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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1. CWP-9477-2024
Date of decision: 09.05.2024

Jaswant Singh
...Petitioner

Versus

State of Haryana and others
...Respondents

2. CWP-19682-2022
Date of decision: 09.05.2024

Narender Kumar
...Petitioner

Versus

State of Haryana and others
...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Rishab Garg, Advocate for the petitioner.
(In CWP-9477-2024)

Dr. Suresh Kumar Redhu, Advocate for the petitioner
(In CWP-19682-2022)

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

VIKAS BAHL, J. (ORAL)

1. This order will dispose of two writ petitions i.e., CWP-9477-2024 filed by Jaswant Singh and CWP-19682-2022 filed by Narender Kumar, as common issues of facts and law arise in the said cases.



2. The primary issue which arises for consideration in both the above-said writ petitions is as to “whether the regular departmental proceedings are required to be stayed or the examination of the common witnesses is required to be deferred till the culmination of the criminal proceedings or till the said common witnesses are examined in the criminal proceedings, which criminal proceedings as per the case of the petitioners, relate to the same incident, on account of which departmental proceedings have been initiated against the petitioners, in the facts and circumstances of the individual cases”. The only prayer pressed by counsel appearing in both the writ petitions is for staying the examination of the common witnesses in the departmental proceedings till the said witnesses are examined in the criminal proceedings. The common argument raised by the counsel for the petitioners is that there are common witnesses in the departmental proceedings and in the criminal proceedings and the said common witnesses should not be examined in the departmental proceedings till the time they are examined in the criminal proceedings as in case the said witnesses are examined in the departmental proceedings, then, the same would cause prejudice to the case of the petitioners in the criminal proceedings. In support of the said argument, learned counsel for the petitioners has relied upon the 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**.

3. Learned counsel appearing on behalf of the respondents has opposed the writ petitions and has prayed for dismissal of both the writ petitions.



4. This Court has heard learned counsel for the parties and has perused the paper-books and finds that both the present writ petitions are meritless and deserve to be dismissed for the reasons which have been detailed hereinafter.

5. Before considering the facts of the present two cases, it would be relevant to note that this Court had after considering the same argument/issue as raised in the present writ petitions, dismissed a bunch of writ petitions i.e. CWP-5111-2024 titled as Mustaq Vs. State of Haryana and others and other connected matters vide judgment dated 10.04.2024. Various judgments of the Hon'ble Supreme Court as well as of this Court were considered and the principles/conclusions which emerged from the said judgments were detailed in para 17 of the judgment dated 10.04.2024 of this Court. Para 17 of the said judgment is reproduced hereinbelow:-

“17. From the above said judgments, the following principles/conclusions emerge:-

*1. Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously though separately. (Specific reference in this regard can be made to the judgment in case of **Capt. M. Paul Anthony (supra)** (relevant portion of which is reproduced in Para 5 of the present order) and **State Bank of India and Ors. (supra)** (relevant portion of which is reproduced in Para 8 of the present order)*

2. The approach and objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different inasmuch as in the disciplinary proceedings, the question is as to whether the employee is guilty of such conduct as would merit his removal from service or imposition



*of lesser punishment whereas in the criminal proceedings, the question is as to whether the offences registered against him are established and if established, what sentence is to be imposed upon him. (Specific reference in this regard can be made to the judgment in **Kendriya Vidyalaya Sangathan & Ors (supra)** (relevant portion of which is reproduced in Para 7 of the present order) and to **Shashi Bhusan Prasad vs. Inspector General, Central Industrial Security Force and others, reported as 2019(7) SCC 797** and also **LPA-470-2024** (relevant portion of which is reproduced in Para 10 of the present order).*

3. *The mode of the enquiry, the rules governing the enquiry and trial as well as the standard of proof in criminal proceedings and in departmental proceedings are distinct and different and in a criminal case, charge has to be established beyond reasonable doubt whereas in the departmental proceedings, the charge of misconduct has to be established on the principle of “preponderance of probabilities”. (Specific reference in this regard can be made to the judgment of the Hon'ble Supreme Court of India in **“State of Karnataka and others vs. Umesh”**, reported as 2022 SCC Online SC 345 and **LPA-470-2024** (relevant portion of which is reproduced in Para 10 of the present order).*

4. *There should be early conclusion of departmental proceedings so as to weed out any employee whose integrity/character has been put in doubt and to maintain discipline in service and efficiency of public service and also in case the employee is not guilty of any wrong doing, then his honour is required to be vindicated at the earliest. [Specific reference in this regard can be made to the judgment in the case **Dr.Balwinder Kumar Sharma’s (supra)** (relevant portion of which is reproduced in Para 14 of the present order) and **Capt. M. Paul Anthony (supra)** (relevant portion of which is*



reproduced in Para 5 of the present order).

