

(2020) 06 SHI CK 0155
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 474 Of 2020

Gian Chand Thakur

APPELLANT

Vs

State Of HP And Others

RESPONDENT

Date of Decision : 26-06-2020

Acts Referred:

General Clauses Act, 1897 — Article 21
Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 10(2),
10(6), 10(7), 14
All India Services (Conduct) Rules, 1968 — Rule 3(2)
Prevention Of Corruption Act, 1988 — Section 7
Indian Penal Code, 1860 — Section 120B, 201, 420, 467, 468, 471
Police Act, 1861 — Section 87

Citation : (2020) 06 SHI CK 0155

Hon'ble Judges : Tarlok Singh Chauhan, J; Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : Prem P. Chauhan, Ashok Sharma, Vinod Thakur, Desh Raj Thakur

Final Decision : Dismissed

Judgement

Jyotsna Rewal Dua, J

1. The petitioner seeks quashing of:- (i) his suspension order dated 16.08.2019; (ii) Article of Charge No.2 as contained in the memorandum of charges dated 07.01.2020, with further prayer for (iii) deferring the departmental enquiry till the statements of the witnesses are recorded in the criminal case.

2. Brief factual position of the case is as under:-

2(i). Petitioner is Class-I Gazetted Officer in the rank of Deputy Superintendent of Police. While serving as Sub-Divisional Police Officer (SDPO), Jawali, District Kangra, an FIR No.09/2019, dated 12.08.2019, was registered against him under Section 7 of the Prevention of Corruption Act, 1988 in Police Station, State Vigilance & Anti Corruption Bureau (SV&ACB), Dharamshala. Allegation in the FIR was that the petitioner was caught red handed while accepting bribe. He was

arrested on 12.08.2019.

2(ii). As the petitioner remained in custody for a period exceeding forty-eight hours, therefore, an order was issued by the respondents on 16.08.2019 under Rule 10(2) of Central Civil Services (Classification, Control and Appeal) Rules, 1965 (in short 'CCS (CCA) Rules'), placing him under deemed suspension w.e.f. 12.08.2019, i.e. date of his detention. The suspension was to continue till further orders. Under this order, the headquarter of the petitioner during suspension after his release from custody, was fixed at O/o Superintendent of Police, District Kangra.

2(iii). Bail was granted to the petitioner in the above FIR by the learned Special Judge, Kangra at Dharamshala, vide order dated 17.08.2019. After release from custody, the petitioner joined as SDPO at Jawali, District Kangra, on 17.08.2019 at 9:10 pm. The order dated 16.08.2019 suspending the petitioner and fixing his headquarter in O/o Superintendent of Police, District Kangra was ordered to be brought to his notice vide endorsement dated 18.08.2019 issued by the Superintendent of Police, Kangra at Dharamshala.

2(iv). The suspension of the petitioner was reviewed and extended from time to time under Rule 10(6) of CCS (CCA) Rules. Proposing to hold an enquiry against the petitioner under Rule 14 of CCS (CCA) Rules, a memorandum containing following two Articles of Charges was issued to him on 07.01.2020 and he was directed to submit his written defence to the same within ten days of its receipt:-

"Article-1

That Shri Gian Chand, HPPS, while functioning as Sub-Divisional Police Officer, Jawali, District Kangra was caught red-handed while accepting a bribe of rupees 45,000/- from the complainant Shri Shashi Sharma on 12-08-2019 at Mini Secretariat, Nurpur, by a team of Police Station, SV&ACB, Dharamshala. A case FIR No.09/2019 dated 12-08-2019 has been registered against him at Police Station, SV&ACB, Dharamshala u/s 7 of PC Act (Amended 2018) in the matter.

Article-2

That Shri Gian Chand, HPPS, the then SDPO, Jawali, Distt. Kangra was placed under deemed suspension w.e.f. 12-8-2019 vide Order No.Home-D-B(3)-14/2017 dated 16-8-2019 and during the period of his suspension, his headquarter was fixed at the office of the S.P., Distt. Kangra at Dharamshala. However, the said Shri Gian Chand after getting bail, immediately joined at Jawali on 17-8-2019 at 9.10 PM and sent his joining report to all superior authorities. Thus, he knowingly & intentionally violated the Govt. order stated above."

