
(2010) 03 DEL CK 0373

In the Delhi High Court

Case No : Writ Petition (C) 11621 of 2009

ASI Jai Bhagwan

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 25-03-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173
Prevention of Corruption Act, 1988 — Section 13, 7
Railway Protection Force Rules, 1987 — Rule 146.2, 146.4, 146.7, 153
Railway Security Rules, 1987 — Rule 153

Citation : (2010) 6 SLR 104

Hon'ble Judges : Vipin Sanghi, J;Gita Mittal, J

Bench : Division Bench

Advocate : U. Srivastava, for the Appellant; J.P. Sharma, for the Respondent

Judgement

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Gita Mittal, J.—By this writ petition, the petitioner has assailed the order dated 17th August, 2009 passed by the disciplinary authority dismissing the petitioner's application praying for keeping the disciplinary proceedings against him in abeyance on the ground that the petitioner stood implicated in a criminal prosecution. The petitioner also prayed for a direction to keep in abeyance the departmental enquiry proceedings till final disposal of his criminal prosecution.

2. The petitioner was appointed on 21st June, 1973 as a constable of the Railway Protection Force, in which post he was serving on all relevant dates. It has been submitted in the writ petition that the petitioner was trapped in a case while he was posted as an Asst. Sub Inspector with the Railway Protection Force at Nizamuddin Station, which resulted in the registration of FIR No. 44/2007 dated 18th September, 2007 u/s 7/13 of the Prevention of Corruption Act against him. The petitioner has contended that his implication was incorrect and the case against him was fabricated and concocted. It is an admitted position that the petitioner was placed in judicial custody on 23rd October, 2007 and was released

on bail only on 2nd November, 2007.

3. By a memorandum dated 20th November, 2007, the respondents served the petitioner with the charge sheet on the basis of misconduct and absence from duty without due permission and proposed to conduct an enquiry against the petitioner under Rule 153 of the Railway Security Rules, 1987. The respondents enclosed the statement of charges on which the same was proposed as also the details of the allegations; list of documents and witnesses by whom the charges were proposed to be proved. The respondents have submitted that they were compelled to initiate the disciplinary proceedings against the petitioner.

4. In view of the challenge raised by the petitioner, it becomes necessary to examine the charges on which the enquiry was proposed against the petitioner in extenso and the same read as follows:

1. On 23.10.07, you were posted for duty at RSF Post Nizamuddin in the shift from 08.00 to 20.00 hours and you absented yourself from your duty without the permission of any authority or any officer and appeared for Bail/surrender in the Anti-Corruption Court, Tees Hazari, which tantamount to the disregard and laxity towards your duty.

2. On 18.09.2007, an F.I.R. No. 44/2007 u/s 7/13 of Prevention of Corruption Act was registered against you by the Anti-Corruption Branch for taking/demanding bribe and from 23.10.2007 to 02.11.2007, you were sent under the judicial custody. This Act of misconduct on your part maligned the image of the Force.

5. So far as the registration of the case against the petitioner is concerned, it is an admitted position that on completion of investigation, the charge sheet as prescribed by Section 173 of the Criminal Procedure Code stands filed before the concerned court and the petitioner's prosecution in respect thereof is pending. The allegation against the petitioner was that he demanded money from passengers who were travelling without tickets on the train between New Delhi to Nizamuddin.

6. Aggrieved by the proposal of the respondents to initiate disciplinary proceedings, the petitioner had earlier filed Writ Petition (C) No. 594/2008 complaining that his defence in the criminal proceedings would be prejudiced in case the disciplinary enquiry was to proceed. This writ petition was disposed off by an order dated 22nd September, 2008 by this Court with a direction to the enquiry officer to examine the application which the petitioner would move seeking stay of the disciplinary proceedings in the light of the principles laid down by the apex court in the decisions noted in the said order. The court had directed that the enquiry officer would give an opportunity of hearing to the petitioner and that the enquiry would not proceed further till decision in application of the petitioner is made. The petitioner was directed to cooperate in the expeditious disposal of the application.

7. The application made by the petitioner was considered and rejected by the

disciplinary authority with a further direction to the enquiry officer to continue with the enquiry proceedings. This order of the disciplinary authority was communicated to the petitioner by way of a letter dated 28th November, 2008 issued by the Asst. Security Commissioner/RPF. The petitioner was thereby informed that the disciplinary authority was of the view that the charge sheet dated 20th November, 2007 was issued on the basis of misconduct and negligence under Rule 153 of the Railway Protection Force Rules, 1987 and on grounds of violation of Rule 146.2, 146.4 and 146.7 of the RPF Rules, 1987 and that the petitioner's act had brought disrespect to the force and the petitioner was also found negligent towards assigned duties. The disciplinary authority was of the view that the charges were not brought against the petitioner for the criminal/corruption case and therefore, there was no similarity between the petitioners' prosecution before the criminal court and the enquiry proceedings were concerned.

8. The petitioner assailed this order of the disciplinary authority by way of a Writ Petition No. 313/2009. This writ petition was accepted by the court by an order dated 18th May, 2009 and the order dated 28th November 2008 by the enquiry officer was set aside for the reason that it did not meet the mandate of the directions contained in the earlier order dated 22nd September, 2008. A further direction was issued to the respondents to pass a fresh order in terms of the order dated 22nd September, 2008.

