

Before Mehtab S. Gill & Augustine George Masih, JJ.

E.H.C. BALJIT SINGH,—Petitioner

versus

STATE OF HARYANA AND OTHERS,—Respondents

CWP No. 18869 of 2007

22nd September, 2008

Constitution of India, 1950—Art. 226—Punjab Police Rules, 1934—S. 13.7—Prevention of Corruption Act, 1988—Ss. 7, 13, 49/88—Allegations of demanding bribe—Registration of case against petitioner under provisions of 1988 Act—Department also initiating departmental proceedings for indiscipline, carelessness & grave act of misconduct—Whether departmental proceedings liable to be stayed during pendency of trial of criminal proceedings—Held, no-Enquiry proceedings are complete—No complicated question of law and facts—No prejudice to right of petitioner in trial of criminal case—Petition dismissed.

Held, that there cannot be a strait jacket formula nor can there be all situations which can be foreseen and elaborated where it can be said that the departmental proceedings must or are to be stayed. Each case has to be seen depending upon the individual facts and circumstances of the case.

(Para 7)

Further held, that a perusal of the allegations in the charge sheet in the departmental proceedings and the FIR would show that the same do not involve complicated questions of facts and law. It is a simple case where bribe of Rs. 5000 has been demanded and the petitioner has been caught red-handed while accepting the same. Further, at this stage, when a show cause notice has already been issued to him and the enquiry proceedings are complete, the petitioner cannot be allowed to take a plea that his defence at the trial in the case would be seriously prejudiced.

(Para 10)

J.S. Maanipur, Advocate, *for the petitioner.*

Harish Rathee, *Sr. DAG, Haryana.*

AUGUSTINE GEORGE MASIH, J.

(1) Counsel for the petitioner has submitted that the departmental proceedings pending against the petitioner may be stayed during the pendency of trial of the criminal proceedings as the allegations in the F.I.R. and the departmental proceedings are the same. The petitioner would be prejudiced as he will have to disclose his defence in the departmental proceedings which would adversely affect his stand in the criminal proceedings. He further submits that the departmental proceedings have come to an end and the petitioner has been issued a show cause notice by passing a final order in the departmental proceedings after the submission of the enquiry report by the Inquiry Officer. He submits that the criminal proceedings before the Competent Court are at the stage of recording of evidence of the prosecution and if the departmental proceedings are finalized prior thereto, the petitioner would suffer an irreparable loss as his defence would be prejudiced before the criminal Court. He has relied upon the judgment of the Hon'ble Supreme Court in the case of **NOIDA Entrepreneurs Association versus NOIDA and others (1)**, to contend that the allegations in the departmental proceedings and the criminal case are based upon identical and similar set of facts and the charge in the criminal case against the delinquent employee is of grave nature which involves conflicting questions of law and facts and therefore, the departmental proceedings be stayed till the conclusion of the criminal case.

(2) On the other hand, counsel for the respondents submits that there are no complicated questions of facts and law involved in this case. It is a simple case where the allegations against the petitioner are that while he was posted at Police Station Sadar Hansi, one Ram Bilas son of Raj Kumar Sharma, resident of Nehla, District Fatehabad was called at the Police Station and told that Manjit Singh son of Rajbir Singh his nephew has been arrested at Police Station Sadar Hansi in F.I.R. No. 219 dated 10th August, 2006 under Section 382 IPC. The

petitioner threatened the said Ram Bilas that he would involve his brother also in that case unless a bribe of Rs. 5000 is not paid to him. The petitioner pressurized Ram Bilas for this amount of Rs. 5000/-. Ram Bilas having got fed up made a written complaint against the petitioner to the Superintendent of Police, State Vigilance Bureau, Hisar on 21st August, 2006. Inspector Ramesh Kumar caught the petitioner red handed and recovered a sum of Rs. 5000/- from him which he had demanded and taken as bribe. F.I.R. No. 50 dated 21st August, 2006 under Section 7, 13, 49/88 of the Prevention of Corruption Act, 1988 was registered against the petitioner at Police Station State Vigilance Bureau, Haryana, Hisar. The petitioner after his arrest was released on bail by the Court and the said case is still pending against him. This act of the petitioner of taking bribe of Rs. 5000/- from Ram Bilas is an act of grave indiscipline and carelessness which has given a bad name and impression to the Police Department in the eyes of the public and therefore, having been charged for this indiscipline and carelessness and grave act of misconduct, the petitioner is being departmentally proceeded against. It has been submitted by the respondents that the intention and purpose of the criminal prosecution and departmental enquiry are totally different and distinct from each other; their nature is different; and their effects are different. In criminal prosecution, the accused is tried 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 made satisfaction to the public. It is the violation of the law or the omission of a public duty for which the Court tries the accused and if found guilty, he is punished accordingly. In a departmental enquiry, it is primarily with an intention of maintaining discipline in the service and to see that the efficiency is maintained in public service.

(3) We have given our thoughtful consideration to the rival contentions of the parties.

(4) The Hon'ble Supreme Court in the case of **Capt. M. Paul Anthony versus Bharat Gold Mines Ltd. (2)**, indicated some of the fact situations which would govern the question where the departmental proceedings may be kept in abeyance during pendency of a criminal

case. The conclusions after considering the law on this aspect were summarized in paragraph 22 thereof which reads as follows :—

- (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 mentions 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.”

