

(1996) 10 AHC CK 0051

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 31427 of 1996

Indra Dev Tiwari

APPELLANT

Vs

Union of India, through Director-General, R.P.F. Rail
Bhawan, New Delhi & Ors.

RESPONDENT

Date of Decision : 08-10-1996

Acts Referred:

Penal Code, 1860 (IPC) — Section 394

Citation : (1996) 10 AHC CK 0051

Hon'ble Judges : R.H. Zaidi, J

Final Decision : Dismissed

Judgement

R.H. Zaidi, J.—Heard learned counsel for the petitioner and Sri Govind Saran, learned counsel appearing for the respondents.

2. By means of present petition under Article 226 of the Constitution of India, petitioner prays for a writ, order or direction in the nature of mandamus commanding the respondents to stay the departmental proceedings initiated by chargesheet dt. 881996 till the decision of the criminal case started on the basis of the first information report dt. 1671996 against him.

3. The relevant facts of the case as stated in the writ petition are that the petitioner was posted as constable in Company No. 48 R.P.F. (Railway Protection Force). It was on 29596 that he was granted 120 days leave. While on leave the petitioner was implicated in a Criminal Case No. 645 of 1996, under Section 394 I.P.C. on 1671996. On the basis of the first information report lodged on the same day, he was arrested and sent to jail. He was subsequently, released on bail.

4. In the meanwhile, disciplinary proceedings were also initiated against him. In the said proceedings charge sheet was issued on 8 81996 and, thereafter, he was asked to appear before the Inquiry Officer. In the criminal case also chargesheet was submitted on 31796. It is stated that the petitioner applied for stay of the

departmental proceedings till the decision of the criminal case to the Assistant Secretary, Commissioner, R.P.F., Northern Railway, Kanpur and also to the Inquiry Officer as he has apprehended that on account of continuance of the criminal proceedings his defence shall be prejudiced. Since no heed was paid to the representation made by the petitioner, he had to approach this court and file the present petition.

5. Learned counsel for the petitioner submitted that it was obligatory upon the authority concerned to stay the disciplinary proceedings till criminal case was not finally decided. In support of his submission, the learned counsel for the petitioner placed reliance upon the decision in the case of the Sunderrajan and another v. Unit Trust of India and another, 1993(3) SLR21. In the said case the apex court of the country was pleased to pass the following order:

"ORDER

Delay condoned.

Special leave granted.

Heard parties. We have perused the records.

We are of the view that the departmental enquiry should be stayed till the trial which is stated to be pending in the Court of the Chief Metropolitan Magistrate, Madras is completed. The enquiry shall accordingly stand stayed. However, it will be open to the respondents to proceed with the enquiry, if they so choose, after the Trial Court has rendered its judgment, whether or not any appeal is taken from that judgment to a higher court. We are told that the trial has been pending since May, 1989 and many witnesses have already been examined. Accordingly we except the Trial Court to complete the trial with in three months from the date of receipt of a copy of this judgment.

In the circumstances, the appeal is disposed of with no order as to costs.

Order accordingly."

6. From the aforesaid order it is apparent that the order was passed by the Supreme Court under the facts and circumstances of that case. It does not lay down the law to the effect that whenever a government employee is involved in a criminal proceedings, the departmental proceedings shall remain stayed till the disposal of the criminal case.

7. On the other hand learned counsel for the contesting respondents relied upon the decision of a Constitution Bench or the Supreme Court in S.A. Venkatraman v. Union of India and another, AIR 1954 SC 375. In the said case, in similar circumstances as of the present case Supreme Court rejected the prayer for staying the departmental proceeding pending disposal of the criminal case holding that there was no legal bar to the initiation or continuation of the criminal proceedings merely because the petitioner was punished earlier in disciplinary proceedings. Legally, therefore, there is no bar or prohibition against

initiation of simultaneous criminal proceedings and disciplinary proceedings.

8. In a recent decision of the Apex Court in *State of Rajasthan v. B.K. Meena*, [Civil Appeal No. 12563 of 1996 decided on 27/9/1996], it was ruled as under:

"It is thus clear that the proposition is not disputed by Mr. K. Madhava Reddy, learned counsel for the respondent, that in law there is no bar to, or prohibition against, initiating simultaneous criminal proceedings and disciplinary proceedings. Indeed not only the said two proceedings, but if found necessary, even a civil suit can also proceed simultaneously."

9. In *Nelson Moils v. Union of India and another*, [AIR 1992, SC 1981], it was held that acquittal of a government servant in a criminal case does not conclude the departmental proceedings. In para 5 of the judgment it was ruled as under:

"So far the first point is concerned, namely whether the disciplinary proceeding could have been continued in the face 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."

10. Thus, neither acquittal in the criminal case can affect the maintainability of the departmental proceedings, nor the conviction can affect the initiation of the criminal proceedings.

11. In view of the aforesaid decision of the Supreme Court the departmental and criminal proceedings may be initiated and continued simultaneously.

12. No case for interference under Article 226 of the Constitution of India is made out. The writ petition fails and is dismissed in limine.