
be returned to the plaintiff for presentation to proper Court. In *Auto Engineering Works* versus *Bansal Trading Co. (15)*, it was held that after having found that the Court had no territorial jurisdiction to entertain the plaint, it ought to have returned the plaint for presentation to the proper forum.

(33) In view of the above legal position, we order return of the petition for presentation of the same to the proper Court having territorial jurisdiction. In the circumstances of the case, there shall be no order as to costs.

R.N.R.

Before Swatanter Kumar & S.S. Saron, JJ

DARSHAN KUMAR GUPTA — *Petitioner*

versus

PUNJAB NATIONAL BANK & ANOTHER—*Respondents*

C.W.P. No. 8796 OF 2001

10th October, 2002

Constitution of India, 1950—Art. 226—Prevention of Corruption Act, 1988—Ss. 7 & 13(2)—Registration of a criminal case u/ss 7 & 13(2) by Vigilance Department against a Bank Officer—Bank initiating departmental proceedings by serving a charge sheet containing different articles of charge—Officer claiming similarity in articles of charge and the charges framed in criminal proceedings—Whether departmental proceedings can be stayed till the conclusion of criminal proceedings—Held, no—Different set of facts in criminal & departmental proceedings—No prejudice to the right of defence of the officer before the criminal Court as a result of continuation of departmental proceedings—Petition liable to be dismissed.

Held, that the departmental proceedings ought not to be stayed if on somewhat similar facts or cause criminal proceedings were initiated before the competent Court of jurisdiction against the delinquent

officer. The ambit, scope and consequences of these two proceedings are entirely distinct and different. Stay of departmental proceedings on the ground of pendency of criminal proceedings would not be a rule but an exception which could be applied only upon satisfaction on the conditions precedent.

(Para 14)

Further held, that scope of the departmental proceedings is entirely different and distinct than that of the criminal proceedings in the present case. We are unable to see any prejudice to the right of defence of the petitioner before the criminal Court in the criminal proceedings as a result of continuation of the departmental proceedings. Both these proceedings are not based upon same set of facts. Similar questions do not arise for determination. There is no complexity in the merits of the respective cases, which is essentially inter-mingled. We are also unable to subscribe to the view that it would in any way be unfair not to permit departmental proceedings to continue during the pendency of criminal proceedings before the Court of competent jurisdiction.

(Para 16)

H.C. Arora, Advocate, for the petitioner.

K.S. Dadwal, Advocate, for the respondents.

JUDGMENT

Swatanter Kumar, J.

(1) Whether as a matter of rule, there ought to be deferment of conclusion of departmental proceedings till pronouncement of judgment by the Court of competent jurisdiction in a criminal trial, where the delinquent claims similarity in articles of charges and the charge framed in criminal proceedings? is the question that arises for consideration before us in this writ petition.

(2) The petitioner was working as Assistant Manager in Saidoke Branch of the Punjab National Bank. Upon registration of FIR No. 3 of 2000 dated 4th October, 2000, the petitioner was arrested by the State Vigilance Department of State of Punjab on 4th October, 2000. Vide order dated 30th October, 2000, petitioner was placed under suspension as a result of his arrest in a criminal case. The respondent Bank served a charge-sheet upon him containing different articles of

Charge accompanied by memorandum of allegations on 16th April, 2001. Enquiry Officer was appointed vide order dated 7th June, 2001. In furtherance to registration of the F.I.R. the investigating agency filed the challan and a charge was framed against the petitioner by the Court of competent jurisdiction.

(3) The contention of the petitioner is that the charge framed by the criminal Court and the Articles of charges served upon the petitioner are based upon common premises and in the event of departmental proceedings continuing, the petitioner would suffer a serious prejudice in his defence before the criminal Court the foundation of both the charges being the same. While relying upon the judgment of the Supreme Court in the case of *M. Paul Anthony Versus Bharat Gold Mines Ltd. (1)* and *Jatnu Ram Versus State of Haryana, (2)* the petitioner prays for stay of departmental proceedings till the conclusion of the criminal trial.

