

(2021) 07 OHC CK 0048

In the Orissa High Court

Case No : Writ Petition (Civil) No. 16373, 22946 Of 2015

Damodar Das (in both cases)

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 06-07-2021

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Railway Property (Unlawful Possession) Act, 1966 — Section 3(a)
Railway Service (Conduct) Rules, 1966 — Rule 3.1(i), 3.1(ii), 3.1(iii)
Railway Protection Force Act, 1957 — Section 9(1)(i)
Railway Protection Force Rules, 1987 — Rule 146.4, 153, 272

Citation : (2021) 07 OHC CK 0048

Hon'ble Judges : Dr B. R. Sarangi, J

Bench : Single Bench

Advocate : Saswati Mohapatra, S.K. Das 2, A.K. Jena, D.K. Sahoo

Final Decision : Dismissed

Judgement

Dr. B.R. Sarangi, J

1. Both the above noted writ petitions have been filed by Damodar Das. In W.P. (C) No.22946 of 2015 he sought the following reliefs:

â??(i)Â Hold/declareÂ thatÂ theÂ opp. party No.3, Enquiry officer is conducting the Departmental Enquiry No.323 against theÂ petitionerÂ beingÂ

preconceivedÂ and predetermined and thereby direct the opp. Party No.2 to change the Enquiry officer for fair enquiry;

(ii) Pass such other order(s) or issue direction(s) as may be deemed fit and proper in the bonafide interest of justice;â??

Whereas W.P.(C) No.16373 of 2015 has been filed by him seeking following reliefs:

â??(i)Â To quash the letter dtd.30.07.2015 under Annexure-14;

(ii) Hold/declare that continuation of Departmental Proceeding against the present petitioner during pendency of the criminal case instituted against the petitioner for

the self same incident is bad, illegal and cannot be sustainable and/or maintainable in the eye of law.â??

Since both the writ petitions have been filed by the selfsame petitioner and they have arisen out of the same occurrence, they have been heard

together and are disposed of by this common judgment which will govern in both the cases.

2. The factual matrix of the case, in brief, is that the petitioner was working as constable in Railway Protection Force (RPF) at Rayagada. While he

was so continuing, on 16.08.2013 at about 10.30 PM at Ladda Railway Station, there was theft of aluminum powder from a stabled rake of goods

train, namely, â??VZP/BTAPâ?. On 17.08.2013, the local police caught hold of three accused persons with vehicle and recovered the materials, i.e.,

all stolen aluminum powder from their possession. Being informed about the theft, the R.P.F. officials on 17.08.2013 conducted raid over the Ladda

Railway Station. The Inspector, R.P.F., Rayagada on 17.08.2013 drew and registered an F.I.R. bearing No. R.P.(UP) Case No.17 of 2013 under

Section 3(a) of Railway Property (Unlawful Possession) Act, 1966 against unknown criminals and on the same day, he forwarded the case record to

the learned S.D.J.M., Rayagada.

2.1. During enquiry of the aforesaid theft case, opposite party authorities came to know that one K. Ramanjaneyulu, Sub-Inspector, R.P.F. was in

contact with some criminals and accused persons of the aforesaid theft case through his cell phone during and after the aforesaid crime. Since the

said K. Ramanjaneyulu made call to the petitioner through his cell phone during night of the date of crime, the petitioner was implicated as an accused

in the aforesaid R.P.(UP) Case No.17 of 2013, which was registered at RPF/Post/Rayagada. The inquiry officer, in the aforesaid case, vide letter

dated 28.11.2013, submitted a report regarding involvement of the petitioner in the theft case while he was deployed for guarding duty at Ladda

Railway Station. Basing on the confession statement of some of the accused persons and also on the call detail records of the accused persons and

the petitioner revealed that many calls in between the petitioner and some of the accused persons and K. Ramanjaneyulu, Sub-Inspector in the night of

15th, 16th and 17th of August, 2013 and thus prima facie his involvement was established in the preliminary enquiry. Consequentially, a criminal case bearing 2(C)CC Case No.504 of 2013, arising out of RP(UP) Case No.17 of 2013, was registered.

2.2 The petitioner filed BLAPL No.27429 of 2013 on 05.12.2013 before this Court, but the same was rejected on 24.04.2014. Thereafter, he

surrendered before the learned S.D.J.M., Rayagada on 14.05.2014, on which date he was arrested and remanded to judicial custody up to 27.05.2014.

Later, on 24.05.2014, he was released on bail by the learned S.D.J.M., Rayagada and after his release, PC/RPF/Rayagada directed him to

SCNL/WAT for his daily attendance at Security Control/Waltair.

