
(2005) 11 RAJ CK 0011

In the Rajasthan High Court

Case No : Special Appeal (Writ) No. 819 of 2005

Hakumat Rai

APPELLANT

Vs

The Oriental Insurance Co. Ltd. and Another

RESPONDENT

Date of Decision : 09-11-2005

Acts Referred:

General Insurance (Conduct, Discipline and Appeal) Rules, 1975 — Rule 3(1), 4(5)
Penal Code, 1860 (IPC) — Section 120B, 409, 465, 467, 471
Prevention of Corruption Act, 1988 — Section 13(1), 13(2)

Citation : (2005) 4 RLW 3013 : (2006) WLC 158

Hon'ble Judges : S.N. Jha, C.J.;Y.R. Meena, J

Bench : Division Bench

Advocate : Praveen Balwada, Hemant Gajraj, Suresh Dhenwal and Rathanesh Choudhary, for the Appellant;

Final Decision : Dismissed

Judgement

S.N. Jha, C.J.—This special appeal is directed against the order of the learned Single Judge dated August 4, 2005 dismissing the writ petition of the appellant. The appellant had filed the writ petition seeking direction upon the respondents to drop the departmental proceedings initiated against him during pendency of the criminal case. The facts of the case briefly are as follows:--

2. During tenure of the appellant as Branch Manager of the Oriental Insurance Company Ltd. (in short "the Insurance Company") at Kishangarh Branch, a criminal case bearing FIR No. RC/JAI/2003/A/0004 under Sections 120B, 409, 465, 467, 471 and 477A IPC and Section 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act was registered by the Central Bureau of Investigation (CBI) at Jaipur Branch against the appellant and others on March 7, 2003 and on November 15, 2003 charge-sheet was submitted against the appellant and others. The case is presently pending in the Court of Special Judge, CBI Cases, Jaipur at the stage of framing of charges. Meanwhile, on March 15, 2005 a departmental proceeding was initiated against the appellant.

On April 1, 2005 the charge-memo along with the statement of imputation of misconduct etc. was issued. The appellant made representation to keep the proceeding in abeyance during pendency of the criminal case. A legal notice was also served. The representation apparently did not find favour and on June 7, 2005 Smt. Jaya Balachandran, CDI, CVC, New Delhi was appointed as Enquiry Officer. Pursuant to letter of the appellant dated June 7, 2005, on July 4, 2005 the respondents appointed Shri Surjeet Singh, CDI, CVC, New Delhi as the Enquiry Officer in place of Smt. Jaya Balachandran. At this stage the appellant filed the writ petition seeking relief as indicated outset. The learned Single Judge noticed the grievance of the appellant to the effect that during pendency of the criminal case departmental proceedings cannot be initiated but disagreeing with the contention, observing that departmental proceedings can be initiated while criminal case is pending, dismissed the writ petition. Feeling aggrieved, the appellant has come in appeal to the Division Bench.

3. Shri Praveen Balwada appearing for the appellant submitted that departmental proceeding is based on self same facts as criminal case and, therefore, it would not be proper to permit the respondents to continue with the departmental proceeding till disposal of the criminal case. In support of the contention counsel placed reliance on Union of India and Ors. v. Naman Singh Shekhawat and Anr. 2005(8) RDD 3332.

4. The question as to whether a departmental proceeding can be held simultaneously with the criminal case or after acquittal of the delinquent in the criminal case is not res-integra. In The Delhi Cloth and General Mills Ltd. Vs. Kushal Bhan, one of the earliest cases on the point, the Supreme Court observed that:--

"It is true that very often employers stay enquiries pending the decision of the criminal case of the criminal Trial Courts and that is fair; but we can not say that principles of natural justice require that an employer must wait for the decision at least of the criminal Trial Court before taking action against an employee."

Having observed thus, the Court added a caveat as under:--

"We may, however, add that if the case is of a grave nature or involves questions of fact or law, which are not simple, it would be advisable for the employer to await the decision of the Trial Court, so that the defence of the employee in the criminal case may not be prejudiced."

5. In Tata Oil Mills Co. Ltd. Vs. Its Workmen, the Supreme Court observed as under:--

"There is yet another point which remains to be considered. The Industrial Tribunal appears to have taken the view that since criminal proceedings had been started against Raghavan, the domestic enquiry should have been stayed pending the final disposal of the said criminal proceedings. As this Court has held in The Delhi Cloth and General Mills Ltd. Vs. Kushal Bhan, it is desirable that if

the incident giving rise to a charge framed against a workman in a domestic enquiry is being tried in a criminal court, the employer should stay the domestic enquiry pending the final disposal of the criminal case."

6. From the above pronouncements of law it is clear that there is no bar to initiating or continuing the departmental proceeding during pendency of the criminal case but the employer is required to take a rational decision as to whether in the facts and circumstances of the particular case, proceeding should be stayed or continued. Understandably, as there cannot be any hard and fast rule limiting the discretion of the employee, the question kept cropping-up in different Courts times without number. It is not necessary to refer to plethora of case law on the subject, suffice it to mention a few of them to indicate the recent trend.