(4) Vide order dated 4th July, 2001 a Division Bench of this Court had granted interim exparte stay of departmental proceedings. The respondents filed an application for vacation of the stay order under Article 226(3) of the Constitution of India. The reply affidavit was also filed. Written statement was also filed along with stay application. According to the respondents, the writ petition was liable to be rejected as the petitioner had not approached the Court with clean hands. The charge-sheet dated 16th April, 2001 is stated to be different and distinct from the charge framed against the petitioner under Sections 7 and 13(2) of Prevention of Corruption Act, 1988. It is specifically pleaded that the scope of the enquiry and investigation is distinct and different in the facts and circumstances of the present case. The petitioner was caught red handed while accepting the bribe. As pleaded by the respondents, the petitioner used to demand money from various customers for advancement of loans. The specific incident related to 3rd October, 2000 when documents of loan were got executed. Despite sanction of the loan, the cash orders were not delivered to the persons, which were seized on 4th October, 2000 upon arrest of the petitioner.

(5) As this question arises more than often in various cases before the Court, we consider it appropriate to discuss the law enunciated by different judgments in regard to such matters. Thus,

(1) 1999(2) RSJ 318

(2) 1999(3) RSJ 134

it would be appropriate to examine the legal aspect of the case before we proceed to discuss the merits of the contentions raised in view of the peculiar facts and circumstances of the case.

(6) We have no hesitation in answering the proposition at the very outset of the judgment in the negative. It is neither practicable nor possible to accept the contention of the petitioner as a matter of absolute proposition of law. General principles which emerge from various pronouncements of the Hon'ble Apex Court definitely indicate that there cannot be a strait jacket formula for deciding the controversy of the present kind. Where there is no specific bar for simultaneous progress of the departmental enquiry and the criminal trial, there the exceptions have also been carved out to the rule. There could be cases where the departmental enquiry and the criminal trial are not only based on identical facts, but are so intermingled that their simultaneous progress could cause serious prejudice to the right of defence of the delinquent. Unless the evidence to be led in support of articles of charges in disciplinary proceedings and in criminal trial are so intricate and difficult and require proper technical or legal appreciation for their final determination, no fruitful purpose can be served by stalling departmental proceedings which are much simpler in their nature and do not require strict adherence to rule of evidence.

(7) The distinction between the departmental enquiry and criminal trial is distinctively accepted and is not a fine one so as to normally cause overlapping of proceedings and evidence. Initiation of criminal proceedings per se is not a bar to concurrent and continuation of disciplinary proceedings on somewhat similar facts. In certain cases, the Supreme Court has even sustained the argument of the department that departmental proceedings could continue even after the delinquent is acquitted by a criminal Court of such charge. In light of these principles we would now refer to specific judgments to provide clarity to the point of view we propose to take in the present case. A Division Bench of this Court in a very recent judgment in the case of *Shri Birbal Versus Haryana State Electricity Board and others*, CWP No. 15171 of 2002, decided on 26th September, 2002 held as under :—

“It is settled principle of law that the departmental proceedings in all the cases cannot be stayed till the conclusion of the proceedings before the criminal court merely on the ground the articles of charges and charges before the

criminal court have the similarities. It will have to be decided keeping in view the facts and circumstances of each case.

At this stage, it may be relevant to refer to the view expressed by the Hon'ble Apex Court in various cases relating to desirability of continuation of disciplinary proceedings despite criminal charges having been filed against the delinquent official. The Hon'ble Supreme Court in the case of Delhi Cloth and General Mills Ltd. v. Kushal Bhan A.I.R. 1960 Supreme Court 806 held as under :—

“Though very often employers stay enquiries into the misconduct of the employees pending the decision of the criminal trial courts dealing with the same facts and that is fair, it cannot be said that principles of natural justice require that an employer must wait for the decision, at least of the criminal trial court, before taking action against an employee.”

Further reference can be made to the case of Jang Bahadur Singh v. Baij Nath Tewari reported as A.I.R. 1969 S.C. 30.

