

Before Jaswant Singh & Sant Parkash, JJ.

DR. BALWINDER KUMAR SHARMA— *Petitioner*

versus

**HON'BLE PUNJAB AND HARYANA HIGH COURT,
THROUGH REGISTRAR GENERAL, AND ANOTHER—**

Respondent

CWP No.7539 of 2021

May 28, 2021

Constitution of India, 1950—Art. 226—Stay on departmental enquiry till conclusion of criminal trial—Allegation of leakage of question paper against petitioner, who was posted as Registrar (Recruitment) in High Court was assigned duty of assisting Recruitment Committee in conducting preliminary examination and question paper of preliminary examination held on 16.07.2017 was leaked—Inordinate delay by Criminal Court in disposal of criminal case—FIR is of year 2017, challan presented in year 2019 and charged framed in January, 2020—Held, where there is delay in disposal of criminal case, departmental proceedings can be proceeded with, so that conclusion can be arrived at an early date—If ultimately employee is found not guilty in criminal trial, his honour may be vindicated and in case he is found guilty, employer's decision to get rid of him by way of disciplinary proceedings at the earliest is endorsed—Therefore, no stay on departmental enquiry till conclusion of criminal trial in FIR.

Held that, the Hon'ble Supreme Court directed the trial Court to decide the trial within one year and respondent was to extend full cooperation to the trial Court for early disposal and if the trial is not completed within one year, the disciplinary proceedings against the respondent shall be resumed by the enquiry officer concerned. No such memorandum has been pleaded to be in existence amongst the parties in the present case.

(Para 25)

Further held that, similarly, the judgment of Stanzen' case (supra) is also not applicable to the facts of the case as in the said case, the Hon'ble Supreme Court had held that there is no legal bar to hold disciplinary as well as departmental proceedings simultaneously, however, in view of the fact that all the three Courts below had

exercised their discretion in favour of staying the ongoing disciplinary proceedings, therefore, directions were issued for expeditious conclusion of trial.

(Para 26)

Ramesh Kumar Bamal, Advocate
for the petitioner.

Kanwaljit Singh, Senior Advocate, assisted by
Ajaivir Singh, Advocate
for the respondent(s)-High Court, Chandigarh.

JASWANT SINGH, J.

(1) Petitioner – Dr. Balwinder Kumar Sharma has filed the instant writ petition seeking quashing of the order / intimation dated 06.11.2019 (**Annexure P-9**), whereby the representation dated 28.09.2018 (**Annexure P-8**) submitted by him requesting for stay on departmental enquiry till the conclusion of criminal trial in FIR No. 194 dated 19.09.2017 registered at P.S 03-North, Chandigarh (**Annexure P-1**), has been rejected.

FACTS:

(2) An advertisement No. 6/2016 was notified by Haryana Public Service Commission for recruitment of Subordinate Judicial Officers in the State of Haryana (common called as HCS (Judicial) Examination). The petitioner, who was posted as Registered (Recruitment) on the establishment of respondent No. 1 – High Court, was assigned the duty of assisting the recruitment committee in conduct of the preliminary examination. After the preliminary examination was conducted on 16.07.2017, a complaint was received by respondent No. 1 – High Court on 20.07.2017 alleging therein that the question paper of preliminary examination held on 16.07.2017 was leaked and prayer was made for cancellation of the examination.

(3) The matter was taken up on judicial side as a petition under Section 482 of Cr.P.C. was filed vide CRM-M- No. 28947 of 2017, titled as *Suman* versus *State of Haryana and others*. In the said petition, it was directed that an FIR be registered against the present petitioner and others and further a Special Investigation Team (SIT) was ordered to be constituted to conduct investigation pertaining to the alleged leakage of question paper of HCS (Judicial) Preliminary Examination. Consequently, FIR No. 194 dated 19.09.2017 (**P-1**) was registered.