5. *All the ingredients i.e., the departmental proceedings and the criminal case being based on identical and similar set of facts, charge in the criminal case being of grave nature involving complicated questions of law and facts are required to be met before the Court could consider the case of the employee for grant of stay of departmental proceedings during the pendency of the criminal case. (Specific reference in this regard can be made to the case of **Capt. M. Paul Anthony (supra)**; **Indian Overseas Bank, Anna Salai and Anr (supra)** (relevant portion of which is reproduced in Para 6 of the present order); **State Bank of India and Ors. (supra)** (relevant portion of which is reproduced in Para 8 of the present order).*

6. *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. [Specific reference can be made to the judgment of **Capt. M. Paul Anthony (supra)**]. Even the question as to whether the case involves identical and similar set of facts would also have to be considered after taking into consideration the FIR, the report under Section 173 Cr.P.C. and the charges framed. [Reference in this regard can be made to the judgment of **Paramjit Kaur's (supra)**] (relevant portion of which is reproduced in Para 16 of the present order)*

7. *The fact that the departmental proceedings and the criminal case are based on identical and similar set of facts and the charges in the criminal case against the delinquent employee are of grave nature which involve complicated questions of law and facts also cannot be considered in isolation to stay the departmental proceedings and due regard*



*must be given to the fact that the departmental proceedings cannot be unduly delayed. [Specific reference in this regard can be made to the case of **Capt. M. Paul Anthony** (supra) (relevant portion of which is reproduced in para 5 of the present order) and **State Bank of India and Ors.** (supra).] (relevant portion of which is reproduced in Para 8 of the present order)*

8. *Before granting stay of the departmental proceedings, special facts of the case are required to be mentioned, warranting stay of departmental proceedings. (Specific reference in this regard can be made to the judgment of **Kendriya Vidyalaya Sangathan & Ors** (supra) (relevant portion of which is reproduced in Para 7 of the present order).*

9. *In case all the above parameters are met and the stay of the departmental proceedings has been granted, then also in case, the criminal case is being unduly delayed, the departmental proceedings can be resumed and proceeded with so as to conclude them at an early date. (Specific reference in this regard can be made to the judgment of **Capt. M. Paul Anthony's** case (supra) (relevant portion of which is reproduced in Para 5 of the present order).”*

6. Various judgments which were relied upon by this Court while passing the judgment dated 10.04.2024, have been detailed in paragraphs 5 to 16 of the said judgment. Paragraphs 5 to 16 of the said judgment are reproduced hereinbelow:-

“5. *Before considering the facts of each case, it would be relevant to refer to various judgments of the Hon’ble Supreme Court as also the judgments of the Division Bench of this Court, in which the same issue, as has been raised in the present bunch of writ petitions, has been considered and has been adjudicated upon. In 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 petitioners 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.

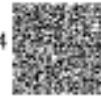
(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during 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 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 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 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 is 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 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.

9. *By relying upon the law laid down in the above-said judgments, this Court had dismissed **CWP-975-2024, decided on 16.01.2024**, titled as “**Ravi Kumar Vs. State of Haryana and others**” and also a bunch of two writ petitions i.e. **CWP-11203-2020** titled as “**Rajbir Singh and others Vs. State of Haryana and others**” and **CWP-17535-2020** titled as “**Satish Chander Vs. State of Haryana and others**”, vide judgment dated 04.12.2023. Primary prayer in the above-said writ petitions was also for staying the departmental proceedings during the pendency of the criminal case registered against the petitioners therein, on the ground that the allegations in the criminal case as well as in the departmental proceedings relate to the same incident and in case the common witnesses are examined in the departmental proceedings prior to their being examined in the criminal case, then, the same would cause prejudice to their defence in the criminal proceedings.*



10. Against the judgment dated 16.01.2024 passed in the case of **Ravi Kumar (supra)** by this Court, **LPA No.470-2024** was filed by Ravi Kumar, which was dismissed by a Division Bench of this Court, vide judgment dated 15.03.2024. The relevant portion of the said judgment is reproduced herein below: -

