
(2018) 01 MAD CK 0352
In the Madras High Court
Case No : 9533 of 2009

A.Ramalingam

APPELLANT

Vs

The District Forest Officer

RESPONDENT

Date of Decision : 02-01-2018

Acts Referred:

[Constitution of India](#), [Article 226](#) -
Power of High Courts to Issue certain writs

Citation : (2018) 01 MAD CK 0352

Hon'ble Judges : S.M.Subramaniam

Bench : Single Bench

Advocate : M.Siddharthan, M.Veilkani Raju, A.Muthukaruppan

Final Decision : Dismissed

Judgement

1. The learned counsel for the Petitioner has sincerely taken this Court to the statement of one Thiru.Prasanna Venkatesan and Mayazhagu

enclosed in typed-set of papers from page No.6 to 14 and 15 to 20.

2. The learned counsel for the writ petitioner has attempted to establish that the charge-memo was issued based on the evidence given by the

above said two persons before the criminal Court and therefore the same cannot constitute a charge. In other words, the learned counsel for the

Petitioner is of the opinion that based on the statement of the witnesses, no charge memo can be issued by the departmental authorities.

3. The learned Additional Government Pleader appearing on behalf of the respondent rebutted the said contention by stating that it is a case of

corruption and the criminal case is pending. The Writ Petitioner is also facing departmental disciplinary proceedings. Thus, it is for the petitioner to

submit his explanation/objection on the charge-memo and to prove his

innocence before the enquiry proceedings conducted by the respondent in this regard. This Court has now to consider the nature of allegations set out against the petitioner in the charge-memo, dated 16.12.2008 and the contents of the charge-memo is extracted hereunder:

VERNACULAR MATTER OMITTED

4. Annexure-II of the charge-memo dealt with allegation statement of imputations on the charges. Annexure-III provides the list of documents and

Annexure-IV denotes the list of witnesses to be examined in the departmental disciplinary proceedings. From the statement of imputations, list of

documents and the list of witnesses, this Court is of the view that there is no infirmity in the charge-memo issued against the Petitioner.

5. No writ can be entertained challenging a charge memo in a routine manner. Judicial review in this regard is certainly limited and the constitutional

Courts are to be cautious, while entertaining a writ petition against a charge memo.

6. A charge memo per se cannot constitute any cause of action to entertain a writ petition. A writ petition can be entertained against a charge

memo, if the same is issued by the authority having no jurisdiction or competency or if any mala fide allegations are raised or if the same is in

violation of the Statutory Rules in force. Even in case, raising allegations on mala fides, the authority against whom allegation is raised to be

impleaded as party respondent in his personal capacity. In the absence of any one of these legal grounds, no writ petition can be entertained

against a charge memo and it is left open to the writ petitioner to prove his innocence before the enquiry officer by providing evidence, documents,

etc.,. Intermittent intervention in the departmental disciplinary proceedings are certainly not desirable.

7. On initiation of the disciplinary proceedings the authorities competent shall ensure that the enquiry proceedings are concluded at the earliest

possible without causing any unnecessary delay. The disciplinary proceedings initiated against a public servant should be allowed to be concluded

within a reasonable period of time and the same should reach its logical conclusion. The authorities competent on initiation of the disciplinary

proceedings cannot keep the same pending for long years. Long pendency of the disciplinary proceedings would cause prejudice to the delinquent

employees.

8. For instance, pending disciplinary proceedings is a bar for promotion, so also for retiring employee. He will be deprived of his pensionary

benefits during the pendency of the disciplinary proceedings. Thus the disciplinary authority once initiated the proceedings under the Discipline and

Appeal Rules should conclude the same without any delay.

9. A direction issued by the Government for speedy disposal of the disciplinary proceedings, though is directory in nature, the authorities

competent have to keep in mind that this is temporary and prescribed only to avoid further complication and to see that the said disciplinary

proceedings are concluded within a reasonable time.

10. Even writ proceedings are filed under the Article 226 of the Constitution of India by the delinquent officials, challenging a charge memo in

order to prolong and protract the disciplinary proceedings. In some cases, the Courts are witnessing that repeated writ petitions are filed at each

and every stage of the disciplinary proceedings with an idea to escape from the clutches of the disciplinary proceedings. Such an attitude of the

delinquent officials are to be deprecated. Entertaining such a writ petition itself to be curtailed in view of the fact that long pendency of the writ

petition in High Court would not cause any undue advantage to the delinquent officials, so as to escape from the clutches of disciplinary

proceedings on account of the long delay.

11. Yet another argument advanced by the learned Counsel for the petitioner is when a criminal case also is pending against the writ petitioner and

the trial has already commenced, in the event of acquittal, the petitioner would be getting the benefit of quashing the charges. Such an argument is

absurd and deserves no consideration.