(4) After registration of FIR, investigation was conducted by the SIT and a challan under Section 173 of Cr.P.C. was submitted before the Special Court at Chandigarh on 04.01.2018 (**Annexure P-2**). Simultaneously, respondent No. 2 – Registrar Vigilance, Punjab and Haryana High Court served the petitioner a Memorandum dated 15.09.2018 alongwith Articles of Charge and Statement of Imputation (**Annexure P-5**), list of documents (**Annexure P-6**) and list of witnesses (**Annexure P-7**) as per Statutory Rules. The petitioner was given fifteen (15) days' time to respond to the said Memorandum. Instead of responding to same, the petitioner gave a written application dated 28.09.2018 (**P-8**) requesting the Chief Justice of Punjab and Haryana High Court for staying the proposed departmental proceedings initiated vide memorandum dated 15.09.2018 till the decision of criminal proceedings as the challan already stands submitted before the Criminal Court. It is relevant to mention that during the pendency of the said application / request, charges have also been framed vide order dated 31.01.2020 (**Annexure P-11**).

(5) The aforesaid application dated 28.09.2018 (**P-8**) has been rejected vide order dated 06.11.2019 (**P-9**), which has been impugned before this Court.

ARGUMENTS BY COUNSEL FOR PETITIONER:

(6) Learned counsel for the petitioner has raised the following arguments:

- A bare perusal of the charges framed by the Criminal Court and the memorandum issued by respondent No. 2 would show that both are based on same set of facts as well as documentary evidence and therefore both cannot continue simultaneously because the defence of petitioner would be prejudiced in criminal trial if the departmental enquiry is permitted to continue. Reliance in this regard has been placed upon the Judgment passed by Hon'ble Supreme Court in *Capt. M Paul Anthony* versus *Bharat Gold Mines Ltd* Allegations levelled and facts in departmental enquiry and those forming basis of criminal trial are same / identical as the evidence / documents as well as witnesses are same;
- Complicated questions of fact and law are involved, and therefore, same is beyond the limited scope of departmental enquiry, being summary in nature;

- In the alternative, in case the departmental enquiry cannot be stayed till the decision of criminal case, then till the examination of witnesses who are common to both trial and enquiry, the department enquiry be kept in abeyance. Reliance in this regard has been placed upon the judgment passed by Hon'ble Supreme Court in *Stanzen Toyotetsu India Private Limited* versus *Girish V. and others (2014) 3 Supreme Court Cases 636* and *State Bank of India and others* versus *Neelam Nag and another (2016) 9 Supreme Court Cases 491*.

(7) We have heard learned counsel for the petitioner at length and have scrutinized the paper-book.

(8) From the pleadings of the writ petition as well as arguments raised before us, we see that the sole question that arises before us to decide is as to whether the departmental proceedings can be permitted to continue in the wake of charges have been framed by the trial court or not?

DISCUSSION ON CASE LAW

(9) Some of the leading decisions on the issue are required to be referred so as to answer the issue raised before us. The first judgment on this issue is *Capt. M. Paul Anthony (supra)*, whereby Hon'ble Supreme Court, after considering the entire law involved had arrived to the following conclusions:

“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. ”

(10) Thereafter, reference can be made to the judgment passed by Supreme Court in *Civil Appeal No. 5121 of 2004*, decided on **10.08.2004**, titled as *State Bank of India and others* versus *R.B. Sharma*. The appellants-State Bank of India in aforesaid case had taken a plea before the Supreme Court that the employee was delaying the criminal trial and he was taking undue advantage of long pendency of the criminal case. The Supreme Court allowed the Civil Appeal and the matter was remanded back to the High Court to dispose of the matter afresh as the High Court had mechanically stayed the departmental proceedings without considering the effect of delay in criminal case as well as the directions issued in *Cap. M. Paul Anthony's case (supra)*.

