



2024:CGHC:50512

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 3870 of 2023

1 - Shailendra Kumar Mishra S/o Late Jamadar Mishra Aged About 41 Years Currently Working As Constable, Railway Protection Force, Secr/bilaspur District- Bilaspur, Chhattisgarh

... Petitioner

versus

1 - South East Central Railway Through Its Inspector General Cum Chief Security Commissioner, Railway Protection Force, South Eastern Central Railway, District-Bilaspur, Chhattisgarh

2 - Senior Divisional Security Commissioner, Railway Protection Force, South Eastern Central Railway, District- Bilaspur, Chhattisgarh

3 - Assistant Security Commissioner, Railway Protection Force, South Eastern Central Railway, District- Bilaspur, Chhattisgarh

4 - Assistant Security Commissioner, Railway Protection Force, South Eastern Central Railway, District- Mirzapur, Uttar Pradesh

---- Respondents

For Petitioner : Ms. Zainab Vanak, Advocate.

For Respondents : Mr. Ramakant Mishra, Dy. S.G.

Hon'ble Shri Justice Rakesh Mohan Pandey

Order on Board

20.12.2024

1. The petitioner has filed this petition seeking the following relief(s):-

“10.1 This Hon'ble Court may kindly be pleased to set aside/ quash the impugned memorandum dated 24.4.2023 (Annexure P/1) issued against the petitioner in further interest of justice.

10.2 This this Court may kindly issue the directions to the respondent authorities to pay the costs for the hardships caused to the petitioner.

10.3 That, this Hon'ble Court may kindly be pleased to grant any other relief(s), which is deemed fit and proper in the aforesaid facts and circumstances of the case."

2. The facts of the present case are that the petitioner was initially appointed in the Railway Protection Force (RPF) at Mirzapur, Uttar Pradesh and at present, he is posted as a Constable at Bilaspur Division, Chhattisgarh. An FIR was registered against the petitioner and Chandan Kumar Jaiswal for the commission of an offence punishable under Sections 7 & 7A of the Prevention of Corruption Act, 1988 (Amended in 2018) (for short 'the PC Act') and Section 120-B of the Indian Penal Code on 11.10.2022. They were arrested on 12.10.2022. A charge-sheet was presented before the Special Judge, CBI, Lucknow. In the FIR, it was alleged that the co-accused Chandan Kumar Jaiswal demanded Rs.8,000/- on behalf of the petitioner from the complainant, namely, Gaurav Mishra, the owner of a Tea-Stall at Mirzapur Railway Station. The petitioner was placed under suspension from services vide order dated 12.10.2022 issued by the Senior Divisional Security Commissioner, Railway Protection Force (RPF), Prayagraj, Uttar Pradesh. The suspension of the petitioner was revoked vide order dated 17.11.2022 and the services of the petitioner were transferred to South East Central Railway, Bilaspur. The petitioner was released on bail vide order dated 20.12.2022. The article of charge was issued by the Assistant Security Commissioner, RPF, SECR, Bilaspur on 24.4.2023. The petitioner appeared before the Enquiry Officer on 28.4.2023 and moved an application for supply of the relevant documents and the same was rejected vide order dated 3.5.2023. In the departmental enquiry, there is one witness, namely, Ajay Kumar Rai, Assistant Security Commissioner, RPF, Prayagraj whereas in the criminal case, there are 23 witnesses.

3. Learned counsel for the petitioner would argue that where departmental proceeding and criminal case are based on the same set of facts and the evidence in both proceedings is common, the proceedings of the departmental enquiry should be stayed. She would contend that in the present case, the charges in the criminal case and the departmental enquiry are almost similar, therefore, the article of charge dated 24.4.2023 issued against the petitioner is liable to be quashed. In support thereof, she placed reliance on the judgment passed by the Hon'ble Supreme Court in the matter of ***Captain M. Paul Anthony vs. Bharat Gold Mines Limited and Another*** reported in ***(1999) 3 SCC 679***, ***Eastern Coal Fields Limited and Others vs. Rabindra Kumar Bharti***, reported in ***(2022) 12 SCC 390***, and the judgment of this Court rendered in the matter of ***A.K. Patre vs. State of Chhattisgarh*** in ***WPS No. 3614 of 2022***.

4. On the other hand, learned Deputy Solicitor General would oppose the submissions made by counsel for the petitioner. He would contend that the Railway Protection Force is an Armed Force of the Union of India. It is deployed for the security of railway property and passengers. The Force requires the maintenance of discipline of the highest order. He would contend that no legal, statutory or fundamental right of the petitioner has been violated. He would submit that the facts of the criminal case and the departmental enquiry are entirely different. He would further submit that the witnesses in both the proceedings are also not common. He would contend that the article of charge was issued against the petitioner for tarnishing the image of the force being a member of the force and in this regard, the Railway Board has issued the guidelines on 31.10.2018. In support thereof, he placed reliance on the judgment passed by the Hon'ble Supreme Court in the matter of ***State of Rajasthan vs. B.K. Meena and Others***, reported in ***(1996) 6***

SCC 417 and the matter of ***Divisional Controller, Karnataka State Road Transport Corporation vs. M.G. Vittal Rao***, reported in **(2012) 1 SCC 442**.