2.3 The petitioner was absconded from duty on 27.08.2013 and from 21.09.2013 to 08.01.2014 without any authority. Therefore, in the meantime he

was placed under suspension on 28.11.2013 on the basis of fact findings report dated 28.11.2013. The Sr. Divisional Security Commissioner,

RPF/E.Co.Rly/ Waltair passed an order on 09.12.2013 under Annexure-4 that during suspension period, the petitioner was to give daily attendance

once in a day at Security Control/Waltair at 10.00 hours and sign in the Daily Diary of Security Control/Waltair. The reason for his absence for the

period from 21.09.2013 to 08.01.2014 was given by the petitioner for his hospitalization at SCB Medical College & Hospital for treatment and to that

effect he has also submitted medical certificates showing his treatment from 22.09.2013 to 08.01.2014. Taking into account the aforesaid medical

certificate, the Post Commander on 09.01.2014 directed the petitioner for examination of his fitness.

2.4. During pendency of the criminal case, charge-sheet under Section 9(1)(i) of the RPF Act, 1957 read with Rule 153 of RPF Rules, 1987 in

Annexure-6 was submitted on 26.03.2015 for initiation of disciplinary proceeding against the petitioner. Though Article of charges no.1 and 2 relate to

the criminal cases pending before the learned S.D.J.M., Rayagada, Article of charges no.3 and 4 deal with the service conditions of the petitioner. On

resumption, his suspension case was reviewed on 01.05.2014 by the disciplinary authority and he was kept under suspension due to prima facie

involvement in crime in the above RP (UP) Act and also it was a case of moral turpitude. On an application filed by the petitioner for revocation of his

suspension order, the competent authority reviewed his suspension on 21.03.2015 and ordered for continuation under suspension and enhanced the subsistence allowance from 50% to 75%. The departmental enquiry is under examination of prosecution witnessesâ?? stage. However, after revocation of suspension order, the petitioner was reinstated in his service on 17.12.2015.

2.5. For causing departmental enquiry, Sri B. Ramu, Inspector was appointed as inquiry officer to conduct the enquiry by the disciplinary authority.

After receiving the charge-sheet dated 26.03.2015 in relation to the disciplinary proceeding, the petitioner on 01.04.2014 submitted a representation on

18.05.2015 to stay the departmental proceeding initiated against him contending that for the self-same allegation he is facing trial in a criminal

proceeding, which is sub-judice before the competent court, therefore, the departmental proceeding should not proceed. As the said representation

dated 18.05.2015 was not disposed of, the petitioner approached this Court by filing W.P.(C) No.8282 of 2015, which was disposed of vide order

dated 04.05.2015 directing opposite party no.2 to consider the representation and pass a speaking order within a period of three months from the date

of receipt of the copy of the order. In compliance of the said order, on 30.07.2015, the authority passed a speaking order contending that the charges

framed in the charge-sheet against the petitioner and the charges of criminal case are not identical and entirely different from each other. In criminal

case, the proof required for conviction has to be beyond reasonable doubt, whereas in departmental proceeding, proof based on preponderance of

probability is sufficient for holding the charges as proved. It is also contended that the trial in criminal case before the learned S.D.J.M., Rayagada is

yet to be finalized and it may take considerable period of time to deliver its judgment. The department need not wait for the disposal of criminal case

for initiation of departmental proceedings. As such, there is no bar to initiate simultaneously departmental proceedings against the petitioner against

whom criminal proceedings are pending as per guidelines issued by Railway Board in terms of CPO/GRCâ??s Estt. Sl. No.195/86 dated 07.10.1986.

Thereby, the petitioner was directed to attend D & A proceedings from time to time on receipt of information from the inquiry officer without further

delay to complete the departmental enquiry proceedings within the stipulated period. Challenging the said order dated 30.07.2015, the petitioner filed

W.P.(C) No.16373 of 2015.

2.6. When the aforesaid matter was listed on 02.12.2015, Mr. D.K. Sahoo, learned counsel appearing for the opposite party-East Coast Railway

sought time to file counter affidavit and in compliance of the same, counter affidavit was filed on 14.01.2016. Though in the meantime five years have

passed, no rejoinder affidavit has been filed by the petitioner.

2.7. The petitioner filed W.P.(C) No.22946 of 2015 effectively to change the inquiry officer for fair enquiry. While analyzing W.P.(C) No.22946 of

2015, this Court vide order dated 23.12.2015 issued notice and in Misc. Case No.21072 of 2015 passed interim order directing opposite party no.3 not

to proceed with the departmental enquiry no.323 pending before him till 21.01.2016. The said interim order was extended vide order dated 21.01.2016

and Mr. D.K. Sahoo, learned counsel appearing for opposite party-East Coast Railway sought time to file counter affidavit, which was filed on