(11) To the same effect is another judgment of Hon'ble Supreme Court in *Civil Appeal No. 7980 of 2004*, decided on **09.12.2004**, titled as *Hindustan Petroleum Corporation Ltd.* versus *Sarvesh Berry*, whereby while allowing the appeal filed by employer, it was held on facts that departmental proceedings could indeed continue as Criminal Court is concerned with the culpability of an offence punishable under various codes, whereas departmental proceeding is only pertaining to misconduct or breach of duty as defined under the relevant service rule and thus, applicability of Evidence Act stands excluded. Relevant paragraph No. 9 of the said judgment is reproduced as under:-

“9. The purpose of departmental enquiry and of prosecution

is two different and distinct aspects. 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. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public duty, as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Indian Evidence Act, 1872 (in short the 'Evidence Act'). Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. Under these circumstances, what is required to be seen is whether the department enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances. ”

(12) The Division Bench of this High Court in *CWP No. 9999 of 2006*, decided on **28.10.2006**, titled as “*Prem Singh Versus State of Haryana and others*”, observed that petitioner was a member of disciplined force and had been charged for demanding ` 30,000/- as illegal gratification. The Division Bench, while referring to judgment

of *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 respondent- department that a person like the petitioner who is charged with serious misconduct continued to be in service. With these observations, writ petition was dismissed.

(13) Further in *CWP No. 6155 of 2007*, decided on **21.08.2007**, titled as *Ved Parkash* versus *State of Haryana and others*¹, the Division Bench of this Court was considering the case of an exemptee Head Constable seeking quashing of the charge-sheet and stay of the disciplinary proceedings during the pendency of the criminal trial in FIR No. 58 dated 22.09.2006 under Sections 7/13 of Prevention of Corruption Act registered at Police Station State Vigilance Bureau, Ambala City. The petitioner therein was shown to have been caught red handed while accepting the bribe. The Division Bench while referring the judgment of *Capt. M. Paul Anthony's case* (supra), held that disciplinary proceedings should not be stayed as a matter of course and the writ petition was dismissed.

(14) In *Stanzen Tooyotetsu India P. Ltd.* versus *Girish V. and others*² same proposition as held in *Capt. M. Paul Anthony's case* (supra) was re-iterated with a slight addition that department proceedings were stayed till the common witnesses of criminal and departmental proceedings were examined in criminal trial.

(15) Thus, to our mind, the crux of all the decisions referred herein above leads to one conclusion that grant or decline of stay on departmental proceedings would always depend on the facts of the case, as there can be no straight jacket formula.

DISCUSSION ON FACTS:

(16) Coming back to the facts of the present case, it would be beneficial to reproduce the charges framed by the trial Court as well as articles of charge issued by respondent No 2. The charges framed in the criminal trial are reproduced as under:-

“ I, Dr. Gagan Geet Kaur, Special Judge – cum – Additional Sessions Judge, Chandigarh, do hereby charge you all accused persons as under:- That you during the year 2017-18, you accused Balwinder Kumar Sharma, Sunita,

¹ 2007(4) SCT 423

² (2015) 6 RCR (Civil) 723,

Sushila, Tejinder Bishnoi, Ayushi, Sunil Kumar @ Titu, Kuldip Singh, Subhash Godara, and Sushil Badhu entered into criminal conspiracy to do an illegal act by illegal means i.e. you accused B.K. Sharma being Registrar (Recruitment), Punjab and Haryana High Court being the custodian of the question paper pertaining to Haryana Civil Services, Judicial (Preliminary) which was to be conducted on 16.7.2017 but you accused B.K. Sharma leaked the said question paper before its due date to co-accused Sunita (prospective candidate) who further leaked the said question paper to co-accused Sushila (prospective candidate) and further allured Suman (complainant) to purchase the paper for the said examination for a sum of Rs. 1.5 crores at Sector-17, Chandigarh and further sold the paper to co-accused Tejinder Bishnoi (prospective candidate) through Ayushi (Room-mate of Sunita), Subhash Godara (father of Ayushi) Sushil Badhu (maternal uncle of Ayushi) and Sunil @ Titu provided accommodation to all the accused persons at Radha Krishan Mandir, Sector 8, Chandigarh for providing the leaked question paper and you accused Sunil @ Titu and accused Kuldip Singh (step brother of accused Sunita) in pursuance of conspiracy removed/destroyed the incriminating material of papers from the rooms of Sunita and Ayushi and thereby, you all committed an offence punishable u/s 120-B of IPC.

