
(2012) 08 AHC CK 0015
In the Allahabad High Court

Case No : C.M.W.P. No's. 37128, 37499, 37501 and 37511 of 2012

Danis Ansari

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-08-2012

Acts Referred:

Citation : (2012) 6 AWC 5676 : (2012) 135 FLR 749

Hon'ble Judges : Sibghat Ullah Khan, J

Bench : Single Bench

Advocate : Vijay Shankar Singh, Vijay Gautam and S.P. Pandey, for the Appellant;

Final Decision : Dismissed

Judgement

Sibghat Ullah Khan, J.—Heard learned Counsel for the petitioners and Sri B.N. Yadav, learned Standing Counsel for the State of U.P. and its authorities respondents. Sri R.B. Singhal, learned A.S.G.I. assisted by Sri Sanjai Kaushik and Sri Sanjai Kumar Yadav, learned Counsel on behalf of Union of India and its authorities respondents have been heard in the second and third writ petitions. A common question is involved in all these writ petitions. The prayer in all these writ petitions is that as criminal cases are pending against the petitioners, who are government employees and on the same facts departmental proceedings are also continuing against them, hence departmental proceedings must be stayed. Stay orders passed in some petitions staying departmental proceedings on the ground of pendency of criminal cases have been placed on record. In some petitions orders have been passed directing disciplinary authority to consider petitioners' representation for staying departmental proceedings. The said orders have been placed on record.

2. In the first writ petition the allegation is that petitioner, who is a constable appeared in High School examination in the year 1993-1994 and showed his date of birth as June, 1979, however in 2003-2004 he again appeared in High School examination and showed his date of birth as 1.7.1985. In the second writ

petition there are several allegations against the petitioner who is also a constable including the allegation that he sold the government ammunition to other persons. In the third writ petition also petitioner is a constable and allegations are similar as are in the second writ petition. In the fourth writ petition, the allegation against the petitioner, who is constable in Railway Police is that he misbehaved with the passengers of a train in which he was performing his duties and on the protest from the passengers he ran away from the duty. In some of these writ petitions itself mention has been made about the judgment of Supreme Court in Captain M. Paul Anthony v. Bharat Gold Mines Ltd. and another. 1999 (82) FLR 627 (SC).

3. The Supreme Court has considered this point in the following authorities:

(i) Captain M. Paul Anthony v. Bharat Gold Mines Ltd. and another, 1999 (82) FLR 627 (SC).

In this authority, it was held that except for cogent reasons departmental proceedings need not be stayed during pendency of the criminal case and that both the proceedings can proceed simultaneously. In para-22(ii), it is mentioned that departmental proceedings may be stayed if they are based on identical and similar set of facts, charge is of grave nature which involves complicated questions of law and fact and under para-22(v), it is mentioned that if criminal case does not proceed or its disposal is being unduly delayed, departmental proceedings, even if they were stayed on account of pendency of criminal case, can be resumed and concluded at an early date.

(ii) Commissioner of Police v. Narendra Singh. 2006 (109) FLR 852 (SC).

In this case, the employee had been acquitted in the criminal case on the ground that apart from confession before police authorities, there was no evidence to prove the guilt beyond reasonable doubt. However, he was dismissed from service pursuant to departmental proceedings on the basis of the same confession. The Supreme Court held that on the basis of his confession before the police authorities, the employee could be dismissed from service in departmental proceedings and such confession though not relevant for conviction in criminal case was quite relevant for recording finding of guilt in departmental proceedings. It was also held in this case that standard of proof in both the proceedings is quite different. In criminal proceedings guilt must be proved beyond reasonable doubt, however in departmental proceeding (sic) of probabilities would serve the purpose. It was (sic) held that acquittal in criminal case by itself is not a ground for not initiating a departmental proceeding against the employee or to drop the same in the event an order of acquittal is passed by the criminal Court.

(iii) Southern Railways Officers Association v. Union of India, 2009 (123) FLR 417 (SC).

In this authority it has been held that if an employee is dismissed from service

after dispensing with the enquiry by disciplinary authority and thereafter the employee is acquitted by criminal Court on the same facts still order of acquittal does not warrant interference in the order of dismissal.

(iv) *Samar Bahadur Singh v. State of U.P.*, 2011 (131) FLR 767 (SC).

In this authority, a constable consumed liquor became drunk and created scene. In departmental proceedings, he was dismissed, however in criminal proceedings on the same facts he was acquitted. The Supreme Court held that on the basis of acquittal in criminal case, order of dismissal from service could not be set aside as standard of proof in both the proceedings is different, i.e. in criminal case guilt is to be proved beyond reasonable doubt however in departmental proceedings department has to prove it only on the basis of preponderance of probabilities.

4. Similar views have been expressed by the Supreme Court in *Noida Entrepreneurs Association v. Noida and Others*, 2007 (112) FLR 1139 (SC). and *Indian Overseas Bank, Annasalai and another v. P. Ganesan and Others*. 2008 (116) FLR 494 (SC).

5. There is one more factor which is to be taken into consideration. If in departmental proceedings the employee is suspended, the fact of staying departmental proceedings due to pendency of criminal case on the same facts will result in unnecessary payment of suspension allowance for an indefinite period.

6. Accordingly, it is only in rarest of the rare cases that due to pendency of criminal case departmental proceedings may be stayed. In this regard, the most important thing to be seen while granting stay of departmental proceedings in such situation is that complicated questions of law and fact are involved. In none of these writ petitions, it has been shown that complicated questions of law and fact are involved apart from making a bald statement to that effect.

7. If in spite of acquittal in criminal case, departmental proceedings can continue, there is no reason to stay the departmental proceedings due to pendency of criminal proceedings on the same facts except in rare cases where several factors are present including the most important factor that complicated questions of law and fact are involved. Accordingly, all the writ petitions are dismissed.