The above view was reiterated with approval and with further extended limits of desirability of continuation of disciplinary proceedings even after being absolved or otherwise by the Hon'ble Supreme Court in the case of State of Punjab & Anr. v. Dalbir Singh & Ors. J.T. 2000 (10) S.C. 456, where the court held as under :—

“The question that arises for consideration, therefore, is whether the levy of penalty under the provisions of Motor Vehicles Act would absolve the concerned employee from all liabilities and would debar the disciplinary authority to initiate disciplinary proceedings. In other words, the question would be whether initiation of a departmental proceedings would tantamount to violation of provision contained in Article 20 (2) of the Constitution. Having examined the relevant facts involved in these appeals and having examined the judgment of the Full Bench of Punjab

and Haryana High Court, we have no hesitation to come to the conclusion that the Full Bench rightly interfered with the judgment of the Division Bench of Punjab and Haryana High Court. In our view, the payment of penalty under the provisions of Motor Vehicles Act would not absolve the employee fully from all other liabilities nor would it debar the employer from initiating a departmental proceedings for the alleged misconduct of the concerned delinquent employee. Such initiation of a departmental proceedings by no stretch of imagination, can be held to be violation of provision of Article 20 of the Constitution of India.”

Similar view was expressed by a Division Bench of this Court in *R.N. Yadav, Accountant Sugar Mills, Shahabad Markanda, Haryana v. State of Haryana and others*, 1997 (2) SCT 332.

Another Division Bench of this Court in the case of *Som Parkash Wadhawan vs. The Uttari Haryana Bijli Vitran Nigam and others* decided on 12th April, 2002, where the Court held as under :—

“It is a well settled rule of law that the scope, effect and consequences of the criminal and departmental proceedings are distinct and different. One necessarily may not determine the fate of the other. Once the employer has a reasonable suspicion on its employee for a serious offence like demanding and accepting illegal gratification, to prevent the department from taking recourse to conclusion of the proceedings, merely because the criminal proceedings have also been initiated against the official by the police/State Vigilance Department, would neither be just nor fair. The burden to show serious prejudice to his rights is upon the delinquent officer/official. The learned counsel for the petitioner has not been able to show as to what prejudice the petitioner is likely to suffer if both the proceedings continue.

The rules governing a criminal trial are so stringent that a delinquent officer as an accused may get benefit of doubt and resultant acquittal, but that necessarily may

not entitle him clearance in the departmental enquiry. The department would be well within its right to conduct an enquiry and pass appropriate orders in accordance with law. In the present case the evidence of the petitioner has still to start and it is not certain as to when the criminal proceedings pending before the Court of competent jurisdiction would attain finality. To keep the departmental proceedings in abeyance for such an indefinite period even otherwise would not be in consonance with the settled canons of service jurisprudence.”

“The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. Staying of disciplinary proceedings pending criminal proceedings, to repeat, should not be a matter of course but a considered decision. Even if stayed at one stage, the decision may require reconsideration if the criminal case gets unduly delayed.”

It also must be noticed that there is no rule which on its plain reading or on the principle of “necessary implication” can be construed as a bar for continuation of the two proceedings simultaneously. Thus, unless it is demonstratively shown that the petitioner would be exposed to grave prejudice and the proceedings are so intermingled that one cannot continue de-hors the other it may not be appropriate for the Court to stay the continuation of departmental proceedings till conclusion of the criminal proceedings. In this regard reference can also be made to a judgment of the Calcutta High Court and a Division Bench judgment of Rajasthan High Court respectively in the cases of Basudev Mitra, 1994(5) S.L.R. 401 and Laxman Lal versus State of Rajasthan, 1994(5) S.L.R. 120. (Reference State of Rajasthan versus Shri B.K. Meena and others, JT 1996(8) S.C. = AIR 1997 S.C. 13).”

(8) In addition to the above judgments, reference to some other judgments of the Apex Court which have a direct bearing on the

matter in issue would be proper. In the case of *State of Rajasthan* versus *B.K. Meena and others* (3) it was held as under :—

“It would be evident from the above decisions that each of them starts with the indisputable proposition that there is no legal bar for both proceedings to go on simultaneously and then say that in certain situations, it may not be desirable, advisable or appropriate to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. The staying of disciplinary proceedings, it is emphasised, is a matter to be determined having regard to the facts and circumstances of a given case and that no hard and fast rules can be enunciated in that behalf. The only ground suggested in the above decisions as constituting a valid ground for staying the disciplinary proceedings is “that the defence of the employee in the criminal case may not be prejudiced.” This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions of facts and law. In our respectful opinion, it means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, advisability, desirability or propriety as the case may be has to be determined in each case taking into consideration all the facts and circumstances of the case.”

