



2024:DHC:8270-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 22.10.2024

+ W.P.(C) 4106/2023 & CM APPL. 15944/2023, CM APPL.
48469/2023
SH.MRINAL KANTI CHATTERJEEPetitioner
Through: Counsel(Appearance not given)

versus

UNION OF INDIA AND ORSRespondents
Through: Mr.Amit Tiwari, CGSC,
Mr.Ayush Tanwar, Mr.Rahul
Bhaskar, Mr.Anil Chhabra,
Adv.
Mr.G.S. Rathore, AC/Law
Mr.Yespal, Insp/CISF
Mr.Prahalad Devenda, SI/CISF

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE SHALINDER KAUR

NAVIN CHAWLA, J. (Oral)

1. This petition has been filed praying for stay of the departmental enquiry proceedings initiated by the respondents *vide* Charge Memorandum dated 17.11.2022.
2. It is the case of the petitioner that the petitioner was enrolled as a Constable and has been serving in the Central Industrial Security Force (in short, 'CISF') since 22.03.2006. In the month of February, 2022, while being posted at the CISF Unit IGI Airport, New Delhi, the petitioner came to know about a gang running a multi-state



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recruitment racket in the examinations conducted by the SSC, HSSC and Delhi District Courts.

3. The petitioner claims that being a responsible citizen, he reported the matter to the Delhi High Court and the Delhi Police. Thereafter, he started receiving threats from the gang members, and considering the threats to him and his family, the respondents transferred the petitioner to the CISF Unit at the Kolkata Airport from the IGI Airport, New Delhi.

4. The petitioner claims that even after the transfer of the petitioner, he continued to receive threats and when the attempt to arm-twist the petitioner to withdraw the complaint filed by him failed, a false complaint was made against the petitioner, on the basis of which FIR No.590/2022 was registered on 11.06.2022 at Police Station, Mukherjee Nagar, under Sections 376/506/509 of the Indian Penal Code, 1860. The petitioner was granted anticipatory bail in the said case on 25.07.2022.

5. The petitioner claims that the respondents, however, influenced by the registration of the FIR, issued the impugned Charge Memorandum.

6. The learned counsel for the petitioner submits that as the impugned Charge Memorandum is based on the same facts on the basis of which the FIR and the criminal case have been registered against the petitioner, in law, the departmental proceedings be stayed while the evidence in the criminal case is being recorded. He further submits that the petitioner cannot be made to disclose his defence in the departmental enquiry. In support of his case, he places reliance on



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the Judgments of the Supreme Court in ***Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. & Anr.*** (1999) 3 SCC 679; ***State Bank of India and Ors. v. Neelam Nag and Anr.*** (2016) 9 SCC 491; and of the Bombay High Court in ***Santosh Motiram Dhande v. Coal India Ltd.***, NC 2024:BHC-NAG:1756-DB, against which a Special Leave Petition, being SLP(C) 12113/2024 titled ***Coal India Limited v. Santosh Motiram Dhande***, was dismissed by the Supreme Court *vide* Order dated 27.06.2024.

7. On the other hand, the learned counsel for the respondents submits that the impugned Charge Memorandum is based on an allegation which is completely different from what is the basis of the criminal case that has been filed and is pending against the petitioner. He submits that by the impugned Charge Memorandum, the petitioner has also been charged with indiscipline, misconduct and moral turpitude tarnishing the image of the CISF and for the petitioner acting in a manner which is unbecoming of a member of the Central Armed Police Forces (in short 'CAPF'). He submits that, therefore, the impugned departmental enquiry should not be stayed as it is unconnected with the criminal trial. He places reliance on the judgment of the Supreme Court in ***Kendriya Vidyalaya Sangathan and Ors. v. T. Srinivas***, (2004) 7 SCC 442, in support of his submissions.

8. We have considered the submissions made by the learned counsels for the parties. We have also perused the contents of the FIR No.590/2022.

9. Without touching the allegations that have been made by the



petitioner against the complainant of the said FIR or by the complainant of the said FIR against the petitioner, we find that the impugned departmental enquiry is not based on the allegations on which the FIR has been registered.