7. In *Kusheshwar Dubey Vs. Bharat Coking Coal Ltd. and Others*, , after survey of the case law of the subject, the Supreme Court observed as under:--

"The view expressed in the three cases of this Court seem to support the position that while there could be no legal bar for simultaneous proceedings being taken, yet, there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case. In the latter class of cases it would be open to the delinquent employee to seek such an order of stay or injunction from the court. Whether in the facts and circumstances of a particular case there should or should not be such simultaneity of the proceedings would then received judicial consideration and the court will decide in the given circumstances of a particular case as to whether the disciplinary proceedings should be interdicted, pending criminal trial. As we have already stated that it is neither possible nor advisable to evolve a hard and fast, strait-jacket formula valid for all cases and of general application without regard to the particularities of the individual situation. For the disposal of the present case, we do not think it necessary to say anything more, particularly when we do not intend to lay down any general guideline."

8. In *Nelson Motis Vs. Union of India and another*, , the statement of law was more emphatic and it would be useful to quote the relevant observation as under:--

"So far the first point is concerned, namely, whether the disciplinary proceedings could have been continued in the fact of the acquittal of the appellant in the criminal case, the plea has no substance whatsoever and does not merit a detailed consideration. The nature and scope of a criminal case are very different from those of a departmental disciplinary proceeding and an order of acquittal, therefore, cannot conclude the departmental proceeding."

9. In *Corporation of the City of Nagpur, Civil Lines, Nagpur v. Ramchandra* (1984) 2 SCC 714 a question arose as to whether departmental proceedings can be initiated where the delinquent has been acquitted of the charge in the criminal case involving the same, set of facts. The Supreme Court laid down certain guide

lines and it may be useful to quote the relevant observation as under:--

"The other question that remains is if the respondents are acquitted in the criminal case whether or not the departmental inquiry pending against the respondents would have to continue. This is a matter which is to be decided by the department after considering the nature of the findings given by the criminal Court. Normally where the accused is acquitted honourably and completely exonerated of the charges it would not be expedient to continue a departmental inquiry on the very same charges or grounds or evidence, but the fact remains, however, that merely because the accused is acquitted, the power of the authority concerned to continue the departmental inquiry is not taken away nor is its direction (discretion) in any way fettered. However, as quite some time has elapsed since the departmental inquiry had started the authority concerned will take into consideration this factor in coming to the conclusion if it is really worthwhile to continue the departmental inquiry in the event of the acquittal of the respondents. If, however, the authority feels that there is sufficient evidence and good grounds to proceed with the inquiry, it can certainly do so."

10. The case law was once again reviewed by the Supreme Court in *State of Rajasthan Vs. B.K. Meena and others*, , wherein it was stated:--

"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 suggestion 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. (supra)*, and *Tata Oil Mills (supra)*, is also not 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- delay unduly. So far as criminal cases are concerned, it is well known that they drag on endlessly where high officials or person 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 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 the 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."

11. In *Depot Manager, Andhra Pradesh State Road Transport Corporation Vs. Mohd. Yousuf Miya, etc.*, it was held that there is no bar to proceed simultaneously with the departmental enquiry and the criminal case unless the charge in the criminal case is of a grave nature involving complicated questions of fact and law.

12. After noticing the decisions on the point, in *Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another*, the Supreme Court summed up the conclusions deducible from various decisions as under:--

"(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."

13. From the above case law it is manifest that the departmental proceeding can be initiated and continued during pendency of the criminal trial; indeed, even after the delinquent has earned acquittal in the criminal case. As in the instant case the criminal case is still at the stage of framing of charge, we are not concerned with the latter eventuality. The only question is whether in the facts and circumstances the departmental proceeding should be permitted to continue against the appellant.

14. Though we have briefly mentioned at the outset genesis of the case, in order to answer the question it would be appropriate to notice the relevant facts.

15. The facts are that during the appellant's tenure as Branch Manager, Kishangarh Branch, one Govind Kumar Garg was posted as Development Officer of the Insurance Company. On 02.01.2001 he issued Cover Note No. 076819 in respect of a Bajaj Tempo bearing Registration No. RJ-01-P-0142 in favour of one Salimuddin, owner of the vehicle, covering third party risk for the period 02.01.2001 to 01.01.2002. He received the amount of Rs. 1,898/- towards premium but did not deposit either the premium amount or the office copy of the Cover Note. Govind Kumar Garg issued another Cover Note No. 076915 on 08.01.2001 in respect of another Bajaj Tempo bearing Registration No. RJ-01-P-2832 in favour of one Smt. Neena Malhotra covering third party risk for the period 09.01.2001 to 08.01.2002. He deposited the office copy of the Cover Note along with amount of premium of Rs. 1,898/- this time vide receipt No. 6187 dated 09.01.2001 and Insurance Policy No. 4885/2001 was issued against Cover Note No. 076915 in respect of the said vehicle i.e. Bajaj Tempo bearing Registration No. RJ-01-P-2832. Tempo No. RJ-01-P-0142 met with an accident on 15.10.2001 at Kishangarh in which four occupants suffered injuries. They filed claim cases in the Motor Accident Claims Tribunal, Kishangarh. On receipt of notices of the claim cases, the appellant as Branch Manager of the Kishangarh Branch forwarded the claim for necessary action. On receipt of the claim from Kishangarh Branch, Divisional Manager Daljeet Singh vide letter dated 30.04.2002 asked the appellant to send the certified copies of the policy in respect of Cover Note No. 076819 with respect to vehicle No. RJ-01 -P-0142 and

