

IN THE HIGH Court OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 12818 of 2023

=====

Arendra Kumar @ Amrendra Kumar, S/o Chakradhar Prasad Yadav, resident of Mohall- Rukanpura P.O. - B.V. College, P.S. - Hawaiadda, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. Director General of Police, Bihar, Patna.
3. D.I.G. of Police, BSAP, Central Zone, Patna.
4. Commandant BSAP- 14, Patna.
5. Enquiry Officer-Cum-Dy. S.P., BSAP- 14, Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Rajendra Narayan, Sr. Advocate Mr. Prafull Chandra Sharma, Advocate Mr. Ram Hriday Prasad, Advocate
For the Respondent/s	:	Mr. Manish Kumar (GP4) Mr. Ajay Kumar, AC to GP-4

=====

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL JUDGMENT

Date : 08-08-2024

1. The short question involved in the instant writ petition is as to whether a departmental proceeding ought to be stayed till the disposal of a criminal case instituted against the Petitioner on the identical facts and circumstances as in the departmental proceeding.

2. The Petitioner was appointed in the year 1997 as Constable of Police. He was promoted to the post of Hawildar in the year 2016. He is also the President of Bihar Police Men's Association. In the month of December, 2022, one Madhumala Kumari, a Constable of Police, lodged a complaint before the



Vigilance Investigation Bureau, Bihar that the Petitioner demanded bribe of Rs. 20,000/- to settle a departmental proceeding instituted against her by the Department. On the basis of the said complaint, the Members of Vigilance Investigation Bureau conducted preliminary enquiry and, subsequently, on 12th of December, 2022, he was caught red-handed in vigilance trap while accepting bribe of Rs. 20,000/- from the above-named lady Constable. The Petitioner was arrested and on the basis of a complaint lodged by a member of trap, Vigilance P. S. Case No. 65 of 2022, dated 12th of December, 2022, was instituted against the Petitioner under Section 7(A) of the Prevention of Corruption Act and the Petitioner was arrested. While he was in custody, he was suspended from service and on 15th of February, 2023, Memorandum of Charge was filed against the Petitioner. The Petitioner was directed to submit a reply, showing cause as to why departmental proceeding would not be conducted against him on the basis of Memorandum of Charge. The Petitioner submitted his reply, stating, *inter alia*, that he was the victim of political feud between the members of Bihar Police Men's Association.

3. He made an application, praying for stay of



departmental proceeding on the ground that both the departmental and the criminal case have been continuing on the same and identical allegation. In both the proceedings, almost same set of witnesses and documents are proposed to be examined and proved. Therefore, the departmental proceeding may be stayed.

4. Mr. Rajendra Narayan, learned Sr. Advocate appearing on behalf of the Petitioner submits that the departmental proceeding and the criminal proceeding are two different proceedings and generally both the proceedings can continue against the delinquent employee as nature of proof in departmental proceeding depends on preponderance of probability, while a criminal case is required to be proved beyond any shadow of doubt. However, there are certain circumstances when a departmental proceeding can be stayed, pending disposal of the criminal case.

5. In support of his contention, Mr. Narayan, learned Sr. Advocate refers to a case of Hon'ble Supreme Court in ***Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. & Anr.***, reported in ***(1999) 3 SCC 679***. In paragraph 13 of the above-mentioned decision, the Hon'ble Supreme Court has observed as follows: -

“13. As we shall presently see, there is a consensus of judicial opinion amongst the High



Courts whose decisions we do not intend to refer to in this case, and the various pronouncements of this Court, which shall be copiously referred to, on the basic principle that proceedings in a criminal case and the departmental proceedings can proceed simultaneously with a little exception. As we understand, the basis for this proposition is that proceedings in a criminal case and the departmental proceedings operate in distinct and different jurisdictional areas. Whereas in the departmental proceedings, where a charge relating to misconduct is being investigated, the factors operating in the mind of the disciplinary authority may be many such as enforcement of discipline or to investigate the level of integrity of the delinquent or the other staff, the standard of proof required in those proceedings is also different than that required in a criminal case. While in the departmental proceedings the standard of proof is one of preponderance of the probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubt. The little exception may be where the departmental proceedings and the criminal case are based on the same set of facts and the evidence in both the proceedings is common without there being a variance.”