10.02.2016. When the matter was listed on 19.02.2016, learned counsel appearing for the petitioner was granted time to file rejoinder affidavit and

interim order was extended till 11.03.2016. Again on 11.03.2016, when the matter was listed, learned counsel for the petitioner sought time to file

rejoinder affidavit and the interim order was extended till 05.04.2016. The matter was again listed on 19.04.2014, 25.07.2016 and 15.07.2019 and the

petitioner was given opportunity to file rejoinder affidavit. Consequentially, the interim order was extended from time to time. But till date, no rejoinder

affidavit has been filed. In the meantime, learned counsel appearing for the opposite party-East Coast Railway filed I.A. No.2684 of 2016 for vacation

of interim order dated 23.12.2015. As such, no objection to such interlocutory application has been filed by the petitioner till today. In the meantime,

more than five years have elapsed and the petitioner is enjoying the interim order passed by this Court. Consequentially, when adjournment was sought

by the petitioner on 27.02.2021, this Court was not inclined to grant adjournment and called upon learned counsel for the parties to argue the matter on

merits. In response to same, the matter was heard at length.

3. Mr. S.K. Das-2, learned counsel appearing for the petitioner in W.P.(C) No.16373 of 2015 contended that for the self-same allegation if the

criminal proceeding is pending, the departmental proceeding should be stayed.

4. Miss S. Mohapatra, learned counsel appearing for the petitioner in W.P.(C) No.22946 of 2015 supported the contention raised by Mr. S.K. Das-2,

learned counsel for appearing for the petitioner in W.P.(C) No.16373 of 2015. She contended that since the inquiry officer terrorized the petitioner

calling upon him to file reply, he should be changed from enquiring the matter so as to have a fair enquiry about the issue.

6. Per contra, Mr. D.K. Sahoo, learned counsel appearing for East Coast Railway argued with vehemence referring to the counter affidavit and

contended that the charges framed against the petitioner in the departmental charge-sheet are not identical with the charges in the criminal case and

they are entirely different from each other. He also contended that in criminal case, proof required for conviction has to be beyond reasonable doubt

whereas in the departmental proceeding proof based on preponderance of probability is sufficient for holding the charges as proved. It is further

contended that the trial in criminal case before the learned S.D.J.M., Rayagada is yet to be finalized and it may take a considerable time to deliver its

judgment. The Department cannot wait for disposal of criminal case for initiating departmental proceeding against the petitioner. Therefore, there is no

bar to initiate departmental proceeding simultaneously against the petitioner, against whom criminal proceeding is pending, as per guidelines issued by

the Railway Board. So far as allegation made against the inquiry officer with regard to terrorizing the petitioner, he denied such allegation and

contended that adequate opportunity has been given to the petitioner to submit his reply to the allegations made against him. More so, if the petitioner

stated that he was remained unauthorized absent from duty on the ground of illness and also illness of his daughter, to that extent he has to produce

relevant documents, that itself also contrary to Rule 272 of the RPF Act. Thereby, he justified initiation of departmental proceeding against the

petitioner and contended that the same should be allowed to continue. Therefore, both the writ petitions should be dismissed by vacating the interim

order.

7. This Court heard Mr. S.K. Das-2, learned counsel appearing for the petitioner in W.P.(C) No.16373 of 2015; Miss S. Mohapatra, learned counsel

appearing for the petitioner in W.P.(C) No.22946 of 2015; and Mr. D.K. Sahoo, learned counsel for opposite party-East Coast Railway in both the

writ petitions by virtual mode; and perused the record. Pleadings have been exchanged between the parties. As time and again this case has been adjourned for filing of rejoinder affidavit and in the meantime five years have been passed and the petitioner is enjoying interim order, this Court is not inclined to grant further adjournment and disposed of both the writ petitions finally on the basis of arguments advanced by the respective counsels and pleadings available on records itself.

8. On the basis of factual matrix, as delineated above, there is no dispute with regard to the fact that the petitioner is facing criminal trial as well as

departmental proceedings. On perusal of the memorandum of charges annexed as Annexure-6 vis-à-vis the FIR lodged under Railway Act/RP (UP)

Act under Annexure-1 to W.P.(C) No.16373 of 2015 and on comparison of both the documents, it clearly indicates that because of involvement of the

petitioner in criminal case, he is facing criminal trial as per the memorandum of charge-sheet issued under Section 9(1)(i) of the RPC Act 1957 read

with Rule 153 of RPF Rules, 1987, of which two of the Article of charges are referred to the allegation of involvement of the petitioner in the criminal

case as in the FIR, and two other charges are regarding his service conditions. The two charges, which are levelled against the petitioner in

departmental proceeding with reference to the FIR, i.e. charge no.1 & 2, the conduct and involvement, so far as charge no.1 is concerned, shows that

the petitioner has failed to maintain integrity and devotion to duty and unbecoming of railway servant, which is violation of Rule 3.1(i) (ii) & (iii) of the