“1. Challenge in the present letters patent appeal is to the order dated 16.01.2024 passed by the learned Single Judge in CWP-975-2024, Ravi Kumar vs. State of Haryana and others. The learned Single Judge dismissed the writ petition wherein, the order dated 21.08.2023 (Annexure P-3) was subject matter of challenge wherein the departmental proceedings had been initiated against the employee who is a police official and the employee had been placed under suspension and summary of allegations (Annexure P-4) and charge sheet had been served upon him on account of the fact that he was involved in criminal case in FIR No. 20 dated 20.08.2023 under Section 7 of the Prevention of Corruption Act, 1988 lodge at Police Station ACB, Ambala in which he was arrested by the team of Anti Corruption Bureau.

2. The prayer made in the writ petition was to keep the departmental proceedings in abeyance till the final decision of the criminal case.

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4. In **LPA-565-2020, State of Haryana and others vs. Satish Kumar** decided by Division Bench of this Court on 30.05.2022, authored by one of us G.S. Sandhawalia, J., we allowed the appeal of the State and dismissed the writ petition by keeping in mind the scope of both set of proceedings and the SLP filed against the same i.e. **Special Leave to Appeal (C) No. 15243 of 2022** was also dismissed on 10.11.2022. Similar view was also taken in **LPA-2096-2017, State of Haryana and others vs. Suresh Punia**, decided on 09.09.2022 by Division Bench of this Court in which one of us i.e. G.S. Sandhawalia, J.



was Member. **SLP (Civil) bearing Diary No.22 of 2023** filed against the same also stands dismissed on 16.01.2023.

5. In **State of Karnataka and others vs. Umesh, 2022 SCC Online SC 345**, the employee had been proceeded against under the provisions of Prevention of Corruption Act, 1988 and had been acquitted after giving him the benefit of doubt. Resultantly, the Apex Court had gone on to hold that the principles which govern a disciplinary inquiry are distinct from those which apply to a criminal trial and in the former, the charge has to be established beyond reasonable doubt whereas in the later, the charge of misconduct has to be established on the principle of 'preponderance of probabilities'. It is also held that the rules of evidence which apply to both the procedures are distinct.

6. A three-Judge Bench of the Apex Court in **Shashi Bhusan Prasad vs. Inspector General, Central Industrial Security Force and others, (2019) 7 SCC 797** held that the two proceedings i.e. criminal and departmental operate in different fields and have different objectives. The objective of criminal trial is to inflict appropriate punishment on an offender whereas the purpose of inquiry proceedings is to deal with the employee departmentally and to impose penalty in accordance with the Service Rules.

7. In such circumstances, we do not find any reason to interfere in the judgment passed by the learned Single Judge. Accordingly, finding no merit in the present appeal, the same stands dismissed. All pending applications also stand disposed of accordingly.”

11. Similarly, the judgment of this Court in **Rajbir Singh and others case (supra)** was also challenged by filing **LPA No.2217-2023; LPA-324 and 327 of 2024** and a Division Bench of this Court, vide judgment dated 15.03.2024 dismissed the said LPAs and upheld the judgment of this Court in **Rajbir Singh and others case (supra)**



*and other connected matters. It would be relevant to note that this Court had also granted interim orders in some of the writ petitions even after the judgment of this Court in **Ravi Kumar's case** (Supra) and **Rajbir Singh and others case** (supra), as certain interim orders were passed by the LPA Bench. After the passing of the judgment of the Division Bench in LPA No.470 of 2024, **Ravi Kumar's case** (Supra) upholding the order passed by this Court in CWP No.975 of 2024, **Ravi Kumar's case** (Supra), the issue in question stands crystallized and the present bunch of writ petitions are being finally adjudicated upon.*

12. *Division Bench of this Court in **LPA-252-2021, decided on 23.07.2021** titled as "**L/ASI Seema Vs. State of Haryana and others**", had in a case, where similar grievance was raised, as has been raised in the present bunch of writ petitions observed that it was a settled position of law that proceedings in a criminal case and departmental proceedings can go on simultaneously and that the purpose of a departmental inquiry and of prosecution in a criminal case are distinct and different. It was further observed that the departmental enquiry is conducted in order to maintain discipline in the service and efficiency of public service and thus, the disciplinary proceedings should be conducted and completed expeditiously and that there is no legal bar to the conduct of the disciplinary proceedings and criminal trial simultaneously and accordingly, the Division Bench opined that no direction could be given to the effect that common witnesses in departmental proceedings and the criminal trial would first be examined in the criminal trial and only thereafter in the departmental proceedings. The relevant portion of the said judgment is reproduced herein below: -*

"We have heard the counsel for the appellant as well as State counsel who was having advance copy of the appeal.