The interest of the delinquent officer also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges, his honour should be vindicated at the earliest possible moment and if he is guilty he should be dealt with promptly according to law. It is not also in the interest of administration that persons accused of serious misdemeanour should be continued in office indefinitely, i.e. for long periods awaiting the result of criminal proceedings. It is not in the interest of administration. It only serves the interest of the guilty and dishonest. While it is not possible to enumerate the various factors, for and against the stay of disciplinary proceedings we found it necessary to emphasise some of the important considerations in

view of the fact that very often the disciplinary proceedings are being stayed for long periods pending criminal proceedings. Stay of disciplinary proceedings cannot be and should not be a matter of course.”

(9) In the case of Capt. M Paul Anthony versus Bharat Gold Mines Ltd. and another (*supra*) the Hon'ble Apex Court held as under :-

“These decisions indicate that though it would not be wrong in conducting two parallel proceedings one by way of disciplinary action and the other in the criminal court, still it would be desirable to stay the domestic inquiry if the incident giving rise to a charge framed against the employee in a domestic inquiry is being tried in a criminal court.”

(10) In the case of **Corporation of the City of Nagpur, Civil Lines, Nagpur and another** vs. **Ramchandra and others** (4), it was held as under :-

“Normally where the accused is acquitted honourably and completely exonerated of the charges it would not be expedient to continue a departmental inquiry on the very same charges or grounds of evidence, but the fact remains, however, that merely because the accused is acquitted the power of the authority concerned to continue the departmental inquiry is not taken away nor is its discretion in any way fettered.”

(11) In the case of **Jang Bahadur Singh** versus **Baij Nath Tiwari**, (5) the Hon'ble Supreme Court held as under :-

“The issue in the disciplinary proceedings is whether the employee is guilty of the charges on which it is proposed to take action against him. The same issue may arise for decision in a civil or criminal proceeding pending in a court. But the pendency of the court proceedings does not bar the taking of disciplinary action. The civil or criminal court has no such power. The initiation and continuation of disciplinary proceedings in good faith is not calculated to obstruct or interfere with the course of justice in the pending court proceeding.”

(4) 1981(2) SLR 274

(5) AIR 1969 SC 30

(12) Upon analysing the application of principles enunciated by the Hon'ble Apex Court, a Division Bench of this Court in the case of *Sarita Kumari and others* versus *The Punjab State Electricity Board, Patiala and others* (6) spelled out the conditions which need to be satisfied before the Court could grant stay of departmental proceedings because of pendency of criminal trial of teh delinquent official. The Court held as under :—

“It is true that court may not be able to evolve any hard and fast rule or formula on the basis of which stay of departmental proceedings can or cannot be granted in cases of simultaneous invocation of remedies by an employer. Equally true is the position of law that emerges from various other pronouncements including the judgments referred to supra that there can be no legal bar for simultaneous proceedings being taken against delinquent employee i.e. disciplinary as well as criminal action. Thus, we feel that it may be appropriate to satisfy certain basic conditions or criteria which the Courts may consider while dealing with the cases specially of the present nature. These are intended to be general guiding factors and are not exhaustive. Thus, the Courts may have to consider the existence of the following conditions in their right perspective to determine and decide whether the stay may or may not be granted in a given case :-

- (i) The criminal action and the disciplinary proceedings are grounded upon the same set of facts ;
- (ii) Identical and or similar question (s) arise for determination before the criminal Court of competent jurisdiction and the disciplinary/enquiring authority ;
- (iii) The Complexity of the merits of the case, that is to say, the case is of grave nature and involves questions of fact or law which are not simple and normally should be decided by a Court of law alone ; and
- (iv) Whether it will be unfair to the delinquent employee, to permit continuation of simultaneous proceedings because it would prejudicially affect the case of the said employee, or the delinquent employee would face trial because of continuation of disciplinary proceedings.”