Railway Service (Conduct) Rules, 1966. Similarly Article of Charge no.2 specifically mentioned about the act of involvement of the petitioner in

criminal case, which tantamounts to discreditable conduct and has brought discredit to the reputation of the Force. Thereby, it violates Rule 146.4 of

the RPF Rules, 1987. Such link/contact shows that he has failed to maintain integrity and devotion to duty and is an act unbecoming of a Railway

servant, which is in violation of Rule 3.1(i), (ii) & (iii) of the Railway Servant (Conduct) Rules, 1966. Therefore, the allegation made in the FIR in

Annexure-1 and the memorandum of charge-sheet in Annexure-6, may be charge nos.1 & 2 in departmental proceeding is incidental to criminal

charge pending against him, but the charges are distinct and completely different from each other. As such, the contention raised by learned counsel

for the petitioner that for self-same charges the petitioner is facing criminal trial and departmental proceeding, cannot sustain in the eye of law.

9. It is well established in law that in criminal cases, proof required for conviction has to be beyond reasonable doubt, whereas in the departmental

proceeding proof based on preponderance of probability sufficient for holding the charges as proved. If the standard of proof in both the proceedings is

different, in that case departmental proceeding cannot wait for disposal of the criminal proceeding even if allegations are identical to each other. But

fact remains, in the present case, the allegations are different and distinct. Merely because the petitioner has involved in a criminal case and that has

referred to Article of charges of the memorandum of charge submitted by the opposite parties in Annexure-6 that ipso facto cannot entitle him to pray

for staying of departmental proceeding till finalization of criminal proceeding initiated against him.

10. In *State of Rajasthan v. B.K. Meena*, (1996) 6 SCC 417, the apex Court held that there was no legal bar for both proceedings to go on

simultaneously unless there is a likelihood of the employee suffering prejudice in the criminal trial. What is significant is that the likelihood of prejudice

itself is hedged by providing that not only should the charge be grave but even the case must involve complicated questions of law and fact. Stay of

proceedings at any rate cannot and should not be a matter of course. In paragraph-14, the apex Court stated as follows:

“14. 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 emphasized, 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. While it is not possible to enumerate the various factors,

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.

11. In *A.P. SRTC v. Mohd. Yousuf Miya*, (1997) 2 SCC 699, the apex Court held that the purpose underlying departmental proceedings is distinctly

different from the purpose behind prosecution of offenders for commission of offences by them. While criminal prosecution for an offence is launched

for violation of a duty that the offender owes to the society, departmental enquiry is aimed at maintaining discipline and efficiency in service. The

difference in the standard of proof and the application of the rules of evidence to

one and inapplicability to the other was also explained and highlighted only to explain that conceptually the two operate in different spheres and are

intended to serve distinctly different purposes.

12. In *Capt. M. Paul Anthony v. Bharat Gold Mines Ltd.*, (1999) 3 SCC 679, the apex Court held 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 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.â??

13. In *Hindustan Petroleum Corpn. Ltd. V. Sarvesh Berry*, (2005) 10 SCC 471, while considering the question whether disciplinary proceedings

should remain stayed pending a criminal charge being examined by the competent criminal court, the apex Court in paragraph-8 stated as follows:

â??8. â?| So, a 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 a grave nature involving complicated questions

of fact and law. â?|

Under these circumstances, what is required to be seen is whether the departmental 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.â??

14. In *Divisional Controller, Karnataka SRTC v. M.G. Vittal Rao*, (2012) 1 SCC

442, the apex Court held as follows:

“(i) There is no legal bar for both the 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.”

15. Applying the above judgments to the present case and also analyzing the factual matrix of the case in hand, this Court is of the

considered view that since the charges framed in the charge-sheet against the petitioner are not identical and different from each other and more so,

in criminal case, proof required for conviction has to be beyond reasonable doubt, whereas in the departmental proceeding proof based on

preponderance of probability is sufficient for holding the charges as proved, keeping the departmental proceeding pending till disposal of the criminal

case has no justification. So far as removal of inquiry officer is concerned, nothing has been placed on record by the petitioner as to how he is

terrorizing the petitioner for filing of reply and on the other hand the counter affidavit indicates that the inquiry officer granted time thrice to file reply

to the charges levelled against him, but somehow or other the petitioner wanted to avoid such situation, therefore the allegation that inquiry officer was

terrorizing the petitioner to file the reply also cannot sustain in the eye of law.

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16. In the result, both the writ petitions merit no consideration and the same are hereby dismissed. However, there shall be no order as to costs.

Consequently, interim order dated 23.12.2015 passed by this Court in Misc. Case No.21072 of 2015 (arising out of W.P.(C) No. 22946 of 2015)

stands vacated.

As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the judgment

available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide

Court's Notice No.4587, dated 25th March, 2020 as modified by Court's Notice No. 4798 dated 15th April, 2021.

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