The only grievance of the counsel for the appellant is that the criminal case and the departmental proceedings against the appellant cannot proceed simultaneously as both



the said proceedings are based on same set of facts and evidence. He further elaborated that if the departmental proceedings and criminal case against the appellant are allowed to proceed simultaneously, then the defence of the appellant will be prejudiced as the appellant will have to disclose her defence in advance in the departmental proceedings which are going to be conducted at a much fast pace then the proceedings in the criminal trial.

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*The plea of the appellant is that the aforesaid criminal case and the departmental inquiry cannot proceed simultaneously as both of them are based on same facts and evidence. This question has been dealt by the Hon'ble Apex Court in **Capt. M. Paul Anthony's** case (supra) as well as in **State Bank of India & Others'** case (supra) which have been relied upon by the appellant. The Hon'ble Apex Court while dealing with the matter came to the following conclusions:-*

“(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.”

*So, it is well settled position in law that proceedings in criminal case and departmental proceedings can go on simultaneously except where departmental proceedings and criminal case are based on same set of facts and evidence. At the same time, the Court cannot ignore the fact that the purpose of departmental inquiry and of prosecution in criminal case are two different aspects. In **State Bank of India and Others vs. R.B. Sharma, 2004(7) SCC 27**, it was observed as under:-*

“The criminal prosecution is launched for an offence for violation of a duty the offender owes to the society, or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances.”

*The standard of proof in the criminal case is altogether different from that in departmental inquiry. In case of disciplinary enquiry the technical rules of evidence have no application. Also in such a situation the action of the department cannot be termed as double jeopardy as has been held in **The Divisional Controller, KSRTC vs. M.G. Vittal Rao, 2012(1) SCC 442**.*

It is generally seen that the criminal cases do not



*proceed quickly, whereas the departmental proceedings are concluded within a short span of time. Admittedly, the appellant is member of the police force. The departmental inquiry is being conducted against her to maintain discipline in the department and efficiency of public service. It would therefore be expedient that the departmental proceedings against the appellant are conducted and completed expeditiously. The disciplinary inquiry cannot be delayed unduly. The learned Single Judge referred to **CWP-9999-2006** titled as **Prem Singh vs. State of Haryana and Others** decided on **28.10.2006**, wherein the Division Bench of this Court while referring to judgment in **Capt. M. Paul Anthony's** case (supra) held that departmental proceedings cannot be permitted to wait endlessly till the conclusion of criminal trial, which may take its own time and it would not be in the interest of the Department that a person like the petitioner who is charged with serious misconduct continued to be in service and accordingly the writ petition was dismissed. The learned Single Judge also referred to **Ved Parkash vs. State of Haryana and Others, 2007(4) SCT 423**, wherein also the similar view was taken by the Division Bench of this Court in a case relating to bribe accepted by Head Constable working in Haryana Police.*

*The Hon'ble Supreme Court in the **The Divisional Controller, KSRTC's** case (supra) considered the judgement of **Capt. M. Paul Anthony's** case (supra) and opined that this judgment is not of universal application. Even in **State Bank of India and Others'** case (supra) the Hon'ble Supreme Court clearly observed that it is well settled that there is no legal bar to the conduct of the disciplinary proceedings and criminal trial simultaneously.*

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We are also of the opinion that even no direction could be given to the effect that common witnesses in departmental



proceedings and the criminal trial would first be examined in the criminal trial and only thereafter in the departmental proceedings, as it would also prejudice the interest of the department.

In view of the above, we do not find any illegality or perversity in the impugned order passed by the learned Single Judge. Consequently, the appeal is hereby dismissed being devoid of merits.”

13. *It would be relevant to note that in the above-said judgment, counsel for the appellant therein had brought to the notice of the Court different interim orders passed by the Courts whereby stay of departmental proceedings was ordered and it was directed that common witnesses in the departmental inquiry and the criminal trial would first be examined in the criminal trial and thereafter in the departmental proceedings and it was after considering the said interim orders that the above said judgment was passed by the Division Bench of this Court, rejecting the pleas of the appellant therein and upholding the judgment of the learned Single Bench, vide which the writ petition was dismissed. It would be further relevant to note that the SLP against the said judgment i.e. ***Petition for Special Leave to Appeal (Civil) No.13573-2021*** titled as ***“L/ASI Seema Vs. State of Haryana and others”***, was dismissed by the Hon’ble Supreme Court, ***vide order dated 29.11.2021*** and thus, the said judgment has attained finality.*

14. *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 that the delay in the criminal trial is attributed to the employee or not. It is 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.