12. Simultaneous proceedings are certainly permissible and the Hon"ble Apex Court of India, reiterated and emphasised that a mere pendency of

the criminal case is not a bar to proceed with the disciplinary proceedings. It is held that for convicting a person in a criminal case high standards of

proof is required. However, no such strict proof is required for punishing an employee under the Discipline and Appeal Rules. Probabilities of

preponderance of are sufficient to punish a public servant under the Conduct Rules. Further an order of acquittal would not exonerate an employee

from the departmental disciplinary proceedings. Even in case of an acquittal, the disciplinary authority can proceed with the departmental

disciplinary proceedings and punish the employee under the Conduct Rules. The Conduct Rules enumerate various misconducts. Even, if the

behaviour of a Government employee is an unbecoming of an officer itself, is sufficient to punish him under the Discipline and Conduct Rules.

Moral turpitude is also a ground to punish a public servant. Thus a mere acquittal in a criminal case is not a ground for seeking exoneration from

the departmental disciplinary proceedings.

13. Government servants play a significant role in running the administration of the country. They are important constituents of the administrative set

up of the nation. They are pillars of the Government departments on whose shoulders the responsibility to implement the Government policies lies.

They provide public services to the citizens at the grass root level and in the same way, they forward grievances of the public, their representations

and demands to higher ups for their effective resolution. The Government employees have different work culture and responsibilities as compared

to their counterparts in private sector. They are smartly paid and have some kind of perquisites given to them but at the same time, they have heavy

responsibilities towards the Government in particular and public in general. However, when the Government servants deviate from the established

rules of conduct, the departmental disciplinary proceedings will be initiated. It is the need of the hour to analyse whether conducting departmental

proceedings and criminal proceedings would amount to double jeopardy or such simultaneous proceedings are to be continued simultaneously.

14. The departmental authorities are free to exercise such lawful powers as are conferred on them by the departmental rules and regulations.

15. In the case of *Sri Bhagwan Ram v. The State of Jharkand, State of Bihar and others*(2017), it is well-settled that a domestic enquiry and a

criminal trial can proceed simultaneously and the decision in the criminal case would not materially affect the outcome of the domestic enquiry. The

nature of both the proceedings and the test applied to reach a final conclusion in the matter, are entirely different.

16. In the case of *Dr.Bharathi Pandey-Deputy General Manager V. Union of India*[Special Civil Application No.15602 of 2013], the Apex Court

held that it is clear that the departmental inquiry proceedings in every case need not be stayed till the criminal proceedings against the petitioner are concluded. It may be done in case of grave nature involving complicated questions of facts and law. The advisability and desirability has to be determined considering facts of each case.

17. In the case of *Ajith Kumar Das v. Union of India and Others*[W.P.(C) NO.4036 of 2017], the Court held that the departmental enquiry is to

maintain discipline in 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 guideline as inflexible rules in which the departmental

proceeding may or may not be stayed pending trial in criminal case against the delinquent officer. There would be no bar to proceed simultaneously

with the departmental proceeding and trial of a criminal case unless the charge in a criminal trial is of grave nature involving complicated questions

of fact and law. Offence generally implies infringement of public as distinguished from mere private right punishable under criminal law, when trial

for criminal offence is conducted it should be in accordance with the proof of offence as per the evidence defined under the provisions of the

evidence act. Converse in the case of departmental enquiry in a departmental proceeding relates to conduct of breach of duty of the delinquent

officer who punish him for his misconduct defined under the relevant statute/rule or law that strict standard of rule or applicability of Evidence Act

stands excluded in a settled legal position.

18. In the case of *Avinash Sadashiv Bhosale v. Union of India*[(2012) 13 SCC 142], the Court held that there is no legal bar for both proceedings

to go on simultaneously. The only valid ground for claiming that the disciplinary proceedings may be stayed would be to ensure that the defence of

the employee in the criminal case may not be prejudiced but even such grounds would be available only in cases involving complex question of fact

and law. Such defence ought not to be permitted to unnecessarily delay the departmental proceedings. The interest of the delinquent officer as well

as the employer clearly lies in a prompt conclusion of the disciplinary proceedings.

19. The Supreme Court in the case of *Karnataka State Road Transport*

Corporation v. M.G.Vittal Rao[(2012) 1 SCC 442] gave a timely reminder of the principles that are applicable in such situations succinctly summed up in the following words:

- (i) There is no legal bar for both proceedings to go on simultaneously.
- (ii) The only valid ground for claiming that the disciplinary proceedings may be stayed would be to ensure that the defence of the employee in the criminal case may not be prejudiced. But even such grounds would be available only in cases involving complex questions of facts and law.
- (iii) Such defence ought not to be permitted to unnecessarily delay the departmental proceedings. The interest of the delinquent officer as well as the employer clearly lies in a prompt conclusion of the disciplinary proceedings.
- (iv) Departmental Proceedings can go on simultaneously to the criminal trial, except where both the proceedings are based on the same set of facts and the evidence in both the proceedings is common".

