
(1999) 10 P&H CK 0140
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 11966 of 1998

Aggarwal B.K.

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 12-10-1999

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Penal Code, 1860 (IPC) — Section 409

Citation : (2000) 2 ILR (P&H) 41 : (2000) 3 LLJ 1547 : (2000) 124 PLR 267 :
(2000) 3 RCR(Criminal) 423

Hon'ble Judges : N.K. Agarwal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

N.K. Agarwal, J.—This is a petition under Articles 226 and 227 of the Constitution for stopping the disciplinary proceedings against the petitioner till the decision in the criminal trial pending against him.

2. The petitioner joined service with the State Bank of India as a Cashier in the year 1972. He was promoted as an Officer, Junior Management Grade Scale I, in the year 1980. He was working in the year 1995 as the Assistant Manager of the Rewari Branch of the bank. Certain fraudulent withdrawals of money were made from some savings accounts during the period from August to October 1995. Such withdrawals were to the tune of Rs. 2,28,500. An F.I.R. was registered by the police against the petitioner on October 30, 1995 u/s 409, I.P.C. That report had been lodged by Sri H.K. Benal, Assistant General Manager.

3. The petitioner has averred in his petition that a criminal case has been registered against him on the basis of certain confessions allegedly made by him. Actually, he had been kidnapped from Rewari on October 30, 1995 and was beaten. He was forced to sign a confessional statement. His wife lodged an F.I.R. on October 31, 1995. He was placed under suspension on November 17, 1995. He was granted anticipatory bail on February 2, 1996. The challan was put up in

the Court on March 1, 1996. The Chief Judicial Magistrate, Rewari framed charge u/s 409, IPC against him on September 8, 1997. A chargesheet, dated December 18, 1997, was issued to the petitioner in the departmental proceedings. He has been asked to submit his reply to the chargesheet served on him in the disciplinary proceedings.

4. The petitioner's case is that the allegations in the F.I.R. and the departmental chargesheet are the same. Both are based on the same facts and the documents. The petitioner would take his defence in the criminal case. He wrote to the Deputy General Manager, who is the disciplinary authority, that he is unable to submit his reply to the departmental chargesheet as it will prejudice his legal rights in the criminal case. He informed that he did not want to disclose his defence in the disciplinary proceedings prior to the disclosure in the criminal trial. He, therefore, requested the disciplinary authority to stay the departmental proceedings till the final decision in the criminal case. The disciplinary authority has not stayed the enquiry.

5. Learned counsel for the petitioner has argued that if the petitioner is compelled to take his defence in the departmental proceedings, his rights in the criminal case would be adversely affected. He has not yet disclosed his defence in the criminal case. The enquiry officer has directed the petitioner to put forward his defence failing which ex parte departmental proceedings would be initiated. The petitioner sent a representation on March 7, 1998 stating therein that the disciplinary proceedings may be stayed. Since this request has not been accepted, the petitioner has come to this Court for the necessary relief.

6. Learned counsel for the petitioner has placed reliance on a decision of the Supreme Court in *Kusheshwar Dubey Vs. Bharat Coking Coal Ltd. and Others*, . It has been held as under, in Para 7 at pp. 472-473:

"The view expressed in the three cases of this Court seems to support the position that while there could be no legal bar for simultaneous proceedings being taken, yet, there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case. In the latter class of cases it would be open to the delinquent employee to seek such an order of stay or injunction from the Court. Whether in the facts and circumstances of a particular case there should or should not be such simultaneity of the proceedings would then receive judicial consideration and the Court will decide in the given circumstances of a particular case as to whether the disciplinary proceedings should be interdicted, pending criminal trial. As we have already stated that it is neither possible nor advisable to evolve a hard and fast, straitjacket, formula valid for all cases and of general application without regard to the particularities of the individual situation. For the disposal of the present case, we do not think it necessary to say anything more, particularly when we do not intend to lay down any general guideline."

7. The Supreme Court had again an occasion to examine a similar matter in

State of Rajasthan Vs. B.K. Meena and others, . It was noticed in that case that the approach and the objective in the criminal proceedings and the disciplinary proceedings were altogether distinct and different. In the disciplinary proceedings the question was 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 was 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.

8. Learned counsel for the petitioner has, on the strength of the aforesaid two decisions, submitted that in the case of the present petitioner, the criminal case has been launched by none other than the Assistant General Manager of the bank. The facts are identical in the criminal case as well as the disciplinary proceedings. Since the allegations are not at all different and relate to the withdrawals from the saving accounts, the defence of the petitioner shall not only be prejudiced but the question to be decided in both the proceedings may be similar.

9. Learned counsel for the respondent-bank has, on the other hand, contended that there is no sufficient reason to stay the disciplinary proceedings. The petitioner had misappropriated the funds of the customers of the bank. Both the criminal proceedings and the disciplinary proceedings may go on simultaneously. Reliance is placed by the learned counsel on a decision of the Karnataka High Court in N. Shivalingaiah v. Karnataka State Co-operative Marketing Federation Ltd, and Ors., 1996 (2) SLR 602. It was noticed in that case that investigation by the police was not complete nor any chargesheet had been filed. Mere pendency of the criminal case was said to be not a bar against taking the disciplinary action. It was further seen that enquiry did not involve any complicated question of law and facts. Therefore, stay of the disciplinary proceedings was said to be not justified.

10. A Division Bench of this Court had also an occasion to consider a similar question in R.N. Yadav v. State of Haryana and Ors. 1998 Lab IC 322 . It was noticed in that case that the statements of the prosecution witnesses u/s 161, Criminal Procedure Code, had already been recorded during investigation. It was held that the interest of the delinquent officer also lay in a prompt conclusion of the disciplinary proceedings. It was ordered that the domestic enquiry should be expeditiously concluded.

11. On a consideration of the controversy, it is found that the criminal case as well as the departmental proceedings are based on identical allegations. The matter was reported to the police by a senior officer of the bank. The nature of evidence would also be similar in both the proceedings, though the standard of proof may indeed be different. In the criminal trial, standard of proof would be stricter. The matter involves the questions of facts as well as law. FIR was lodged on October 31, 1995, whereas chargesheet in the disciplinary proceedings has

been served on the petitioner on December 18, 1997. In these circumstances, it is found appropriate that the disciplinary proceedings may await the outcome of the criminal case. The petitioner should not be asked to face two identical proceedings involving same facts and allegations. The questions to be decided in both the proceedings appear to be, almost similar. In these circumstances, it would be just and fair to stay the disciplinary proceedings till the conclusion of the criminal trial.

12. In the result, the writ petition is allowed.

13. The disciplinary proceedings against the petitioner shall remain stayed till conclusion of the criminal trial. No costs.