6. A close reading of paragraph 13 postulates that



generally departmental proceeding and the criminal proceeding can be continued at a time. The little exception may be where the departmental proceedings and the criminal case are based on the same set of facts and the evidence in both the proceedings is common without there being a variance. In such case, the departmental proceeding may be stayed on the ground that the defense of the employee in the criminal case cannot be disclosed and thereby prejudiced. Finally, in paragraph 22 of the aforesaid judgement, the issue is summed up by the Hon'ble Supreme Court in following words:

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

7. On similar point, Mr. Narayan, learned Sr. Advocate appearing on behalf of the Petitioner refers to another decision of the Hon'ble Supreme Court in the case of ***State Bank of India & Ors. v. Neelam Nag & Anr.***, reported in ***(2016) 9 SCC 491***. In paragraph nos. 27 to 29 of the aforesaid judgement, the



Hon'ble Supreme Court has passed the following directions: -

“27. Accordingly, we exercise discretion in favour of Respondent 1 of staying the ongoing disciplinary proceedings until the closure of recording of evidence of prosecution witnesses cited in the criminal trial, as directed by the Division Bench of the High Court and do not consider it fit to vacate that arrangement straightaway. Instead, in our opinion, interests of justice would be sufficiently served by directing the criminal case pending against Respondent 1 to be decided expeditiously but not later than one year from the date of this order. The trial Court shall take effective steps to ensure that the witnesses are served, appear and are examined on day-to-day basis. In case any adjournment becomes inevitable, it should not be for more than a fortnight, when necessary.

28. We also direct that Respondent 1 shall extend full cooperation to the trial Court for an early disposal of the trial, which includes cooperation by the advocate appointed by her.

29. If the trial is not completed within one year from the date of this order, despite the steps which the trial Court has been directed to take, the disciplinary proceedings against Respondent 1 shall be resumed by the enquiry officer concerned. The protection given to



Respondent 1 of keeping the disciplinary proceedings in abeyance shall then stand vacated forthwith upon expiry of the period of one year from the date of this order.”

8. It is submitted by Mr. Rajendra Narayan, learned Sr. Advocate on behalf of the Petitioner that same order as that of **Neelam Nag** (supra) may be passed by this Court, staying the departmental proceeding till the disposal of the criminal case institute against him.

9. The learned Advocate appearing on behalf of the Respondents, on the other hand, submits that imputation of misconduct against the Petitioner is that on 12th of December, 2022, the Petitioner while accepting bribe from Constable No. 544, Madhumala Kumari, attached to Bihar Special Armed Police-14, was caught red-handed and produced before the Special Judge, Vigilance, Patna and was remanded to judicial custody. Thus, the subject matter of the departmental enquiry is gross misconduct of taking bribe.

10. Thus, it is urged by the Learned Counsel for the State Respondent that in criminal case the charge against the Petitioner is that he take illegal gratification from another lady Police Constable with promise to offer undue advantage in departmental proceeding instituted against her. But the subject



matter of the departmental proceeding is, as a responsible Policeman, it is the responsibility of the Petitioner to discharge his duties honestly and in disciplined manner. However, he took bribe from the lady Constable and the said action has tarnished the image of Police Department. Such act on the part of the Petitioner is indicative of gross indiscipline, dereliction of duty, arbitrariness, fraudulent act, which reduced him to an incompetent Policeman. Therefore, the departmental charge is different from criminal case. It is also pointed out by the Learned Advocate for the Respondent that the documents, which are proposed to be relied upon against the Petitioner in the departmental proceeding and the list witness are different from list of witness and the document mentioned in the charge-sheet against him in criminal proceeding. Therefore, in the instant case, criminal proceeding and the departmental proceeding are not same and identical and there is no reason to grant an order of stay on further proceeding in departmental enquiry, pending disposal of the criminal case.

11. The learned Advocate appearing on behalf of the State also submits that in *Neelam Nag* (Supra), the Hon'ble Supreme Court referred to various decisions where plea was taken to grant stay of departmental proceeding on the ground of identity



of the same with the criminal proceeding, but the Hon'ble Supreme Court refused to grant an order of stay. Therefore, the Hon'ble Supreme Court does not lay down a straight-jacket formula that in all cases of departmental proceeding arising out of involvement of the charged employee in a criminal case should be stayed till the disposal of the criminal case.