20. In the case of NOIDA Entrepreneur Association v. NOIDA and the others[J.T. 2001 (2) SC 620], the Court held that the standard of proof

and nature of evidence in the departmental inquiry is not the same as in criminal case. 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.

21. In the case of State Bank of India & Ors. Versus R.B.Sharma, [AIR 2004 SC 4144], the Hon"ble Supreme Court reiterated observing that

both proceedings can be held simultaneously. It held, "the purpose of departmental inquiry and of prosecution is to put a distinct aspect. Criminal prosecution is launched for an offence for violation of 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 a public duty. The departmental inquiry is to maintain discipline in the service and efficiency of public service.

22. In the case of Ajith Kumar Nag v. General Manager(PJ), Indian Oil Corporation Ltd., Haldia[2005-7-SCC-764], the Honourable Apex

Court considered the issue of validity of conducting departmental proceeding when the criminal case was pending against the official and held as

follows:

Acquittal by a criminal court would not debar an employer from exercising power in accordance with Rules and Regulations in force. The two

proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of

criminal trial is to inflict appropriate punishment on offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and

to impose penalty in accordance with service Rules. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to

prove the guilt of the accused "beyond reasonable doubt", he cannot be convicted by a court of law. In departmental enquiry, on the other hand,

penalty can be imposed on the delinquent officer on a finding recorded on the basis of "preponderance of probability".

23. In the case of West Bokaro Colliery(Tisco Ltd.) v. Ram Parvesh Singh(2008) 3 SCC 729, the Hon"ble Supreme Court has held in the case of

that since standard of proof required in criminal case are beyond reasonable doubt and what is required in departmental inquiry is only of finding

the guilt on the basis of preponderance of probability, there is no bar in continuing both simultaneously.

24. In the case of S.A.Venkatraman v. Union of India, AIR 1954, SC 375 it has been held by the Supreme Court that taking recourse to both,

does not amount to double jeopardy.

1. In Stanzen Toyotetsu India Private Limited v. Girish V. And Other (2014) 3 SCC 636. It was held that suffice it to say that while there is no

legal bar to the holding of the disciplinary proceedings and the criminal trial simultaneously, stay of disciplinary proceedings may be advisable

course in cases where the criminal charge against the employee is grave and continuance of the disciplinary proceedings is likely to plagiarize their

defence before the criminal court.

2. The Supreme Court in *State of Rajasthan v. B.K.Meena and Others* (1996) 6 SCC 417 held 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. Therefore,

stay of disciplinary proceedings cannot be, and should not be, a matter of recourse.

3. It is also to note that acquittal in criminal proceedings on the same set of charges, per se, does not entitle the delinquent to claim immunity from

disciplinary proceedings, as observed by the Supreme Court in the case of *C.M.D.U.C.O. vs. P.C.Kakkar*, AIR 2003 SC 1571. In the same

way, departmental proceedings may be continued even after retirement of the employee. (*U.P.S.S.Corp.Ltd. vs. K.S.Tandon*, AIR 2008 SC

1235)

25. Considering the above judgments, this Court is of the firm opinion that the procedure for taking disciplinary action against a Government

servant is lengthy and detailed one, giving maximum opportunity to the government servant to prove his innocence. A Government employee is

expected to perform his duties with utmost diligence, efficiency, economy and effectiveness. The Government procedures are lengthy in order to

ensure that the Government employees perform their responsibilities without any pressure or exterior considerations. However, at the same time, it

ensures discipline amongst the employees and shows the door to the employees who have become dead wood and do not perform as per

expectations of public in general and his department in particular. Disciplinary proceeding are conducted to ensure that the morale of the

employees as a whole is boosted. It ought to be noted that criminal proceedings will last for years and this can lead to loss of evidences and

thereby staying departmental disciplinary proceedings from being conducted simultaneously would lead to gross miscarriage of justice. Also, it is

pertinent to note the fact that the object of such departmental proceedings is not

to penalise but to assist in restoring the morale of Government

servants. Thus, it is of utmost importance that the Court has to strike a balance between the need for a fair trial to the accused on one hand and the

competing demand for an expeditious conclusion of the ongoing disciplinary proceedings on the other which will not have any adverse impact if is

conducted simultaneously.

26. Such being the view of this Court, no further adjudication on merits is to be undertaken in this writ petition. Accordingly, the writ petition

stands dismissed. However, there shall be no order as to costs. Consequently, connected MP(MD)No. 1 of 2009 is also dismissed.