Secondly that on the above said period and place, you accused Balwinder Kumar Sharma being Registrar (Recruitment) as public servant was entrusted with the question paper of Haryana Civil Services, Judicial (Preliminary) to be held on 16/07/2017 and you leaked the question paper in pursuance of the aforesaid criminal conspiracy and thereby committed criminal breach of trust in respect of entrusted question paper and thereby you committed the offence punishable U/s 409 of IPC and you all the other above named accused persons committed an offence punishable U/s 409 of IPCr/w 120-B of IPC and within my cognizance.

Thirdly that on the above said period and place, you accused Balwinder Kumar Sharma being Registrar (Recruitment) as public servant was entrusted with the

question paper of Haryana Civil Services, Judicial (Preliminary) to be held on 16/07/2017 and you leaked the question paper in pursuance of the aforesaid criminal conspiracy induced the complainant to part with a sum of Rs. 1.5 Crores to provide her leaked question paper well in advance, as well as cheated Hon'ble Punjab and Haryana High Court and the other aspirants of the said examination and thereby you committed the offence punishable U/s 420 of IPC and you all the other abovenamed accused persons committed an offence punishable U/s 420 of IPC r/w 120-B of IPC and within my cognizance.

Fourthly that on the above said period and place, you accused Sunita influenced, by corrupt and illegal means to accused Balwinder Kumar Sharma being Registrar (Recruitment) as public servant who was entrusted with the question paper of Haryana Civil Services, Judicial (Preliminary) to be held on 16/07/2017 and leaked the question paper in pursuance of the aforesaid criminal conspiracy induced the complainant to part with a sum of Rs. 1.5 Crores to provide her leaked question paper well in advance, as well as cheated Hon'ble Punjab and Haryana High Court and the other aspirants of the said examination and thereby you committed the offence punishable U/s 8 of Prevention of Corruption Act, 1988 and you all the other above named accused persons committed an offence punishable U/s 8 of Prevention of Corruption Act, 1988 r/w 120-B of IPC and within my cognizance.

Fifthly that on the above said period and place, you accused Sunita by exercising personal influence to accused Balwinder Kumar Sharma being Registrar (Recruitment) as public servant who was entrusted with the question paper of Haryana Civil Services, Judicial(Preliminary) to be held on 16/07/2017 and leaked the question paper in pursuance of the aforesaid criminal conspiracy induced the complainant to part with a sum of Rs. 1.5 Crores to provide her leaked question paper well in advance, as well as cheated Hon'ble Punjab and Haryana High Court and the other aspirants of the said examination and thereby you committed the offence punishable U/s 9 of Prevention of Corruption Act, 1988 and you all the other above named

accused persons committed an offence punishable U/s 9 of Prevention of Corruption Act, 1988 r/w 120-B of IPC and within my cognizance.

Sixthly that on the above said period and place, you accused Balwinder Kumar Sharma being Registrar (Recruitment) as public servant was entrusted with the question paper of Haryana Civil Services, Judicial (Preliminary) to be held on 16/07/2017 and you leaked the question paper in pursuance of the aforesaid criminal conspiracy committed criminal mis-conduct and thereby you committed the offence punishable U/s 13(1)(d) of Prevention of Corruption Act, 1988 punishable U/s 13(2) of Prevention of Corruption Act, 1988 and you all the other above named accused persons committed an offence punishable U/s 13(1)(d) of Prevention of Corruption Act, 1988 punishable U/s 13(2) of Prevention of Corruption Act, 1988 r/w Section 120-B of IPC and within my cognizance.

Lastly that During the year 2017-18 at Chandigarh, Panchkula and Delhi, you accused Sunil @ Titu and accused Kuldip Singh (step brother of accused Sunita), Sunita, Sushila and Ayushi in pursuance of aforesaid conspiracy knowing that the offence regarding the leakage of paper has been committed and incriminating material, documents connected with the said offence were removed/destroyed from the rooms of Sunita and Ayushi, and you accused Sushila broken your mobile phone and you accused Sunil @ Titu destroyed the record relating to accommodation at Radha Krishan Temple, Sector 18, Chandigarh in order to dis- appear the evidence against you and other co-accused being part of conspiracy with the intention to screen the offender from legal punishment, as mentioned above, and thereby, you accused Sunil Titu and accused Kuldip Singh (step brother of accused Sunita), Sunita, Sushila and Ayushi committed an offence punishable u/s 201 of IPC whereas other accused persons committed an offence punishable U/s 201 of IPC r/w 120-B of IPC.