also compliance u/s 64VB of the Insurance Act for being deposited in the Claims Tribunal. The Divisional Manager sent reminder on 20.6.2002. In response to the letter the appellant informed the Divisional Office on telephone on 21.06.2002 that policy and Cover Note No. 076819 were not traceable.

16. Investigation conducted by the CBI revealed that Govind Kumar Garg had filled up the particulars viz. policy No., cover note No., name of the party, vehicle No. etc. in respect of Cover Note No. 076819 in the policy format bearing No. JRO/MCS/02/No. 0015967 in the computer at Kishangarh Branch and taken out the print out. He deliberately mentioned Policy No. as 4885/2001 in the said policy format, even though the said policy was actually issued against Cover Note No. 076915 in respect of Tempo No. RJ-01-P-2832 in favour of Smt. Neena Malhotra. The appellant, the investigation revealed, had put his signature on the said false policy and thus created a false document fraudulently showing as if the policy was issued from Kishangarh Branch in respect of Tempo No. RJ-01-P-0142 belonging to Salimuddin even though the policy had already been issued against Cover Note No. 076915 in respect of Tempo No. RJ-01-P-2832. The investigation further revealed that on 04.07.2002 the Divisional Manager sent the carbon copy of the said false policy No; 4885/2001 asking for the true copies of the policy and Section 64VB compliance. Govind Kumar Garg got filled up false details in the proforma for compliance of Section 64VB of the Insurance Act and the said proforma contained the signature of the appellant.

17. It is not necessary to make any observation on merit of the charge or accusation against the appellant for disposal of this case more so because the criminal case is pending trial in the concerned Court. Suffice it to say nevertheless that elements of forgery, mis-appropriation and cheating are writ large. The Policy said to have been signed by the Branch Manager and the proforma in the matter of compliance of Section 64VB of the Insurance Act contain the signatures of the appellant. Whether the action of the appellant was bonafide or in collusion, that is, in furtherance of criminal conspiracy with Govind Kumar Garg are questions of fact. The limited question for consideration is whether in the facts of the case, it is a fit case to keep the departmental proceeding in abeyance till disposal of the criminal case.

18. As noticed above, where departmental proceedings and criminal case are based on identical and similar set of facts, the departmental proceedings can be stayed but only when the charge against the delinquent in the criminal case is of a grave nature and involve complicated questions of law and fact. Whereas the charge in the criminal case in the case is hand in substance is that he acted in criminal conspiracy with Govind Kumar Garg, in the departmental proceeding the charge is that he created a fake policy and on the basis of fake documents, facilitated payment of compensation to the tune of Rs. 1,00,000/- in favour of the claimants, and by doing so failed to maintain the absolute integrity, devotion to duty and acted in a manner unbecoming of a public servant and prejudicial to the interest of the Company amounting to gross misconduct and violation of

Rules 3(1)(i)(ii)(iii), 4(5) of the General Insurance (CDA) Rules, 1975. Not only, it would appear, the nature of the charge and accusation is different from the criminal case, the charge does not involve complicated questions of law and fact to warrant stay of departmental proceedings.

19. As a matter of fact we are inclined to think that it is in the interest of the appellant that he participates in the departmental proceeding in right earnest so that in the event of being exonerated, his innocence stands vindicated. It need hardly be emphasized that if the proceeding can be initiated or re-initiated after conclusion of the criminal case which itself may be a time consuming affair, it would not be in the interest of the delinquent to keep the possibility of the departmental proceedings being revived after conclusion of the criminal case hang over like a damocles' sword. The Supreme Court in *State of Rajasthan v. B.K. Meena and Ors.* (supra), echoed the same idea when it observed—vide passage quoted above that the "interest of the delinquent officer lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charge, his honour should be vindicated at the earliest possible moment and if he is guilty, he should be dealt with promptly according to law."

20. In the above premises, in the facts and circumstances, we find no ground to drop or stay the departmental proceedings till disposal of the criminal case. Accordingly, we do not find any error in the order of the learned Single Judge dismissing the writ petition. The appeal, consequently, is dismissed.