2(v). Apparently, the petitioner did not submit his written defence to the Memorandum of Charges. He rather chose to invoke the extraordinary jurisdiction of this Court praying for quashing of his suspension order, Article of Charge No.2 and for deferring the examination of witnesses in the departmental

enquiry till the statements of witnesses are recorded in the criminal trial.

3. We have gone through the pleadings and heard learned counsel for the parties, who made submissions under following macro points:-

(a). Validity of suspension order dated 16.08.2019 beyond 10.11.2019 vis-a-vis Rule 10(7) of CCS (CCA) Rules.

(b). Justification for continued suspension of the petitioner.

(c). Validity of Charge No.2 in the memo dated 07.01.2020.

(d). Deferring the disciplinary proceedings till the recording of statements of witnesses in the criminal trial.

We discuss the above points hereinafter.

4. Validity of Suspension Order vis-a-vis Rule 10(7) of CCS (CCA) Rules:-

4(i). Relying upon (2010) 2 SCC 222, titled Union of India and others Versus Dipak Mali, learned counsel for the petitioner argued that in terms of Rule 10(7) of CCS (CCA) Rules, the review and extension of suspension becomes invalid in case the same is not effected within the prescribed period of ninety days from the date of suspension. On the basis of information gathered by the petitioner under the Right to Information Act, learned counsel submitted that in the instant case, review and extension of suspension order dated 16.08.2019 can be said to have been actually carried out only on 18.11.2019, when the competent authority had approved in writing the recommendations of review committee for extending the suspension. However, ninety days period from 12.08.2019, i.e. deemed date of petitioner's suspension, had lapsed on 10.11.2019 without there being any valid review and extension thereof. Therefore, no valid suspension order was in existence on 18.11.2019, which could be reviewed and extended further. His precise contention, therefore, is that suspension order dated 16.08.2019, issued by the respondents under Rule 10(2) of the CCS (CCA) Rules, having not been reviewed and extended within the prescribed mandatory period of ninety days under Rule 10(7) of the CCS (CCA) Rules, has lost its efficacy.

4(ii). Rule 10(7) of CCS (CCA) Rules, being relevant, is extracted hereinafter:-

"(7) An order of suspension made or deemed to have been made under sub-rule (1) or (2) of this rule shall not be valid after a period of ninety days unless it is extended after review, for a further period before the expiry of ninety days.

Provided that no such review of suspension shall be necessary in the case of deemed suspension under sub-rule

(2), if the Government servant continues to be under suspension at the time of completion of ninety days of suspension and the ninety days' period in such case will count from the date the Government servant detained in custody is released from detention or the date on which the fact of his release from detention is intimated to his appointing authority, whichever is later."

There can be no quarrel with the settled legal position that the order of suspension made or deemed can be extended after a review for a further period of ninety days only if the review is carried out within a period of ninety days from the date of suspension under Rule 10(7) of CCS (CCA) Rules.

4(iii). In the backdrop of above legal position, we have perused the record produced before us by the respondents. The record shows that the department convened a three members' review committee headed by the Chief Secretary on 08.11.2019, i.e. before the expiry of ninety days from the date of deemed suspension, i.e. 12.08.2019. The review committee deliberated, reviewed and finally recommended extension of suspension of the petitioner for a further period of ninety days w.e.f. 10.11.2019 to 07.02.2020. The minutes of meeting were signed by all the members on 08.11.2019 itself. The Competent Authority, Hon'ble the Chief Minister, being out of station, could not approve the minutes on 08.11.2019. However, under Rules of Business, on 08.11.2019 itself, order was issued extending the suspension of the petitioner w.e.f. 10.11.2019 to 07.02.2020 after review of the same on 08.11.2019. Though the Competent Authority eventually approved the recommendations of the review committee dated 08.11.2019 on 18.11.2019, however, this alone will not make the review and extension of suspension of the petitioner ordered within prescribed period of ninety days as invalid as the review committee was actually convened within the prescribed period of ninety days, it deliberated, reviewed and recommended extension of petitioner's suspension on 08.11.2019, i.e. within prescribed period. As per reply, the Competent Authority had accorded its verbal approval on 08.11.2019 itself for extension of petitioner's suspension. Therefore, order dated 08.11.2019 extending suspension of the petitioner was rightly issued under the Rules of Business. No advantage can be taken by the petitioner by putting forth the written approval of Competent Authority on a later date of 18.11.2019. It is not the case of the petitioner that the Competent Authority had decided to revoke the suspension of the petitioner. Therefore, we do not find any substance in the argument advanced by the learned counsel for the petitioner that the review and extension of suspension of the petitioner w.e.f. 10.11.2019 to 07.02.2020 was carried out in violation of Rule 10(7) of CCS (CCA) Rules.

