



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12-06-2024

CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

And

THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

WA No.1409 of 2021

And

CMP Nos.8688 and 8689 of 2021

Sri Apurba Bauri

.. Appellant

-VS-

1.The Assistant Security Commissioner,
RPF/TNPM & DA,
O/o.The Senior Divisional Security Commissioner,
Railway Protection Force/Chennai,
V Floor, NGO Complex,
Park Town,
Chennai-600 003.

2.The Enquiry Officer,
PC/MTMY,
RPF, Mylapore RPF Office,
Mylapore,
Chennai-600 004.

.. Respondents



Writ Appeal is preferred under Clause 15 of the Letters Patent against the order passed by this Court in WP No.11069 of 2020 dated 01.03.2021.

For Appellant : Ms.D.Geetha
For Respondents : Mr.P.T.Ramkumar,
Standing Counsel for Railways.

J U D G M E N T

[JUDGMENT OF THE COURT WAS DELIVERED

BY S.M.SUBRAMANIAM, J.]

The writ petitioner is the appellant before us.

2. The relief sought for in the writ petition was to direct the respondents to defer the departmental disciplinary proceedings until the completion of the criminal case pending against the petitioner in Sessions Case No.59 of 2020 on the file of the learned I Additional District Judge, Durgapur, State of West Bengal.



3. The petitioner joined the services of the Railway Protection Force (RPF), Chennai in the year 2015 as Constable. He obtained 40 days LAP for the purpose of his marriage with one Ms.Tanushree on 29.07.2019.

When he was in his native place after marriage, he was arrested by Durgapur Women Police on 10.12.2019 and he was remanded to judicial custody on 11.12.2019 on the complaint given by one Ms.Sujatha Bauri alleging that the petitioner on the false promise of marrying her, had sexual intercourse with her on several times.

4. Pursuant to his arrest, he was placed under deemed suspension by the first respondent by order dated 18.12.2019 and as a later development, a chargesheet was laid by the Sub Inspector of Police, Durgapur Women Police Station before the learned Additional Chief Judicial Magistrate, Durgapur, State of West Bengal.

5. Pursuant to criminal case, the departmental disciplinary proceedings was initiated against the appellant and admittedly, a charge sheet was issued by the Assistant Security Commissioner, who is the Disciplinary Authority. The charge framed against the appellant is as under:-



“He was permitted to avail 40 days LAP from 13.11.2019 to 22.12.2019. While on leave, at about 13.35 hrs on 10.12.2019, he was arrested for a criminal offence by Durgapur Women Police Station, Asansol Durgapur Police Commissionerate, West Bengal in Station Crime No.57/19 dated 07.11.2019 and subsequently sent to judicial custody at Durgapur Correctional home by Hon'ble ACJM, Durgapur Court on 11.12.2019.

By the aforesaid act, he has tarnished the image of the force and thereby brought discredit to the reputation of the Force.

Thus has contravened Rule 146.1, 146.4, 147(ii) of RPF Rules 1987 and Rule 3(1)(iii) of Railway Services Conduct Rules, 1966.”

6. The chargesheet contains statement of allegation on the basis of which the charge is framed against the appellant. The list of documents are also provided. The chargesheet indicates that the list of witnesses to be examined. Thus, we do not find any infirmity in respect of the chargesheet issued against the appellant.



7. The learned counsel for the appellant Ms.D.Geetha would submit that mere registration of FIR would not provide a cause for institution of departmental disciplinary proceedings against the appellant.

The Disciplinary Authority may not be in a position to establish any misconduct, since the criminal case trial is pending before the Competent Criminal Court of Law. The Department ought to have awaited for the outcome of the criminal case, which is pending, but hurriedly, they have instituted the departmental disciplinary proceedings against the appellant, which is untenable.