15. Against the said judgment, an SLP was filed i.e. **Petition for Special Leave to Appeal (Civil) No.8279-2021** titled as **"Dr.Balwinder Kumar Sharma vs. Hon'ble Punjab and Haryana High Court and other** and the learned senior counsel for the appellant therein sought permission to withdraw the special leave petition and accordingly, vide order dated 17.10.2022, the special leave petition was dismissed as withdrawn.

16. 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.”

7. In the light of the abovesaid judgments and also the abovesaid principles/conclusions, for the reasons detailed hereinafter, this Court is of the opinion that the present writ petitions are meritless and deserve to be dismissed.

CWP-9477-2024

8. The petitioner while holding the post of Assistant Sub Inspector in the Haryana Police was made an accused in FIR No.38 dated 19.10.2023 registered under Section 7 of the Prevention of Corruption Act, 1988 and Section 384 of IPC at Police Station Anti Corruption Bureau, Gurugram, Haryana on the statement of one Vishal who had alleged that the petitioner along with another police official had demanded an amount of Rs.1 lac for releasing him and that he was forced to transfer Rs.70,000/- to the petitioner via Phonepay and the complainant had a recording of the petitioner of his further demand for Rs.25,000/-. Investigation in the criminal case is complete and the report under Section 173 Cr.P.C. has already been



submitted.

9. Learned State Counsel has submitted that there are 35 witnesses in the criminal case, out of which, none have been examined as charges are yet to be framed. It is further submitted that disciplinary proceedings were also initiated against the petitioner vide order dated 23.10.2023 (Annexure P-2) and the summary of charge under such disciplinary proceedings has been annexed as Annexure P-4 with the paper book. It is also submitted that there are nine witnesses in the disciplinary proceedings, out of which, none have been examined.

10. From the abovesaid facts, it is apparent that the primary issue which is involved in the criminal case is as to whether the petitioner along with another police official had demanded bribe from the complainant-Vishal and in pursuance of the same, had taken an amount of Rs.70,000/- from the said complainant via phonepay and had further demanded an amount of Rs.25,000/- regarding which, as per the case of the complainant, he had a phone recording with the petitioner. The same in the opinion of this Court does not involve any complicated questions of law and facts, nor any complicated questions of law and facts have been brought to the notice of this Court, nor any judgment has been cited by the counsel for the petitioners to show that the facts of the present case give rise to complicated questions of law or facts. Further, no special facts arise in the present case, which are required to be mentioned, as per the law laid down by the Hon'ble Supreme Court in Kendriya Vidyalaya Sangathan & Ors (supra) warranting stay of departmental proceedings, rather the allegations against the petitioners are such that the departmental proceedings are required to be



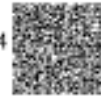
culminated expeditiously.

11. It would be relevant to note that in the present case the report under Section 173 CrPC has already been submitted and the statements of all the witnesses under Section 161 CrPC have already been recorded and a copy of the same has been given to the petitioner/accused and it is for the prosecution to prove the case against the petitioner by relying upon the evidence of the witnesses whose statements have already been recorded under Section 161 CrPC and the documents which form a part of the report under Section 173 CrPC and thus, the plea of prejudice raised is misconceived. The Division Bench of this Court in the case of ***Dr. Balwinder Kumar Sharma's (supra)***, the relevant portion of which has been reproduced in para 14 of the present order, had observed as under: -

“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.”

The SLP against the said judgment has been withdrawn.

Thus, keeping in view the principles as have been enumerated in para 17 of the judgment passed by this Court in ***Mustaq's case*** (Supra), and the abovesaid facts, there is no ground to accept the arguments of learned counsel for the petitioners to the effect that till the time common witnesses are examined in the criminal case, the said witnesses should not



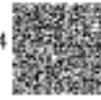
be examined in the departmental proceedings and thus, the writ petition being meritless, deserves to be dismissed and is accordingly, dismissed.

12. It is made clear that this Court has not opined on the merits of the allegations either in the criminal proceedings or in the departmental proceedings and the trial Court in the criminal case as well the competent authority in the departmental proceedings would consider and adjudicate / decide the same independently, in accordance with law.