5. Justification for continued suspension of the petitioner:-

5(i). Suspension of the petitioner first ordered on 16.08.2019, has been continued and extended for further period of ninety days vide order dated 08.11.2019 (w.e.f. 10.11.2019 to 07.02.2020), order dated 06.02.2020 (w.e.f.

5(ii). Learned counsel for the petitioner has urged that the review and extension of petitioner's suspension has been mechanically carried out. Petitioner as on date has completed almost ten months under suspension. He further 08.02.2020 to 07.05.2020) and order dated 20.04.2020 (w.e.f. 08.05.2020 to 05.08.2020). contended that such long period of suspension by mechanically extending the same has been deprecated by the Hon'ble Apex Court in Ajay Kumar Choudhary Versus Union of India through its Secretary and another, (2015) 7 SCC 291 and

State of Tamil Nadu Versus Promod Kumar, IPS and another, (2018) 17 SCC 677. Para 21 of the judgment in re: Ajay Kumar Choudhary and paras 24 and 25 in State of Tamil Nadu, supra, are extracted below:-

Para 21 [(2015) 7 SCC 291]

"21. We, therefore, direct that the currency of a suspension order should not extend beyond three months if within this period the memorandum of charges/charge-sheet is not served on the delinquent officer/employee; if the memorandum of charges/charge-sheet is served, a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the person concerned to any department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and while he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognised principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognise that the previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time-limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interest of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation, departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us."

Paras 24 & 25 [(2018) 17 SCC 677]

"24. The first respondent was placed under deemed suspension under Rule 3(2) of the All India Services Rules for being in custody for a period of more than 48 hours. Periodic reviews were conducted for his continuance under suspension. The recommendations of the Review Committees did not favour his reinstatement due to which he is still under suspension. Mr. P. Chidambaram, learned Senior Counsel appearing for the first respondent fairly submitted that we can proceed on the basis that the criminal trial is pending. There cannot be any dispute regarding the power or jurisdiction of the State Government for continuing the first respondent under suspension pending criminal trial. There is no doubt that the allegations made against the first respondent are serious in nature. However, the point is whether the continued suspension of the first respondent for a prolonged period is justified.

25. The first respondent has been under suspension for more than six years. While releasing the first respondent on bail, liberty was given to the investigating agency to approach the Court in case he indulged in tampering with the evidence. Admittedly, no complaint is made by CBI in that regard. Even now the appellant has no case that there is any specific instance of any attempt by the

first respondent to tamper with evidence."

5(iii). The above contention has been vehemently opposed by the learned Advocate General. The suspension of the petitioner from time to time has been defended on the ground that criminal case originating from FIR No.09/2019, registered against the petitioner by SV&ACB, Dharamshala, under Section 7 of the Prevention of Corruption Act, 1988, is still under investigation. Therefore, there is grave apprehension of the petitioner hampering with investigation, tempering evidence and influencing witnesses in case he is given active duty at this stage. In support of his submission, learned Advocate General has relied upon Union of India and another Versus Ashok Kumar Aggarwal, (2013) 16 SCC 147, wherein the Hon'ble Apex Court observed that the suspension order can be passed by the Competent Authority considering the gravity of the alleged misconduct. Effect on public interest due to employee's continuation in office is a relevant and determining factor. Facts of each case have to be taken into consideration as no formula of universal application can be laid down in this regard. Suspension order should be passed only where there is strong, prima facie, case against the delinquent and if the charges stand proved, would ordinarily warrant imposition of major punishment, i.e. removal or dismissal from service or reduction in rank etc. Paragraph 27 of the judgment is extracted hereunder:-

"27. Suspension is a device to keep the delinquent out of the mischief range. The purpose is to complete the proceedings unhindered. Suspension is an interim measure in aid of disciplinary proceedings so that the delinquent may not gain custody or control of papers or take any advantage of his position. More so, at this stage, it is not desirable that the court may find out as which version is true when there are claims and counter claims on factual issues. The court cannot act as if it an appellate forum de hors the powers of judicial review."