8. In support of the above contention, Ms.D.Geetha for the appellant, would rely on the judgment of the Aurangabad Bench of Bombay High Court in WP No.1644 of 2014 dated 05.08.2016, wherein in paragraph-23, the following observations are made:-

“23. The petitioner cannot be held to have brought C.R.P.F. in disrepute only on the basis of registration of an offense against him. Possibility of filing a false case against any person cannot be ruled out. Unless there is some more evidence, on the basis of which a prudent man can form an opinion, as about involvement of the person



concerned in the crime registered against him, he cannot be held guilty for the offenses alleged against him in the crime concerned. We have discussed here-in-before that no such evidence was brought on record in the proceedings of enquiry. Arrest of the petitioner in the crime registered against him also cannot be given much importance and the petitioner cannot be said to have caused damage to the image of C.R.P.F. for the reason that once a crime is registered against a person for the cognizable and non bailable offense, he is bound to be arrested by the Police. As such, the conclusion recorded by the enquiry officer that registration of a crime against the petitioner and his arrest in the said crime did bring the C.R.P.F. in disrepute cannot be subscribed.”

9. Relying on the above judgment, the learned counsel for the appellant would contend that the appellant has not challenged the chargesheet, but prayed before the Writ Court that the departmental disciplinary proceedings shall be deferred till the disposal of the criminal case.



10. Mr.P.T.Ramkumar, learned Standing Counsel appearing for the respondents, would oppose by stating that the pendency of the criminal case is not a bar for institution of departmental disciplinary proceedings. The Hon'ble Supreme Court of India in the cases of **State of Karnataka and Another vs. Umesh [(2022) 6 SCC 563]** and **Shashi Bhushan Prasad vs. Inspector General, Central Industrial Security Force and others [(2019) 7 SCC 797]** reiterated that pendency of the criminal case is not a bar for departmental disciplinary proceedings. The procedures to be followed for departmental disciplinary proceedings and criminal case are distinct and different and thus there is no bar for the Disciplinary Authority to continue the departmental disciplinary proceedings.

11. Mr.P.T.Ramkumar for the respondents, produced the case details regarding the criminal case pending against the appellant on the file of the learned Additional District Judge, Durgapur, State of West Bengal. As per the case details, even after lapse of five years, not even one witness has been examined. Therefore, the Department is not in a position to delay the proceedings for a prolonged period. By considering all these reasons, the



learned Single Judge dismissed the writ petition. Therefore, the present Writ Appeal is also to be rejected.

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12. The legal principles regarding the simultaneous proceedings (i.e., departmental disciplinary proceedings and criminal cases) are summarised as under:-

(a) It is a settled law that criminal case and the departmental disciplinary proceedings may be initiated simultaneously as the case may be;

(b) an order of suspension, if required, may be issued in the prescribed format as per the rules;

(c) if the records and evidences are available with the disciplinary authority, then without any loss of time, charge memorandum shall be issued and the disciplinary proceedings may go on;

(d) The question to be considered is whether simultaneous proceedings may go on or not?;

(e) The departmental domestic enquiry and the criminal trial shall proceed simultaneously and the decision in the criminal case would not materially affect the outcome of the domestic enquiry;

(f) The nature of both proceedings and the test applied to reach



final conclusion in the matter are entirely different.

(g) If the case involves complicated questions of fact and law and the disciplinary authority is not in possession of the required materials for the purpose of conducting enquiry, then administrative decision may be taken to keep the departmental proceedings in abeyance. till the disposal of the criminal case. However, the advisability and desirability has to be determined considering the facts of each case by the authority concerned. Therefore, it would be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible.

(h) There is no legal bar for both proceedings to go on simultaneously.

(i) Acquittal by a criminal Court would not debar an employer from exercising power in accordance with service rules and regulations in force. The two proceedings, criminal and departmental are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on offender, the purpose of departmental enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with service rules.



(j) In the criminal case, the burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond reasonable doubt', he cannot be convicted by a Court of law. In departmental enquiry, on the other hand penalty can be imposed on the delinquent officer on a finding recorded on the basis of 'preponderance of probability'. To convict a person under criminal law, high standard of proof is required. Even the benefit of doubt would be a benefit for the accused in a criminal case. However, no such strict proof is required in a departmental disciplinary proceedings. Therefore, there is absolutely no bar for the respondents to continue the departmental disciplinary proceedings and conclude the same and pass final orders.

