
(2003) 03 JH CK 0104

In the Jharkhand High Court

Case No : Writ Petition (S) No. 582 of 2003

Ashok Kumar Upadhya

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 12-03-2003

Acts Referred:

Citation : (2003) 2 JCR 559

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : S.K. Dwivedi, for the Appellant; Sheela Prasad, Addl. CGSC, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—This application has been preferred by petitioner to suspend the departmental proceeding initiated vide Memo No. V-15014/HEC/Admn.in/Maj (CISF)/200Q/407 dated 14th April, 2000 till the disposal of criminal case in which the petitioner has been committed session being S.T. No. 1227/2000 pending before the Sessions Judge, Nalanda, Bihar.

2. The main plea taken by the petitioner is that both the charges in the criminal case and departmental proceeding are identical and based on similar set of facts.

3. It appears that the petitioner with his unit was sent on deputation on election duty in the year 2000 vide order dated 6th February, 2000 passed by the Deputy Commandant, CISF. On 28th February, 2000, after returning from election duty, one Sri Meena - the inspector of the petitioner's unit, complained against the petitioner to the Dy. Inspector General, CISF. Unit HEC Ltd., Ranchi that on 27th February, 2000, when the inspector gave certain direction to the members of the Force, the Constable No. 852230387, A.K. Upadhaya (petitioner) misbehaved with him and fired one round from his rifle. On the basis of such complaint, the petitioner was suspended on 28th February, 2000 and a criminal case was also lodged on 29th February, 2000, registered as Deep Nagar PS Case No. 29/2000.

In connection with the said case, the petitioner was arrested by police and remanded to the judicial custody but later on granted bail on 15th March, 2000.

4. Counsel for the petitioner referred to the FIR and the imputation of charges enclosed with the memorandum dated 18th March, 2000 by which departmental proceedings was initiated. It was submitted that for same and similar set of facts the criminal case and the departmental proceeding has been initiated. Reliance was also placed on the decision of the Supreme Court.

5. Counsel for the Union of India opposed the prayer and submitted that the charges are different.

6. Whether simultaneous continuance of a department proceeding with criminal proceeding can proceed or not, fell for consideration before the Supreme Court a number of times and a number of decisions were given. In a recent case Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, the Supreme Court taken into consideration all such decisions rendered earlier held as follows :

"The conclusion which are deducible from various decisions of this Court referred to above are :

(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 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."

7. In the present, case of petitioner, the main charges in the departmental proceeding are misconduct and misbehaviour of the petitioner with the superior

officer. It is based on the incidence dated 27th February, 2000 on the basis of which the criminal case has been lodged. The allegation, such as the petitioner refused to obey the direction of the superior officer as was made by the Inspector, CISF cannot be decided in the criminal case, nor the Court can decide whether it amounts to misconduct and misbehaviour with the superior officer or not.

8. Further, from the allegations made, there appears to be no complicated question of fact and law. Thereby, the petitioner cannot derive any benefit of Clause (ii) or (iii) of paragraph 22 of the judgment in Capt. M. Paul Anthony (*supra*), as quoted above.

9. In the circumstances, I am not inclined to suspend the departmental proceeding at the instance of the petitioner which is pending for last three years but could not progress in view of interim order of the Court.

10. There being no merit, the writ petition is dismissed.