(13) In the case of **Depot Manager, Andhra Pradesh State Transport Corporation** versus **Mohd. Yousuf Miya etc. (7)**, in a case where criminal proceedings under Section 304-A and 338 IPC were pending against the delinquent, the departmental enquiry on the basis that the delinquent official failed to anticipate accident and prevention thereof, were permitted to continue despite criminal proceedings. Similar view was also taken by the Calcutta High Court in the case of **Bhaskar Mondal** versus **UCO Bank and others (8)**, after discussing judgments of the Apex Court at some length.

(14) In a recent judgment the Hon'ble Apex Court has also taken the view that even the proceedings before the Civil Court and/or the criminal Court are based on the same cause of action, the proceedings before both should be permitted to continue simultaneously as it is not necessary that findings arrived at by the Civil Court shall be binding over the criminal Court. They would also not supersede the findings recorded by the others. This view was taken in the case of **K. Premshanker** versus **Inspector of Police and another (9)**, and it was held that the view expressed by the Apex Court in the case of **V.M. Shah** versus **State of Maharashtra and another JT 1996(6) SC 433** is not the correct view. It is indicative of the fact that continuation of proceedings founded on common cause necessary need not lead to an inevitable result of staying one during the pendency of the other. This view can be appropriately applied to the proceedings before the criminal and departmental proceedings on the principle of ratio decidendi. Therefore, it may not be appropriate to hold as a principle of law that the departmental proceedings ought to be stayed if on somewhat similar facts or cause criminal proceedings were initiated before the competent Court of jurisdiction against the delinquent officer. It is a settled principle of law that the ambit, scope and consequences of these two proceedings are entirely distinct and different. On the analysis of the afore-stated principle it could fairly be stated that stay of departmental proceedings on the ground of pendency of criminal proceedings would not be a rule but an exception which could be applied only upon satisfaction on the afore-noticed conditions precedent.

(15) Having answered the legal proposition as afore-noticed, now we proceed to discuss the merits of the present case on facts. In the present case the petitioner is facing criminal proceedings under

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- (7) AIR 1997 SC 2232
 - (8) 2002(4) SLR 601
 - (9) JT 2002(7) SC 30

Sections 7 and 13(2) of the Prevention of Corruption Act, 1988 for demanding and accepting the bribe. The said proceedings are stated to be pending before the Court of competent jurisdiction. The department has served a charge-sheet upon the delinquent official, which has been annexed as Annexure P/2 to the writ petition. The charges framed against the petitioner are of very general nature. The emphasis of the charge-sheet is that petitioner's activities have tarnished the image of the Bank by demanding and accepting bribe from the applicants/borrowers for sanctioning and disbursing loans in their favour. The charge refers to other transactions as well which are neither the basis nor even mentioned in the challan filed against the petitioner and the charge framed by the Court of competent jurisdiction. The criminal charge relates to demanding bribe from one Shri Amrik Singh. In the statement of imputations supporting the charge-sheet, cases of Pawan Kumar and Baljinder Singh have also been mentioned from whom the petitioner demanded bribe of Rs. 7,500 and Rs. 3,500.

(16) It is evident from the above narrated facts that scope of the departmental proceedings is entirely different and distinct than that of the criminal proceedings in the present case. We are unable to see any prejudice to the right of defence of the petitioner before the criminal Court in the criminal proceedings as a result of continuation of the departmental proceedings. Both these proceedings are not based upon same set of facts. Similar questions do not arise for determination. There is no complexity in the merits of the respective cases, which is essentially inter-mingled. We are also unable to subscribe to the view that it would in any way be unfair not to permit departmental proceedings during the pendency of criminal proceedings before the Court of competent jurisdiction. It appears to us that it will not be fair to stall the departmental proceedings as they will take considerable time in their conclusion particularly finally. The Bank cannot be compelled to pay to the delinquent officer for ~~and~~ this period despite the fact that as alleged, the petitioner has tarnished the image of the Bank and is prima facie blameworthy of serious misconduct. On the contrary, an appropriate direction should be issued to the Bank to conclude the departmental proceedings as expeditiously as possible and in any case not later than one year from the date of pronouncement of the judgement.

(17) For the reasons afore-stated we dismiss this petition with above observations, leaving the parties to bear their own costs.

R.N.R.