(k) An order of conviction if any passed in the criminal case or in criminal appeal, after disposal of the disciplinary proceedings, then if necessary the Head of the department or the Government may exercise the power of review as the case may be under the relevant rules.

(l) Order of acquittal if at all passed in the criminal case or in criminal appeal, the same would not affect the final orders already passed in the departmental disciplinary proceedings based on the domestic enquiry conducted, in view of the fact that acquittal in a criminal case cannot be a



ground for seeking exoneration from the departmental disciplinary proceedings.

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(m) If the criminal case was registered under the Prevention of Corruption Act, 1988 and if the original records are seized by the investigating agency, then the disciplinary authority may obtain the true copies of the documents and proceed with the departmental disciplinary proceedings independently.

(n) As far as the departmental corruption allegations are concerned, it is not necessary that the disciplinary authority should wait for the final disposal of the criminal case registered under the Prevention of Corruption Act, 1988.

13. The Hon'ble Supreme Court of India in the case of **State of Rajasthan and Others vs. Heem Singh [judgment pronounced in Civil Appeal No.3340 of 2020 dated 29.10.2020]**, considered the principles. **Dr.Dhananjaya Y.Chandrachud, J.**, speaking for the Bench reiterated the principles in paragraph-53, which reads as under:-

“33. In exercising judicial review in disciplinary matters, there are two ends of the spectrum. The first embodies a rule of restraint.



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The second defines when interference is permissible. The rule of restraint constricts the ambit of judicial review. This is for a valid reason. The determination of whether a misconduct has been committed lies primarily within the domain of the disciplinary authority. The judge does not assume the mantle of the disciplinary authority. Nor does the judge wear the hat of an employer. Deference to a finding of fact by the disciplinary authority is a recognition of the idea that it is the employer who is responsible for the efficient conduct of their service. Disciplinary enquiries have to abide by the rules of natural justice. But they are not governed by strict rules of evidence which apply to judicial proceedings. The standard of proof is hence not the strict standard which governs a criminal trial, of proof beyond reasonable doubt, but a civil standard governed by a preponderance of probabilities. Within the rule of preponderance, there are varying approaches based on context and subject. The first end of the spectrum is founded on deference and autonomy – deference to the position of the disciplinary authority as a fact finding authority and autonomy of the employer in maintaining discipline and



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efficiency of the service. At the other end of the spectrum is the principle that the court has the jurisdiction to interfere when the findings in the enquiry are based on no evidence or when they suffer from perversity. A failure to consider vital evidence is an incident of what the law regards as a perverse determination of fact. Proportionality is an entrenched feature of our jurisprudence. Service jurisprudence has recognized it for long years in allowing for the authority of the court to interfere when the finding or the penalty are disproportionate to the weight of the evidence or misconduct. Judicial craft lies in maintaining a steady sail between the banks of these two shores which have been termed as the two ends of the spectrum. Judges do not rest with a mere recitation of the hands-off mantra when they exercise judicial review. To determine whether the finding in a disciplinary enquiry is based on some evidence an initial or threshold level of scrutiny is undertaken. That is to satisfy the conscience of the court that there is some evidence to support the charge of misconduct and to guard against perversity. But this does not allow the court to re-appreciate evidentiary findings in a disciplinary enquiry or to



substitute a view which appears to the judge to be more appropriate. To do so would offend the first principle which has been outlined above. The ultimate guide is the exercise of robust common sense without which the judges' craft is in vain."

14. The effect of acquittal in a criminal case was also repeatedly considered by the Hon'ble Supreme Court of India. Mere acquittal in a criminal case is not a ground to seek exoneration from the departmental disciplinary proceedings. Preponderance of probabilities are enough to punish the public servant. But strict proof is required to convict a person under the Criminal Law.