5. I have heard learned counsel for the parties and perused the documents present on the record.

6. The allegations levelled against the petitioner in the departmental enquiry are that while he was posted on the post of Constable at Mirzapur on 12.10.2022 he accepted a bribe of Rs.7,500/- from one Gaurav Mishra and an FIR was registered for the commission of an offence punishable under Section 120-B of IPC and Sections 7 & 7A of the PC Act and by doing so, the petitioner has tarnished the image of the Force being a member of the Force. In FIR, it is alleged that the petitioner in criminal conspiracy with the co-accused Chandan Kumar Jaiswal demanded and agreed to accept undue pecuniary advantage of Rs.7500/- from the complainant - Gaurav Mishra for allowing him to run his Tea-Stall at Mirzapur Railway Station smoothly. On 12.10.2022, a CBI team led by Shri Ajit Singh, Inspector, CBI, ACB, Lucknow along with independent witnesses assembled at BSNL Guest House and trapped the petitioner. In the criminal case, there are a total of 23 witnesses. In the departmental enquiry, there is only one witness namely, Ajay Kumar Rai, Assistant Protection Commissioner, Prayagraj.

7. In the matter of ***Rabindra Kumar Bharti (supra)***, the Hon'ble Supreme Court in para 13 held as under:-

"13. We would notice that this is a case where there is a criminal case against the respondent. The appellant(s) as employer also launched disciplinary 4 (2019) 10 SCC 367 (CA No.2794 of 2022 @ SLP(C) No.12061/2021 proceedings. It is undoubtedly true that this Court has taken the view that when the charges are identical and gives rise to complicated issues of the fact and law and evidence is the same, it may not be appropriate to proceed simultaneously in disciplinary proceedings, along with the criminal case. The rationale behind the principle largely is that the employee who is facing the disciplinary proceeding would

necessarily have to take a stand. This in turn would amount to revealing his defense and therefore prejudice the employee in the criminal proceedings. No doubt, this Court has laid down that it is not an absolute embargo and the principle is one to be applied based on the facts of each case.”

8. In the matter of **A.K. Patre (supra)**, the Co-ordinate Bench of this Court held as under:-

“Departmental enquiry initiated against the petitioner shall proceed and witnesses who are not common in departmental enquiry and criminal case, shall be examined in enquiry. However, if the witnesses are common in both the proceedings in that case, such witnesses were to be examined only after their examination in criminal case.”

10. Now coming to the judgments relied on by the learned counsel for the respondents in the matter of **B.K. Meena (supra)**, the Hon’ble Supreme Court held that in the interest of good administration, the truth or falsity of the charges against a delinquent employee is determined promptly. If he is not guilty of the charges, his honour should be vindicated early and if he is guilty, he should be dealt with appropriately without any avoidable delay. The criminal court may decide, whenever it does, whether the respondent is guilty of the offences charged and if so, what sentence should be imposed upon him. The interest of the administration cannot brooke any delay in disciplinary proceedings. It is further held that in the disciplinary proceedings, the question is whether the delinquent employee is guilty of such conduct as would merit his removal from service or a lesser punishment, whereas, in the criminal proceedings, the question is whether offences registered against him under the Prevention of Corruption Act are established and, if established, what sentence should be imposed upon him. It is also held that the standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different.

11. The Hon’ble Supreme Court in the matter of **Captian M. Paul**

Anthony (supra), while dealing with a similar issue summarized the findings in paras 13 & 22 as under:-

“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 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 the 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 doubts. 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.

“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.”

12. The Hon'ble Supreme Court in the matter of **State Bank of India vs. Neelam Nag** reported in (2016) 9 SCC 491 in paras 14 and 18 held as under:-

“14. This Court in Karnataka SRTC vs. M.G.Vittal Rao reported in (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)

18. In the peculiar facts of the present case, therefore, we accede to the contention of the appellants that the pendency of the criminal case against the respondent cannot be the sole basis to suspend the disciplinary proceedings initiated against the respondent for an indefinite period; and in larger public interest, the order as passed in Stanzen's case be followed even in the fact situation of the present case, to balance the equities.”

13. In the matter of **Captian M. Paul Anthony (supra)**, the Hon'ble Supreme Court has held that 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, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case. It is further held that the departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar to their being conducted simultaneously. It is further held that if the criminal case

does not proceed or its disposal is being unduly delayed, even if the departmental proceedings 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. In the criminal case, there is an allegation with regard to the demand and acceptance of a bribe and there are 23 witnesses to be examined whereas in the departmental enquiry, the allegation against the petitioner is that he tarnished the image of force being a member of force and thus, the allegation is entirely different. Further, there is only one witness, who is not a cited witness in the criminal case.

14. In the matter of ***Rabindra Kumar Bharti (supra)***, the Hon'ble Supreme Court has held that when the charges are identical and give rise to complicated issues of the fact and law and evidence are the same, it may not be appropriate to proceed simultaneously in disciplinary proceedings, along with the criminal case. It is further held that it would amount to reveal the defence.

15. In the present case, in the criminal case there is an allegation of demand and acceptance of a bribe whereas the allegation in the departmental enquiry touches the discipline of the members of the Railway Protection Force. The article of charge was issued according to Rule 153 of the Railway Protection Force Act, 1987 by the Competent Authority. It would be worthy to mention here that the departmental enquiry cannot be stayed for an indefinite period on account of the pendency of a criminal case. If after the conclusion of the departmental enquiry, the petitioner 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.

16. In the present case, the petitioner has not sought relief for stay of proceedings of the departmental enquiry but he has sought relief for quashing the entire departmental enquiry initiated against him. The petitioner has not assigned any valid ground to quash the entire departmental enquiry rather he has raised grounds and citations to stay the further proceedings of the departmental enquiry till the conclusion of the criminal case.

17. Taking into consideration the above-discussed facts and the law-laid down by the Hon'ble Supreme Court, I do not find any good ground to interfere with the departmental enquiry.

18. Consequently, this writ petition fails and is hereby **dismissed**. No cost(s).

Sd/-
(Rakesh Mohan Pandey)
Judge