CWP-19682-2022

13. The petitioner while holding the post of ESI in the Haryana Police was made an accused in FIR No.13 dated 16.05.2022 registered under Section 7 of the Prevention of Corruption Act, 1988 at Police Station SVB Gurgaon, District State Vigilance Bureau, on the complaint made by one Dharam Singh on the allegations that the petitioner was demanding bribe for removing the names of children of the complainant from the FIR which as per the complainant had been falsely implicated and that he had already taken Rs.4000/- from the complainant and was demanding an amount of Rs.15,000/-. A perusal of Annexure P-2 would show that the petitioner was caught red handed by the Vigilance Bureau while accepting the bribe of Rs.15,000/-.

14. Learned State Counsel has submitted that challan in the present case has been filed and the charges have also been framed but neither the report under Section 173 Cr.P.C. nor the order of framing of charges has been annexed with the present writ petition. It has been stated that in the criminal case, out of 17 prosecution witnesses, five witnesses have been examined. Departmental proceedings were also initiated against the



petitioner vide order dated 17.05.2022 and the summary of allegations in the departmental proceedings has been annexed as Annexure P-3 with the paper book. It is also submitted that in the departmental proceedings, out of 12 witnesses, 8 witnesses have been examined.

15. From the abovesaid facts, it is apparent that the primary issue for consideration in the criminal case is as to whether the petitioner had demanded the bribe from the complainant-Dharam Singh for removing the name of his children from a case who as per the complainant, had been falsely implicated in the case and as to whether the petitioner was caught red handed while accepting the bribe of Rs.15,000/- by the Vigilance Team. The same in the opinion of this Court does not involve any complicated questions of law and facts, nor any complicated questions of law and facts have been brought to the notice of this Court, nor any judgment has been cited by the counsel for the petitioners to show that the facts of the present case give rise to complicated questions of law or facts. Further, no special facts arise in the present case, which are required to be mentioned, as per the law laid down by the Hon'ble Supreme Court in Kendriya Vidyalaya Sangathan & Ors (supra) warranting stay of departmental proceedings, rather the allegations against the petitioners are such that the departmental proceedings are required to be culminated expeditiously.

16. It would be relevant to note that admittedly in the criminal case, the report under Section 173 Cr.P.C. as noticed hereinabove, has already been filed but the same has not been annexed and even charges have been framed but the order framing charges has not been annexed and thus, the law laid down by the Hon'ble Division Bench of this Court in the case



of ***Paramjit Kaur (supra)***, applies in the present case inasmuch as, in the said case it was observed that since the charge-sheet was not placed before the learned Single Judge, thus, in the said circumstances, the argument of the appellant therein that the basis of the departmental proceedings and criminal trial was the same was held to be neither substantiated nor established. Moreover, since the report under Section 173 CrPC has not been annexed, therefore, it cannot be said with absolute certainty as to whether the charge in the criminal case and the departmental proceedings is based on identical and similar set of facts and that there is no additional/extra charge in the departmental proceedings. It would be further relevant to note that in the present case the report under Section 173 CrPC has already been submitted and the statements of all the witnesses under Section 161 CrPC have already been recorded and a copy of the same has been given to the petitioner/accused and it is for the prosecution to prove the case against the petitioner by relying upon the evidence of the witnesses whose statements have already been recorded under Section 161 CrPC and the documents which form a part of the report under Section 173 CrPC and thus, the plea of prejudice raised is misconceived. The Division Bench of this Court in the case of ***Dr. Balwinder Kumar Sharma's (supra)***, the relevant portion of which has been reproduced in para 14 of the present order, had observed as under: -

“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."

The SLP against the said judgment has been withdrawn. Thus, keeping in view the principles as have been enumerated in para 17 of the judgment passed by this Court in **Mustaq's case** (Supra), and the abovesaid facts, there is no ground to accept the arguments of learned counsel for the petitioners to the effect that till the time common witnesses are examined in the criminal case, the said witnesses should not be examined in the departmental proceedings and thus, the writ petition being meritless, deserves to be dismissed and is accordingly, dismissed.

17. It is made clear that this Court has not opined on the merits of the allegations either in the criminal proceedings or in the departmental proceedings and the trial Court in the criminal case as well the competent authority in the departmental proceedings would consider and adjudicate / decide the same independently, in accordance with law.

18. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

09.05.2024
Pawan

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:-	Yes/No
Whether reportable:-	Yes/No