought, rather the allegations against the petitioner are that he had sought bribe and was caught red handed by the Anti Corruption Bureau. Even the 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.

9. 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 further observed that the department cannot wait endlessly for the criminal trial to conclude irrespective of the fact whether the delay in the criminal trial is

attributed to the employee or not. It was 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.

10. In the present case, it would be relevant to note that although list of witnesses in the departmental proceedings has been annexed but no list of witnesses in the criminal case has been annexed and thus, it cannot be ascertained as to who are the common witnesses. Reliance which has been placed upon the interim order dated 18.05.2023 (Annexure P-9) would also not further the case of the petitioner inasmuch as the same is only an interim order and the law laid down by the Hon'ble Supreme Court as well as Hon'ble Division Bench of this Court, which has been considered by this Court in the abovesaid judgments, has not been considered in the said order. With respect to interim order dated 13.08.2020 (Annexure P-8), learned counsel for the petitioner has very fairly submitted that the main writ petition has been withdrawn. It would also be relevant to note that this Court has taken a similar view in **CWP-16365-2023** titled as "**Ashok Kumar vs. State of Haryana and others**" decided on 05.12.2023.

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.

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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 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 circumstance, no complicated questions of law and facts were involved. In the present case, although the report under Section 173 Cr.P.C. has been filed and the charges have been framed as per the stand taken by learned counsel for the petitioner but neither the report under Section 173 Cr.P.C. nor charges are on record and thus, the law laid down in the above said judgment would also apply in the present case.

12. 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.

(VIKAS BAHL)
JUDGE

December 15, 2023.
Davinder Kumar

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