

Before Ashutosh Mohunta & T.P.S. Mann, JJ

VED PARKASH,—*Petitioner*

versus

STATE OF HARYANA & ANOTHER,—*Respondents*

C.W.P. No. 6155 of 2004

21st August, 2007

Constitution of India, 1950—Art. 226—Charges for demanding and accepting illegal gratification against an exemptee Head Constable—Criminal proceedings initiated—Whether departmental proceedings should be stayed till finalization of criminal proceedings—Held, no—No prejudice to petitioner merely because he may have to disclose those facts in departmental enquiry which he may like to disclose before criminal Court—Standard of proof in both proceedings is entirely different—Petition dismissed.

Held, that in a case of criminal nature where the petitioner is shown to have demanded and received illegal gratification and the same was, thereafter recovered from him, it is not easy to conclude that the defence of the petitioner is likely to be prejudiced merely because he may have to disclose those facts in the departmental enquiry, which he may like to disclose before the criminal Court. Similarly, charge of misconduct can also be proved as it would not be required of him to disclose his defence. Moreover, the standard of proof in both the proceedings, departmental and criminal, in any case, is entirely different.

(Para 7)

Further held, that the disciplinary proceedings should not be stayed as a matter of course. The prejudice to the defence of the delinquent officer before the criminal Court is only one factor. It will also be required that the charges must be same and the case involved complicated questions of law and fact

(Para 10)

H. S. Mann, Advocate, for the petitioner.

Harish Rathee, Sr. DAG, Hayana for the respondents.

T.P.S. MANN, J.

(1) The petitioner, who was an exemptee Head Constable and posted in the office of C.I.A-1, Ambala has filed the present petition, under Article 226 of the Constitution of India, for issuance of a writ in the nature of certiorari for quashing chargesheet dated 1st October, 2006 (Annexure P-1). Prayer has also been made for issuance of a writ of mandamus, directing the respondents to reinstate him in service and grant all the consequential reliefs.

(2) The facts of the case are that the petitioner joined the Haryana Police as a Constable on 12th April, 1989. He was promoted as exemptee Head Constable in July, 2005 after he had put in 15 years of service. On 22nd September, 2006, FIR No. 58 was registered at Police Station State Vigilance Bureau, Ambala City, under Sections 7/13 of the Prevention of Corruption Act. The petitioner was arrested in the said FIR and placed under suspension with effect from 22nd September, 2006 by an order passed by Superintendent of Police, Ambala on 26th September, 2006. After investigation of the criminal case, final report under Section 173 Cr.P.C has since been submitted. The charges against the petitioner have also been framed in the FIR in question and the case now fixed for 24th September, 2007 for recording of prosecution evidence. During the pendency of the aforementioned criminal case, impugned chargesheet dated 1st October, 2006 has been served upon the petitioner for holding a departmental enquiry.

(3) Learned counsel for the petitioner has submitted that continuance of departmental enquiry would tantamount to pre-judging the guilt of the petitioner, which would be established in the criminal case. In case the petitioner is proceeded against departmentally, he would be compelled to disclose his defence. Moreover, principal witnesses as cited in support of the chargesheet (Annexure P-1) are the same as cited in the list of witnesses in the criminal case. Pleading that the departmental enquiry is in violation of Articles 14 and 16 of the Constitution of India and against the principles of natural of justice, it has been contended that the same

is liable to be set aside and in any case stayed, during the pendency of criminal proceedings.

(4) Controverting the stand of the petitioner, the respondents through their counsel have submitted that the criminal and disciplinary proceedings can go simultaneously. It is not necessary that departmental proceedings are to be stayed till the finalization of criminal proceedings. Both the proceedings are not based on identical charges and evidence. Even otherwise, mere fact that the charges were identical was not a bar to the continuation of both the proceedings side by side.

(5) We have heard learned counsel for the parties and gone through the documents placed before us.

(6) It is clear from the facts of the case that the petitioner, who was an exemptee Head Constable has been charged for demanding and accepting Rs. 5,000 as illegal gratification for not arresting one Sonu Kumar Gupta. The petitioner was shown to have been caught red-handed while accepting the bribe. By his so doing, he has tarnished the image of the police in the eyes of general public, in spite of the fact that he was a member of a disciplined force.

(7) In the case of criminal nature, as mentioned above, where the petitioner is shown to have demanded and received illegal gratification and the same was, thereafter, recovered from him, it is not easy to conclude that the defence of the petitioner is likely to be prejudiced merely because he may have to disclose those facts in the departmental enquiry, which he may like to disclose before the criminal Court. Similarly, charge of misconduct can also be proved as it would not be required of him to disclose his defence. Moreover, the standard of proof in both the proceedings, departmental and criminal, in any case, is entirely different.

(8) In **State of Rajasthan versus B. K. Meena & others**, (1) it was held by Hon'ble the Supreme Court that during the pendency of criminal proceedings, the stay of disciplinary proceedings could not be and should not be a matter of course. The disciplinary proceedings should not be delayed unduly. It was well-known that the criminal cases are dragged on endlessly where high officials or persons holding high public offices are

(1) 1996(4) R.S.J. 402

involved. If a criminal case is unduly delayed that may itself be a good ground for going ahead with the disciplinary enquiry even where the disciplinary proceedings are held over at an earlier stage. The interest of administration and good government demanded that these proceedings be concluded expeditiously. The interest of administration demanded that undesirable elements were thrown out and any charge of mis-demeanour inquired into promptly. The disciplinary proceedings were meant not only to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. Moreover, the interest of delinquent officer also lay in a prompt conclusion of the disciplinary proceedings. If he was not guilty of the charges, his honour should be vindicated at the earliest possible moment and if he was guilty, he should be dealt with promptly, according to law.

(9) In **NOIDA Entrepreneurs Association versus NOIDA & others** (2), a three-Judge Bench of the Hon'ble Supreme Court, after referring to **Capt. M. Paul Anthony versus Bharat Gold Mines Ltd.** (3) indicated some of the fact situations which would govern the question whether departmental proceedings should be kept in abeyance, during the pendency of a criminal case. The conclusions which were deduced from various decisions were observed as summarised in para 22 in **Capt. M. Paul Anthony's case** (*supra*). The same are reproduced as under :

- “(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 conclusions of the criminal case.

(2) 2007(2) R.S.J. 504

(3) 1999(3) S.C.C. 679

- (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.”

(10) It is clear from the above that the disciplinary proceedings should not be stayed as a matter of course. The prejudice to the defence of the delinquent officer before the criminal Court is only one factor. It will also be required that the charges must be same and the case involved complicated questions of law and fact. When the facts of the present case are considered keeping in view the observations of the Hon'ble Supreme Court in **State of Rajasthan's case** (*supra*) and **NOIDA Entrepreneurs Association's case** (*supra*), we find that the petitioner has failed to make out any case for the grant of the reliefs prayed for by him.

(11) For the reasons mentioned above, the petition fails and is, accordingly, dismissed.