10. For reaching this conclusion, we need to only reproduce the Articles of Charge on the basis of which the departmental enquiry has been initiated against the petitioner. They read as under:

“ ARTICLE OF CHARGE-I

That CISI No. 062120065. CONSTABLE/GD MRINAL KANTI CHATTERJEE of CINE Unit NSCBIA Kolkata despite being married and while he was posted at CISF Unit IGI Delhi and performing duty at APS HQRS New Delhi, he made close intimate illicit relationship a. He frequently met with Miss Deepika, accompanied her for her exam at various a and also stayed along with her in Hotel. He also used credit card of Miss nis own personal use and extended monetary help to Miss Deepika. The above act on of CISF No 062120065. Constable/GD Mrinal Kanti Chatterjee of CISF Unit ASG Kolkata tantamount to gross indiscipline, misconduct, moral turpitude hereby tarnishing the image of CISH and highly unbecoming of a member of CAPF like CISF. Hence, the charge.

ARTICLE OF CHARGE-II

That CISF No. 062120065, CONSTABLE/GD MRINAL KANTICHATTERJEE OF CISE Unit NSCBIA Kolkata while he was posted at CISF Unit IGI Delhi and performing duty at APS HQRS New Delhi, he has advised and helped Miss Deepika to file court case relating to her termination as Sub-Inspector from CISF against own Department (CISF). He has taken undue advantage from the lady in lieu of helping her, cheating in the pretext of false promise of marriage. The above act on the



part of CISF No 062120065, Constable/GD Mrinal Kanti Chatterjee of CISF Unit ASG Kolkata tantamount to gross indiscipline, misconduct, moral turpitude hereby tarnishing the image of CISF and highly unbecoming of a member of CAPF like CISF. Hence, the charge.”

11. Interestingly, the petitioner had submitted a reply to the impugned Charge Memorandum in which he had admitted his acquaintance and dealings with the complainant of the said FIR.

12. In **Capt. M. Paul Anthony** (supra), the Supreme Court has held that a departmental proceeding and proceedings in a criminal case can proceed simultaneously and there is no bar in them being conducted simultaneously, though separately. The Supreme Court further held that 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. The Court laid down the principles that would be applicable in such situations as under:

“22. The conclusions which are deducible from various decisions of this Court referred to above are:

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves



complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

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

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest.”

13. In ***State Bank of India and Ors.*** (supra), the Supreme Court while reiterating that there is no legal bar to simultaneously hold the disciplinary proceedings and the criminal trial, however, the stay of the disciplinary proceedings may be a proper course in cases where the criminal charge against the employee is of grave nature and the proceeding of the disciplinary enquiry is likely to prejudice the defence of an employee before the criminal court, has held that a balance has to be maintained between the need for a fair trial to the



accused and the competing demand for an expeditious conclusion of the ongoing disciplinary proceedings. The Supreme Court has further held that the disciplinary proceedings cannot remain stayed for an indefinitely long period of time as it would neither be in the interest of the employer nor of the employee. In the facts of that case, however, the Court exercised its discretion by staying the ongoing disciplinary proceedings until the closure of the recording of evidence of the prosecution witnesses in the said case. The Court also directed for an expeditious disposal of the criminal trial.

14. In ***Kendriya Vidyalaya Sangathan and Ors.*** (supra), after considering its earlier judgment in ***Capt. M. Paul Anthony*** (supra), the Supreme Court held as under:

“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, a 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 respondent in service in spite of such serious charges levelled against him. This Court in the said case of State of Rajasthan 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 seem to be almost similar to the facts of this case, held that the Tribunal fell in error in staying the disciplinary proceedings.

12. We think the above ratio of law laid down by this Court applies aptly to the facts of the present case also. It is also to be noted that in Capt. M. Paul Anthony case this Court has accepted the principle laid down in Rajasthan case.

13. As stated above, in the case in hand, both the Tribunal and the High Court proceeded as if a departmental enquiry and a criminal trial could not proceed simultaneously, hence, they stayed the departmental enquiry which by itself, in our opinion, is contrary to the principles laid down in the abovesaid cases."

15. From the above, it would be evident that where the criminal trial and the departmental proceedings are based on the same or identical facts, the Court may in its discretion stay the proceedings of the departmental enquiry till at least the evidence in the criminal trial is recorded. However, there is no legal bar in holding of the disciplinary enquiry and the criminal trial may simultaneously go on.

16. In the present case, as noted hereinabove and as is evident from the Articles of Charge, the disciplinary proceedings are not based on similar or identical facts or allegations based on which the criminal



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trial is pending against the petitioner.

17. Keeping in view the above, we find no merit in the present petition. The same is accordingly dismissed. The pending applications also stand dismissed.

18. We make it clear that we have not expressed any opinion on the merits of the criminal trial or the disciplinary proceedings.

NAVIN CHAWLA, J

SHALINDER KAUR, J

OCTOBER 22, 2024/sg/SJ

Click here to check corrigendum, if any