15. The observations made by the Aurangabad Bench of Bombay High Court in the case (WP No.1644 of 2014 dated 05.08.2016) relied on by the learned counsel for the appellant, is running counter to the legal principles settled by the Hon'ble Supreme Court of India and therefore, the said judgment of the Bombay High Court, cannot be considered as precedent for the purpose of considering the case on hand.



16. The Courts have culled out the principles mainly on the pretext that criminal trial and its consequences would affect the fundamental right of liberty under the Constitution of India. Therefore, the penal consequences are relatable to the fundamental right of a citizen, which is not made available in departmental disciplinary proceedings, wherein it involves in civil consequences. Even the major penalty of dismissal from service would have civil consequences. However, conviction of a person in criminal trial would result in affecting the fundamental right under the Constitution. This exactly is the reason why the Constitutional Courts time and again reiterated that the departmental disciplinary proceedings cannot be equated with the criminal case proceedings, which all are distinct and different.

17. Coming to the case on hand, the writ petition was instituted to defer the departmental disciplinary proceedings till the criminal case is disposed of. When the Courts have consistently held that the departmental disciplinary proceedings and the criminal cases are distinct and different, there is no bar for continuing the departmental disciplinary proceedings during the pendency of the criminal case. There is no reason to tie the hands of the Disciplinary Authority from continuing the disciplinary proceedings



during the pendency of the criminal case.

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18. Yet another point raised is that whether an FIR would constitute a misconduct under the Conduct Rules applicable to the Uniformed Services/Public Servants. The learned Single Judge considered these aspects with reference to Rule 146.1 and 146.4 of the Railway Protection Force and Conduct Rules. The said Rules are extracted hereunder:-

“146.1 – All members of the Force, irrespective of their ranks, shall submit themselves to the requirement of the following code of behaviour, both on and off duty. It shall be incumbent upon all members of the Force to respect the code of behaviour and maintain an attitude of complete discipline and obedience to it. Any breach of these provisions on the part of any member of the Force shall constitute misconduct and shall be punishable under the Railway Servants (Discipline and Appeal) Rules, 1968 as applied to superior officers or, as the case may be, under section 9 or section 17.

146.4 - Discreditable conduct: No member of the Force shall act in any manner prejudicial to



discipline or conduct himself in such a manner which is reasonably likely to bring discredit to the reputation of the Force.”

19. In this context, Mr.Ramkumar, learned Standing Counsel for the respondents, brought to our notice that the chargesheet issued under the Railway Police Force Conduct Rules indicates that the list of documents relied on as well as the list of witnesses to be examined in the departmental disciplinary proceedings. Since the Courts have held that the departmental disciplinary proceedings are distinct and independent, there is no bar for the Disciplinary Authority to conduct enquiry by examining the witnesses, scrutinising the documents and form an opinion, whether any misconduct has been proved or not.

20. The Disciplinary Authority is empowered to ascertain preponderance of probabilities and punish an employee under the Service Rules. Therefore, registration of an FIR can be a ground to institute departmental disciplinary proceedings and the Disciplinary Authority is



empowered to proceed with the enquiry by examining the witnesses and form an opinion as to whether the allegations are proved or not.

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21. Behaviour of unbecoming of a member of Police Force itself would be sufficient to initiate departmental disciplinary proceedings. Moral turpitude are incorporated as misconduct in the Conduct Rules. Therefore, the Conduct Rules as applicable to the member of the Protection Force is to be taken into consideration for the purpose of dealing with such matters and there cannot be any comparison or consideration with reference to the criminal case, which is registered under the relevant provisions of the Criminal Law.

22. The learned Single Judge appreciated the Railway Protection Force Conduct Rules and dismissed the writ petition.

23. We do not find any further ground to consider the relief as such sought for by the appellant in the present appeal. Therefore, the writ order, which is impugned, stands confirmed and consequently, the present Writ Appeal stands dismissed. However, there shall be no order as to costs.



Consequently, the connected miscellaneous petitions are also dismissed.

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(S.M.SUBRAMANIAM,J.) (C.KUMARAPPAN,J.)

12-06-2024

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
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To

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