And I hereby direct that you be tried by this Court for the aforesaid offences. ”

(Emphasis Supplied)

(17) Similarly, Articles of Charge appended with the memorandum dated 15.09.2018 is reproduced as under:-

“ You, Dr. Balwinder Kumar Sharma, Additional District & Sessions Judge, Under Suspension with Headquarter at Rupnagar are hereby charged as under:-

(1) That while you were posted as Registrar (Recruitment), Preliminary Examination of Haryana Civil Services (Judicial Branch) was held on 16.07.2017. The question paper of the said examination remained in your custody, was leaked out due to which some candidates including Ms. Sunita d/o Sh. Ranjeet Singh r/o R.Z.P. 29 New Roshanpura, Nazafgarh, New Delhi, took undue benefits. Ms. Sunita was in constant contact with you and due to unwarranted favour by you, she managed to get top position in General Category with exceptionally high marks. Being Registrar (Recruitment), it was incumbent upon you to work honestly and with utmost devotion towards duty. By extending illegal favour to aforesaid Ms. Sunita d/o Sh. Ranjeet Singh, you have failed to maintain honesty, integrity and devotion to duty thereby showing conduct unbecoming of a judicial officer.

(2) That on receipt of complaints dated 19.07.2017 and 20.07.2017 made by Sh. Manoj Kumar alleging leakage of question paper for Preliminary Examination-2017 for recruitment to Haryana Civil Service (Judicial Branch), a fact finding enquiry was conducted in the matter wherein you denied any acquaintance with Ms. Sunita d/o Sh. Ranjeet Singh, contrary to the facts that as per call details you had exchanged as many as 760 calls/sms's with Ms. Sunita during the last one year. Thus, you had suppressed the facts from the authorities in order to avoid disciplinary action and thereby you failed to maintain utmost honesty, integrity and acted in a manner unbecoming of a judicial officer.

(3) During investigation by the police, from scrutiny of call detail records between you and Ms. Sunita d/o Sh. Ranjeet Singh, it has been revealed that you were using mobile numbers 7973415192 & 8360753268 and exchanged about 1100 calls with Ms. Sunita, on these numbers. You intentionally concealed these mobile numbers being used

by you from the High Court in violation of the instructions issued by this Court. By doing so, you have failed to maintain absolute integrity and showing conduct unbecoming of a judicial officer.

(4) That one Ms. Suman filed CRM-M No.28947 of 2017 titled 'Suman Versus State of Haryana and others' for direction to the respondents to register a case on the basis of complaint dated 19.07.2017 made by Sh. Manoj Kumar. F.I.R. No.194 dated 19.09.2017, under Sections 8, 9 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and Sections 409, 420 and 120-B of the Indian Penal Code, 1860 was registered against you at Police Station Sector-03 Chandigarh. During investigation of the case, it came to notice that you had developed intimate relations with Ms. Sunita amounting to immoral conduct thereby violated the Government Employees (Conduct) Rules, 1966, Punjab. Thus, you not only failed to maintain absolute integrity but also committed criminal act, maligned the image of judiciary in the eyes of public and acted in a manner unbecoming of a judicial officer. ”

(18) A perusal of the charges framed in criminal trial and Articles of Charge issued to petitioner in departmental enquiry would show that the petitioner has been implicated in both the criminal as well as departmental proceedings on similar set of facts. However, in our opinion this is bound to happen. When an employee is roped in a criminal offence, the disciplinary authority by taking cognizance of such initiation of criminal offence, proceeds with the departmental proceedings to take appropriate action as per the statutory rules governing the post an employee is holding. In case the offence is of serious nature, which may impute the integrity / character of an employee, then the department suspends the employee immediately and initiates further departmental proceedings.

(19) 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 at least 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.