5(iv). The limited scope of interference by the Courts with the order of suspension has been outlined in following manner in Union of India and another Versus Ashok Kumar Aggarwal, (2013) 16 SCC 147:-

"26. The scope of interference by the Court with the order of suspension has been examined by the Court in a large number of cases, particularly in State of M.P. v. Sardul Singh, P.V. Srinivasa Sastry v. Comptroller & Auditor General, ESI v. T. Abdul Razak, Kusheshwar Dubey v. Bharat Coking Coal Ltd., Delhi Cloth & General Mills Ltd. v. Kushal Bhan, U.P. Rajya Krishi Utpadan Mandi Parishad v. Sanjeev Rajan, State of Rajasthan v. B.K. Meena, Prohibition and Excise Deptt. v. L. Srinivasan and Allahabad Bank v. Deepak Kumar Bhola, wherein it has been observed that even if a criminal trial or enquiry takes a long time, it is ordinarily not open to the court to interfere in case of suspension as it is in the exclusive domain of the competent authority who can always review its order of suspension being an inherent power conferred upon them by the provisions of Article 21 of the General Clauses Act, 1897 and while exercising such a power, the authority can consider the case of an employee for revoking the suspension

order, if satisfied that the criminal case pending would be concluded after an unusual delay for no fault of the employee concerned. Where the charges are baseless, mala fide or vindictive and are framed only to keep the delinquent employee out of job, a case for judicial review is made out. But in a case where no conclusion can be arrived at without examining the entire record in question and in order that the disciplinary proceedings may continue unhindered the court may not interfere. In case the court comes to the conclusion that the authority is not proceeding expeditiously as it ought to have been and it results in prolongation of sufferings for the delinquent employee, the court may issue directions. The court may, in case the authority fails to furnish proper explanation for delay in conclusion of the enquiry, direct to complete the enquiry within a stipulated period. However, mere delay in conclusion of enquiry or trial can not be a ground for quashing the suspension order, if the charges are grave in nature. But, whether the employee should or should not continue in his office during the period of enquiry is a matter to be assessed by the disciplinary authority concerned and ordinarily the court should not interfere with the orders of suspension unless they are passed in mala fide and without there being even a prima facie evidence on record connecting the employee with the misconduct in question."

We find force in the submission of learned Advocate General. The petitioner was Class-I Gazetted Officer in the rank of Deputy Superintendent of Police. The FIR was registered against him by the State Vigilance & Anti Corruption Bureau, Dharamshala, as he was allegedly caught red handed on 12.08.2019 for accepting a bribe of Rs.45,000/-. He was placed under suspension on 16.08.2019. Petitioner has not challenged his suspension order. Competent Authority after review has decided to extend the period of suspension in accordance with the provisions of Rule 10(7) of CCS (CCA) Rules. The decisions taken by the competent authority for extension and continuation of the suspension of the petitioner cannot be said to be mechanical. The criminal case against the petitioner is admittedly still under investigation. In case, the petitioner is assigned active duties, the possibility of his influencing the witnesses, tempering the evidence and documents cannot be ruled out. Putting the petitioner back in service at this stage during ongoing investigation in the criminal case registered against him under Section 7 of the Prevention of Corruption Act, 1988, may send wrong message to officials of disciplined force of which he is a member. Therefore, the recommendation of the review committee for extending and continuing the suspension of the petitioner on the ground that he might try to influence the witnesses and adversely affect the line of investigation cannot be said to be unwarranted, illegal or unreasonable.

6. Quashing Article of Charge No.2:-

Charge No.2 in the memorandum dated 07.01.2020 pertained to petitioner joining his duties as SDPO at Jawali, District Kangra, instead of his headquarter fixed at O/o Superintendent of Police, Kangra at Dharamshala under order dated