12. Having heard the Learned Advocates appearing on behalf of the Petitioner and the Respondents, this Court, at the outset, records that when a departmental proceeding and a criminal proceeding had based on same set of allegations and evidences and in criminal trial, the accused is acquitted, he is entitled to be exonerated from departmental proceeding.

13. In ***Karnataka Power Transmission Corpn. Ltd. v. C. Nagaraju***, reported in **(2019) 10 SCC 367**, the Hon'ble Supreme Court has held as under:-

“9. Acquittal by a criminal court would not debar an employer from exercising the power to conduct departmental proceedings in accordance with the rules and regulations. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. [Ajit Kumar Nag v. Indian Oil Corpn. Ltd., (2005) 7 SCC 764 : 2005 SCC (L&S) 1020]. 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 under the PC Act are established, and if established, what sentence should be imposed upon him. The standard of proof, the mode of inquiry and the rules governing inquiry and trial in both the cases are significantly distinct and different. [State of Rajasthan v. B.K. Meena, (1996) 6 SCC 417 : 1996 SCC (L&S) 1455]

13. Having considered the submissions made on behalf of the appellant and Respondent 1, we are of the view that interference with the order of dismissal by the High Court was unwarranted. It is settled law that the acquittal by a criminal court does not preclude a departmental inquiry against the delinquent officer. The disciplinary authority is not bound by the judgment of the criminal court if the evidence that is produced in the departmental inquiry is different from that produced during the criminal trial. The object of a departmental inquiry is to find out whether the delinquent is guilty of misconduct under the conduct rules for the purpose of determining whether he should be continued in service. The standard of proof in a departmental inquiry is not strictly based



on the rules of evidence. The order of dismissal which is based on the evidence before the inquiry officer in the disciplinary proceedings, which is different from the evidence available to the criminal court, is justified and needed no interference by the High Court.”

14. In a very recent decision in ***The State of Karnataka v. Umesh***, reported in (2022) 6 SCC 563, the Hon'ble Supreme Court observed as follows:-

“16. The principles which govern a disciplinary enquiry are distinct from those which apply to a criminal trial. In a prosecution for an offence punishable under the criminal law, the burden lies on the prosecution to establish the ingredients of the offence beyond reasonable doubt. The accused is entitled to a presumption of innocence. The purpose of a disciplinary proceeding by an employer is to enquire into an allegation of misconduct by an employee which results in a violation of the service rules governing the relationship of employment. Unlike a criminal prosecution where the charge has to be established beyond reasonable doubt, in a disciplinary proceeding, a charge of misconduct has to be established on a preponderance of probabilities. The rules of evidence which apply to a criminal trial are distinct from those which govern a disciplinary enquiry. The acquittal of the accused in a



criminal case does not debar the employer from proceeding in the exercise of disciplinary jurisdiction.”

15. In ***Nirmal Krida & Samaj Prabodhan v. State of Maharashtra***, reported in ***2022 SCC OnLine Bom 5901***, the Hon’ble Bombay High Court relied on the above-mentioned decisions of the Hon’ble Supreme Court and came to the finding that even where the FIR was quashed, the same could not have been reasoned for the Petitioner-Trust to drop the disciplinary proceeding. No presumption could have been drawn either by Respondent No. 2 or by the Tribunal that mere quashing of the FIR would automatically entail dropping of disciplinary proceedings.

16. Thus, considering the line of decisions rendered by the Hon'ble Supreme Court, subsequent to ***Capt. M. Paul Anthony*** (supra) and ***Neelam Nag*** (supra), this Court is of the view that departmental proceeding and criminal proceeding can run simultaneously and even if criminal proceeding is quashed or the accused is acquitted, departmental proceeding can continue and if on the principle of preponderance of probability a delinquent employee is found to have committed misconduct, he is liable to be departmentally punished according to Bihar Government Servants (Classification, Control and Appeal)



Rules, 2005. There is no hard and fast rule that whenever an accused is acquitted of charge of Prevention of Corruption Act, he would be exonerated from the departmental proceeding.

18. Under such circumstances, I do not find any merit in the instant writ petition and the writ petition is dismissed, on contest, however, without cost.

(Bibek Chaudhuri, J)

skm/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	12.08.2024
Transmission Date	N/A