(20) 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). The charges that have been framed against the petitioner are based upon the fact that question paper of HCS (Judicial Branch)-2017 was leaked by the petitioner on account of his intimacy with one *Sunita* who in turn had given it to other co-accused leading to parting of a sum of ` 1.5 Crore by the complainant. These allegations had led to framing of charges under Sections 409, 420, 120-B, 201 IPC and Section 8, 9, 13(1)(d) read with 13(2) of Prevention of Corruption Act, 1988. The petitioner, being a judicial officer holding the rank of Additional District Judge and posted as Registrar (Recruitment) was required to have the highest standards of propriety as well as moral conduct. One of the documentary evidence that has come on record is by way of call detail record of petitioner – Dr. Balwinder Sharma whereby 726 and 34 calls / SMSs have been made between him and accused-*Sunita*, who incidentally was a topper in the HCS (Judicial) Preliminary Examination. This *prima facie* reflects towards a conduct not behoving the post that petitioner – Dr. Balwinder Sharma was holding.

(21) We have highlighted only one of the aspect that is glaring at our faces to only satisfy ourselves regarding the decision taken vide impugned order dated 06.11.2019 (**P-9**) to continue with departmental proceedings. We would like to refrain ourselves to further delve into the issue and make more comments, lest it would prejudice the case of petitioner either during criminal trial or during the disciplinary proceedings.

(22) 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.

(23) Further, Charge 4 of Articles of Charge would show that the disciplinary authority has also charged the employee for immoral conduct and thereby violating the Government Employees (Conduct) Rules, 1966, Punjab as he had alleged developed intimate relations with *Ms. Sunita*. Further, petitioner has also been charged for failing to maintain absolute integrity as expected from a judicial officer and thus, has acted in a manner unbecoming of a judicial officer. These charges, by no stretch of imagination, can be gone into or enquired or punished by the Criminal Court. Hence, seen from this angle as well, we do not find any reason to stay disciplinary proceedings against the petitioner.

(24) Another factor that has weighed on our mind is the inordinate delay by the Criminal Court in disposal of criminal case. FIR is of the year 2017, challan presented in the year 2019 and charged framed in January, 2020. We are in 2021 and there seems to be little progress in the case. As held in *Capt. M. Paul Anthony's case (supra)*, where there is delay in the disposal of a criminal case, the departmental proceedings can be proceeded with so that the conclusion can be arrived at an early date. If ultimately the employee is found not guilty in criminal trial, his honour may be vindicated and in case he is found guilty, the employer's decision to get rid of him by way of disciplinary proceedings at the earliest is endorsed. In any case, the burden of proof and the manner in which allegations are to be proved, are different for criminal trial and disciplinary proceedings. The petitioner has been drawing salary, being an employee under suspension and it is neither desirable nor advisable for any Court of law in view of nature and gravity of allegations, to force an employer to continue paying an employee which the establishment does not

deem fit to continue as it's part by stalling the conclusion of departmental proceedings.

(25) Although the counsel for petitioner has relied upon the judgment passed by Hon'ble Supreme Court in *Neelam Nag's* case (supra) to contend that criminal trial can be ordered to be expedited rather than continuation of departmental proceedings, however, we are of the view that the judgment is not at all applicable to the facts of the present case. In the said case, *Neelam Nag* was an employee of a bank and there was a memorandum of settlement dated 10.04.2002 which protected the employees of bank from necessary departmental proceedings until completion of trial in the criminal case. The Hon'ble Supreme Court directed the trial Court to decide the trial within one year and respondent was to extend full cooperation to the trial Court for early disposal and if the trial is not completed within one year, the disciplinary proceedings against the respondent shall be resumed by the enquiry officer concerned. No such memorandum has been pleaded to be in existence amongst the parties in the present case.

(26) Similarly, the judgment of *Stanzen'* case (supra) is also not applicable to the facts of the case as in the said case, the Hon'ble Supreme Court had held that there is no legal bar to hold disciplinary as well as departmental proceedings simultaneously, however, in view of the fact that all the three Courts below had exercised their discretion in favour of staying the ongoing disciplinary proceedings, therefore, directions were issued for expeditious conclusion of trial.

(27) In view of the above, we find no merit in the instant writ **petition**, therefore, the same is hereby ordered to be **dismissed**.

Ritambhra Rishi