16.08.2019. Prima facie, it appears that the petitioner may have some justification seeking dropping of this charge (already extracted above). Since the petitioner was in custody w.e.f. 12.08.2019 till 17.08.2019, therefore, he could not be expected to be aware of the order dated 16.08.2019, suspending him and fixing his headquarter during suspension at O/o Superintendent of Police, District Kangra. Therefore, after grant of bail on 17.08.2019, would his joining at Jawali on 17.08.2019 instead of at O/o Superintendent of Police, District Kangra, should give rise to framing of Article of Charge No.2, when admittedly the order dated 16.08.2019, notifying his headquarter during suspension at O/o Superintendent of Police, Kangra at Dharamshala, was not served upon him prior to 18.08.2019. But, then again it is to be noticed that memorandum containing the Articles of Charges including Charge No.2 was issued on 07.01.2020. The pleadings do not show that the petitioner submitted his written defence to this charge-sheet. Instead of responding to the charge-sheet, he immediately rushed to this Court by way of instant petition, wherein memorandum of charges was stayed vide order dated 24.01.2020. It is for the petitioner to respond to the Article of Charges. Whether this charge is actually made out or not is yet to be decided by the disciplinary authority after considering the material on record including the written defence to be submitted by the petitioner. We have no reason to assume at this stage that decision on the basis of facts and in accordance with law will not be taken by the disciplinary authority.

7. Continuation of disciplinary proceedings/ departmental enquiry: -

7(i). It has been contended on behalf of the petitioner that disciplinary proceedings should be stayed till the statements of witnesses are recorded in the criminal case as Charge No.1 in the memorandum of charges is similar to the contents of the FIR and has to be proved by same set of witnesses as will have to be examined in the criminal case. Therefore, examination of witnesses in the departmental enquiry will cause prejudice to him in the criminal case. Learned Advocate General has opposed this prayer by submitting that the purpose, object, scope and approach of the departmental enquiry and criminal proceedings are altogether different and distinct. The criminal prosecution has been launched against the petitioner for an offence, for violation of a duty, which he owed to the society and for breach of law, whereas the departmental enquiry has been initiated to examine whether the act and conduct of the petitioner amounted to misconduct or is violative of the service rules with a view to maintain discipline and efficiency in public service.

7(ii). Having noticed the rival contentions, we now examine the legal position. Hon'ble Apex Court in *Delhi Cloth and General Mills Ltd. v. Kushal Bhan*, AIR 1960 SC 806, observed that very often employers stay enquiries pending decision of criminal trials. However, it cannot be said that the principles of natural justice require an employer to mandatorily wait for the decision of the criminal trial Court before taking action against an employee. However, if the case was of grave nature and involved complicated questions of facts and law, it would be

advisable for the employer to await decision of the trial Court, so that the defence of the employee in the criminal case is not prejudiced. Somewhat similar was the ratio in *Tata Oil Mills Co. Ltd. v. Workmen*, AIR 1965 SC 155. Both the above decisions and in fact the entire case law on the point was reviewed in *State of Rajasthan Versus B.K. Meena and others*, (1996) 6 SCC 417, wherein it was observed that there is no legal bar for simultaneous holding of criminal trial and disciplinary proceedings. Stay of disciplinary proceedings has to be measured with regard to facts of each case. No hard and fast rule can be enunciated in this regard. Prejudice to defence in the criminal case by continuation of disciplinary proceedings may be a good ground for staying the latter, but then again it can be done in cases of grave nature involving complicated questions of fact and law. 'Advisability', 'desirability' or 'propriety' has to be determined in each case in the given facts. The ground indicated in *Delhi Cloth and General Mills Ltd. and Tata Oil Mills Co. Ltd.*, supra, is not an invariable rule. It is only a factor, which will go into the scales while judging the desirability of staying the disciplinary proceedings. Another relevant consideration would be that disciplinary enquiry cannot be and should not be delayed unduly as the criminal cases drag on for long period. In case a criminal case is unduly delayed, it may itself be a good ground for going ahead with the disciplinary enquiry. Relevant para from the judgment is extracted hereinafter:-

"14. It would be evident from the above decisions 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 considerations 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 in spite 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 the 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."

Entire case law including the above judgments was considered in Capt. M. Paul Anthony Versus Bharat Gold Mines Ltd. and another, (1999) 3 SCC 679. Following conclusions were culled out after discussion of all the facets on the point under consideration:-

"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, the administration may get rid of him at the earliest."

The legal position was reiterated in *Avinash Sadashiv Bhosale (Dead) Versus Union of India and others*, (2012) 13 SCC 142, in following manner:-

"54.1. There is no legal bar for both proceedings to go on simultaneously.

54.2. 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.

54.3. 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.

54.4. 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.

54.5. In our opinion, the principles culled out by this Court would be a complete answer to all the submissions made by Mr. Jain.