9. The enquiry officer thereafter proceeded to examine the petitioner's application praying for keeping in abeyance its proceedings. The application has been dismissed by a fresh order dated 17th August, 2009. Aggrieved thereby, the petitioner has filed the present writ petition. We have heard learned Counsel for both the sides at length.

10. Learned Counsel has contended that in fact, the entire proceedings against the petitioner are baseless. He has submitted that so far as the prayers of the petitioner under the present proceedings are concerned, the same is confined to the petitioner's contention that the proceedings before the enquiry officer would strongly prejudice the petitioner's defence in his criminal prosecution.

11. Having regard to the nature of allegations which are subject matter of the first charge against the petitioner, learned Counsel for the petitioner concedes that he cannot possibly maintain the prayer made in the writ petition for keeping the enquiry in abeyance and the petitioner would have no objection if the disciplinary proceedings are proceeded with so far as the first charge is concerned. We, therefore, in the present order have examined the merit of the petitioner's prayer for keeping the disciplinary proceedings in abeyance only with regard to the second charge.

12. It needs no elaboration that there is no legal bar for criminal proceedings and a departmental enquiry to go on simultaneously in respect of identical charges. The question which has to be considered by the court is the impact of the

continuation of the disciplinary proceedings on the defence of the employee in the criminal case. It has been repeatedly held that identity of charges, witnesses, documents against an employee in the two cases may make out a strong case for keeping the criminal proceedings in abeyance for the reason that the defence of the employee in the criminal case may be strongly prejudiced.

13. On this issue we may usefully extract the principles laid down by the apex court in *State of Rajasthan Vs. B.K. Meena and others*, , wherein at paragraph 14 and 17, it was held as follows:

14. It would be evident from the above decision 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 not also 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 consideration 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 inspite 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 disciplinary proceedings are held over at an earlier stage. The interests of 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.

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.

14. These very principles have been reiterated by the Supreme Court in the later pronouncements reported at Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, Hindustan Petroleum Corporation Ltd. and Others Vs. Sarvesh Berry, and Noida Entrepreneurs Assn. Vs. Noida and Others,

15. In Capt. Paul Antony (supra), the apex court has laid down the principles which would apply while determining whether the proceedings in a criminal case and departmental proceedings could proceed simultaneously. In paragraph 22 of the pronouncement, the court has culled them out as follows:

22. The conclusions 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, administration may get rid of him at the earliest.

16. In the instant case, it has been contended before us that on 18th September, 2007 an FIR No. 44/2007 was registered against the petitioner by the Anti Corruption Branch u/s 7/13 of the Prevention of Corruption Act. It is further alleged that as part of second charge, it is alleged that a case was registered on the allegation that the petitioner had accepted/demanded bribe, and from 23rd October, 2007 to 2nd November, 2007 and the petitioner was sent to judicial custody. The respondents have only to examine as to whether the factum of the petitioner being sent to judicial custody on the charge of taking/demanding bribe amounts to misconduct which has maligned the image of the force.

17. Mr. Srivastava, learned Counsel for the petitioner has painstakingly urged that these allegations could be supported by the respondents only in case the petitioner was convicted of the charges which have been levelled against him in the criminal case. This aspect, in our view, would form the basis of the petitioner's defence in the enquiry which has to be conducted. It is open for the petitioner to place the aforesaid submissions before the enquiry officer, who would then consider the same. However, the disciplinary proceedings cannot be kept in abeyance on the ground that the petitioner's defence to the second charge is that decision thereon depends on the outcome of the criminal proceedings.

18. So far as the allegations which constitute the second charge are concerned, the respondents have alleged that on 18th September, 2007, FIR No. 44/2007 was registered against the petitioner by the Anti Corruption Branch for taking/demanding bribe and that the petitioner was sent to judicial custody. The charge does not relate to the allegations which are the subject matter of the criminal case, but only to the factum of registration of the case; the petitioner having been sent to judicial custody, and; about these facts maligning the image of the force.

19. Having regard to the nature of allegations against the petitioner in the charge sheet, it has to be held that the approach as well as objective of the criminal proceedings and the disciplinary proceedings is clearly distinct and different. The disciplinary proceedings are not at all concerned with the nature or content of the allegations which are subject matter of the criminal trial. It is not disputed before us that the witnesses and the documents which are to be placed before the enquiry officer for proof of charges in the disciplinary proceedings is not the same as those to prove the charges before the criminal court. No element of mens rea is involved in so far as the charge in the disciplinary proceedings is concerned. In view of the above, the prayer of the petitioner for keeping the disciplinary proceedings in abeyance is devoid of any legal merit. The same is certainly not supported by the principles laid down in the judicial precedents which we have noted herein above.

20. We, therefore, find no merit in this writ petition and application, which are hereby dismissed.

21. We may note that when the writ petition came up for hearing on 11th September, 2009, an interim order staying the departmental proceedings was passed. This order has remained operative till date. In view of the above, the interim order shall stand vacated. The respondents shall be free to proceed with the disciplinary enquiry.

22. It is made clear that nothing contained herein is an expression of opinion on the merits of the case.

Dasti to the parties.