(5) In the case of **State of Rajasthan versus B.K. Meena and others (3)**, the Hon'ble Supreme Court has laid down the law with regard to the staying of departmental proceedings during the pendency of the criminal proceedings and in para 14 has held as follows :—

“14. 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 fact 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 ground indicated in *D.C.M. And Tata Oil Mills* is also not an invariable rule. It is only a factor which will go into the scales while judging the advisability or desirability of staying the disciplinary proceedings. One of the contending considerations is that the disciplinary enquiry cannot be—and should not be—delayed unduly. So far as criminal cases are concerned, it is well known that they drag on endlessly where high

officials or persons holding high public offices are involved. They get bogged down on one or the other ground. They hardly ever reach a prompt conclusion. That is the reality in spite of repeated advice and admonitions from this Court and the High Courts. If a criminal case is unduly delayed that may itself be a good ground for going ahead with the disciplinary enquiry even where the administration and good government demand that these proceedings are concluded expeditiously. It must be remembered that interests of administration demand that undesirable elements are thrown out and any charge of misdemeanour is enquired into promptly. The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. 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. All the relevant factors, for and against, should be weighed and a decision taken keeping in view the various principles laid down in the decisions referred to above.” (emphasis applied)

and then in para 17, the Hon'ble Supreme Court has pointed out the difference between the departmental proceedings and the criminal proceedings which reads as under :—

“17. There is yet another reason. The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. 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 under the Prevention of Corruption Act (and the Indian Penal Code, if any) are established and, if established, what sentence should be imposed upon him. 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.

(6) The Hon'ble Supreme Court has reiterated the law in the judgment relied upon by the counsel for the petitioner i.e. **NOIDA Entrepreneur Association's case** (supra) and in para 11 has held as follows :—

“11. 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."

(7) The position which emerges therefore, is that there cannot be a strait jacket formula nor can there be all situations which can be foreseen and elaborated where it can be said that the departmental proceedings must or are to be stayed. Each case has to be seen depending upon the individual facts and circumstances of the case and applying the broad principles as laid down in **Capt. M. Paul Anthony's** case (*supra*), the Court must proceed to decide the question as to whether the departmental proceedings should be stayed during the pendency of the criminal proceedings or not.

(8) In the presnet case, the contention of the petitioner that his rights would be prejudiced as he would have to disclose his defence in the departmental proceedings which would directly affect his stand before the criminal Court, cannot be sustained.

(9) In the present case, the enquiry against the petitioner stands already concluded when the Inquiry Officer completed his enquiry and submitted the enquiry report on 19th November, 2007. Thereafter, the Punishing Authority has,—*vide* its order dated 15th December, 2007 issued a show cause notice to the petitioner. The petitioner has participated in the enquiry and has cross-examined the witnesses produced by the Department against him.

(10) A perusal of the allegations in the charge-sheet in the departmental proceedings and the F.I.R. would show that the same do not involve complicated questions of facts and law. It is a simple case where bribe of Rs. 5000 has been demanded and the petitioner has been caught red handed while accepting the same. Further, at this stage, when a show cause notice has already been issued to him and the enquiry proceedings are complete, the petitioner cannot be allowed to take a plea that his defence at the trial in the criminal case would be seriously prejudiced.

(11) We cannot lose sight of the fact that the petitioner is a member of a disciplined force. He is a police official who is directly dealing with the public. The allegations are of bribery. Corruption in any form cannot and will not ever be beneficial in the administrative machinery. By way of initiating and proceeding with the departmental proceedings, the delinquent employee is given a fair chance to defend himself. The interest of the administration demands that undersirable elements are thrown out after the due process of law in case the delinquent official is held guilty. The action needs to be prompt and in accordance with law. It serves a dual purpose (i) in case the delinquent employee is an undesirable element, he needs to be got rid of at the earliest to keep the administrative machinery unsullied; and (ii) if he is not guilty of the charges, the honour of the delinquent employee should be restored. It is also not in the interest of the administration that the persons who are accused of serious misdemeanour

should be continued in the office indefinitely or for long periods awaiting the result of the criminal proceedings. It is in the interest of the administration and the employee both that the matter is finalized at the earliest to avoid any undue hardship or any undue benefit to either the administration or the employee.

(12) The present case is one where we are of the view that the interest of the petitioner would not be seriously prejudiced in case the departmental proceedings are not stayed during the pendency of the criminal proceedings.

(13) In the light of what has been held by the Hon³ble Supreme Court and in the facts and circumstances of the present case, we do not find any merit in this petition and dismiss the same.

R.N.R.

Before Hemant Gupta & Kanwaljit Singh Ahluwalia, JJ.

AVNASH RANI AND ANOTHER,—*Petitioners*

versus

**ADDL. DEPUTY COMMISSIONER-CUM-REGISTRAR,
FEROZEPUR & OTHERS,—*Respondents***

CWP No. 16539 of 2007

3rd October, 2008

Constitution of India, 1950—Art. 226—Registration Act, 1908—Ss. 23 & 36—Presentation of sale deed for registration after more than four months of its execution—S.23 of 1908 Act provides that no document other than a will shall be accepted for registration unless presented for that purpose to proper officer within four months from date of its execution—Even pendency of civil suit between parties invocation of jurisdiction of Registrar lacks bona fide—Order of Registrar passed without examining facts is not sustainable—Respondent also failing to prove transaction of sale—Order passed by Registrar set aside holding same as illegal and unjustified.