55. In view of the aforesaid legal principles enunciated and reiterated by this Court, we cannot accept that because the appellant had been prosecuted, the departmental proceedings could not have been continued simultaneously. As pointed out by Mr. Dwivedi, the charges against the appellant in the criminal trial related to the commission of criminal offences under Sections 120-B, 420, 467, 468, 471 and 201 of Indian Penal Code. The proof of criminal charges was depended upon prosecution producing proof beyond reasonable doubt relating to the culpability of the appellant along with other persons. In the departmental proceedings, the basic charge was that appellant whilst posted as a Branch Manager of Washi Turbhe Branch, failed to discharge his duties with utmost integrity, honesty, devotion and diligence to ensure and protect the interest of the Bank and acted in a manner unbecoming of a Bank Officer. The aforesaid charge clearly related to the manner in which the appellant performed the duties as the Manager of the Branch of the Bank. It had nothing to do with any criminal liability attaching to such conduct.

56. It must be emphasised that Bank officials act as trustees of funds deposited by the public with the Bank. They have an obligation to earn the trust and confidence of not only the account-holders but also the general public. The standard of integrity required of the Bank officials, particularly the cashiers, accountants, auditors and the Management at all levels, is like the Caesar's wife, they must be above suspicion. Mr. Bhosale failed to maintain such high standards of integrity. He therefore, acted in violation of Rule 50(4) of the 1992 Rules. We, therefore, do not find any merit in the aforesaid submissions of Mr. Jain."

Thus, it has been clearly held that there is no embargo of simultaneous but separate holding of departmental and criminal case proceedings. It would be desirable to stay the departmental proceedings till the conclusion of criminal case, in case both are based on identical and similar set of facts and the charge in the criminal case is of grave nature involving complicated questions of law and fact. However, whether the charge in the criminal case is grave and involves complicated questions of fact and law or not will depend upon the nature of offence and nature of case launched against the employee on the basis of evidence and material collected against him during investigation. Apart from these factors, due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed. In case the criminal case does not proceed or the disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of pendency of criminal case, can always be resumed and proceeded with.

Also in *State of Rajasthan Versus B.K. Meena and others*, (1996) 6 SCC 417, it was observed by the Hon'ble Apex Court that approach and objective in the criminal and disciplinary proceedings are altogether distinct and different. The question determined in the disciplinary proceedings is whether the conduct of the respondent merits imposing punishment to him under the applicable service laws, whereas in the criminal proceedings, the question always is as to whether the offences registered against the delinquent employee (here under the Prevention of Corruption Act) is established and if established, what sentence should be imposed upon him. The standard of proof, mode of enquiry and the rules governing the enquiry and trial in both the proceedings are entirely distinct. Paragraph 17 of the judgment is reproduced herein-below:-

"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 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."

The difference between criminal prosecution and departmental enquiry was also elaborated in *Hindustan Petroleum Corporation Ltd. and others Versus Sarvesh Berry*, (2005) 10 SCC 471, while reiterating that there is no bar for simultaneous proceeding of the two. It was observed therein that 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. Crime is an act of commission in violation of law or of omission of public duty. Offence generally implies infringement of public duty as distinguished from mere private rights punishable under criminal law. Whereas the departmental enquiry is to maintain discipline in the service and efficiency of public service. The enquiry in the departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. The strict standard of proof for applicability of Evidence Act stands executed. It would be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not 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. Each case required to be considered in the backdrop of its own facts and circumstances. After noticing the principles culled out in *Capt. M. Paul Anthony* case in the facts of this case, it was observed by the Hon'ble Apex Court as under:-

"14. That being the position, the High Court was not justified in directing stay of the departmental proceedings pending conclusion of the criminal charge. As noted in *Capt. M. Paul Anthony* case where there is delay in the disposal of a criminal case the departmental proceedings can be proceeded with so that the conclusion can be arrived at, at an early date. If ultimately the employee is found not guilty, his honour may be vindicated and in case he is found guilty, the employer may get rid of him at the earliest."

7(iii). In the case in hand, the petitioner is a Class-I Gazetted Officer in the rank of Deputy Superintendent of Police. FIR was lodged against him on 12.08.2019 by State Vigilance & Anti Corruption Bureau, Dharamshala, for allegedly accepting a bribe of Rs.45,000/-. The memorandum of charges was issued to him for imposition of major penalty under Rule 14 of CCS (CCA) Rules on 07.01.2020. In the instant petition filed by him, the charge-sheet itself was stayed vide order dated 24.01.2020. Investigation in the criminal case is still going on.

The petitioner is governed by provisions of CCS (CCA) Rules and The Himachal Pradesh Police Act, 2007. Section 87 of the Police Act provides for action to be taken for breach of discipline and disciplinary misconduct by a police officer. The relevant portion of Section 87 is reproduced hereinafter:-

"87. Breaches of Discipline and disciplinary misconduct by a Police Officer.

(1) Whoever, being a Police Officer-

(i) knowingly contravenes or fails to follow the provisions of any law or any rule or instruction made thereunder, in the discharge of his official duties, with the intention of giving undue benefit or causing harm to any person; or

(ii)-(vi)

(vii) commits any other service misconduct;

shall be deemed to have breached service discipline and shall be liable to be punished for conduct unbecoming of a Police Officer by a disciplinary authority in accordance with the provisions of this Act and relevant conduct rules.

(2) The State Government, having regard to the nature of misconduct, may by notification published in the Official Gazette, classify the "major" and "minor" misconducts for which any of the following penalties shall respectively be awarded, namely:-

(I) Major Penalties:-

(a) Dismissal from service; or

(b) Removal from service; or

(c) Compulsory retirement; or

(d) Reduction in rank; provided that such reduction shall not be to a rank below the rank in which such officer was recruited:

Provided that a Police Officer who has been sentenced by a criminal court of law to imprisonment exceeding one month or whose misconduct is of the gravest nature, including-

(i)-(v)

(vi) corruption or perjury; or

(vii) such other major misconduct as the State Government may, having regard to its nature, declare to be misconduct of the gravest nature; shall be awarded the penalty of dismissal from service; and

(II) Minor Penalties:-

(a) reduction in pay by upto 3 stages in the timescale for a period not exceeding 3 years; or

(b) withholding of increments for upto 3 years; or

(c) fine not exceeding one month's pay or

(d) reprimand or censure; or

(e) fatigue drill."

The departmental proceedings initiated against the petitioner will only examine and determine as to whether his act and conduct amounted to misconduct as per the mandate of H.P. Police Act and other applicable service rules and whether such act has rendered the petitioner liable for imposition of any penalty under the service rules. The allegations against the petitioner in the departmental enquiry are to be proved on preponderance of probabilities on the basis of documents and witnesses.

Whereas, charges in the criminal case presently at the investigation stage are to be proved on the basis of witnesses and evidence to be led during trial, but beyond all reasonable doubts. It cannot be even said at this stage that both the proceedings are based on the same set of evidence.

Considering all these aspects and the fact that the criminal case is still under investigation, the departmental proceedings cannot be unduly delayed. Hence, the prayer of the petitioner for keeping the departmental proceedings in abeyance till the recording of statements in the criminal case is rejected.

The sum and substance of above discussion under different heads is that:-

(i) Deemed suspension of the petitioner w.e.f. 12.08.2019 has been reviewed and extended vide order dated 08.11.2019 in accordance with law.

(ii) Further review and extension of petitioner's suspension vide order dated 06.02.2020 till 07.05.2020 and vide order dated 20.04.2020 till 05.08.2020 has also been carried out in accordance with law and is justified in the given facts and circumstances of the case. However, we direct that investigation in the criminal case originating from FIR No.09/2019 registered by State Vigilance & Anti Corruption Bureau, Dharamshala, under Section 7 of the Prevention of Corruption Act, 1988, against the petitioner, a Class-I Gazetted Police Officer, for allegedly accepting bribe, be completed as expeditiously as possible, preferably before 05.08.2020.

(iii) It is for the petitioner to submit his written defence to the Memorandum of Charges and for the disciplinary authority to determine whether a particular charge is made out or not. At this stage, it is premature to assume that disciplinary authority shall not determine the question on the basis of facts and law.

(iv) Peculiar facts and circumstances of this case do not warrant deferring and unduly delaying the departmental enquiry till the recording of statements of witnesses in the criminal trial.

The writ petition is accordingly dismissed alongwith pending miscellaneous application(s), if any.

We may, however, clarify that we have not expressed any opinion on the merits of matter/charges levelled against the petitioner.