

(2017) 08 CAL CK 0003
In the Calcutta High Court
Case No : 30552 (W) of 2016

Jitendra Kumar Misra

APPELLANT

Vs

Union of India and Others.

RESPONDENT

Date of Decision : 04-08-2017

Acts Referred:

[Indian Penal Code, 1860](#), [Section 324](#),
[Section 307](#), [Section 326](#), [Section 353](#), [Section 427](#) - Voluntarily
causing hurt by dangerous

Citation : (2017) 08 CAL CK 0003

Hon'ble Judges : Sambuddha Chakrabarti

Bench : SINGLE BENCH

Advocate : Pinaki Chakrabarty, ?Amar Kumar Banerjee, ?Swapan Banerjee, ?
Arunava Ganguly

Final Decision : Allowed

Judgement

1. There are certain issues in law which, even though discussed many times and in myriad forms, call for a fresh consideration each time a problem touching on that has to be addressed. A straight jacket formula moulding everything on a homogeneous cast not being possible the problem frequently surfaces itself in varied context and appearance.

2. A recurrent issue in service jurisprudence is whether a disciplinary proceeding faced by an employee should proceed during the continuance of a criminal proceeding based on the same facts. Views are divergent and vary from case to case.

Ultimately, the answer is highly case-specific and must upon a detailed consideration of its whole factual matrix.

3. The immediate context of the prolegomenon is one such case where the oft-discussed issue of service jurisprudence has to be considered in details to appreciate its ramification. But before that it is necessary to consider the factual aspect of the case.

4. The petitioner is an employee of the Railway Protection Force (RPF, for short). By a memo, dated June 22, 2016, issued by the Assistant Security Commissioner, RPF, i.e., the respondent no. 4 herein, the petitioner was informed that an enquiry had been proposed to be held against him. The proposed charges, lists of documents and witnesses were sent to him.

5. The charge against the petitioner was that on March 23, 2016 at about 11 a.m. he came to the RPF post in badly intoxicated condition and started abusing the staff present there in unparliamentary language and created a nuisance. Again, on that very day at about 2.10 p.m. when a senior official was taking his lunch along with other staff, the petitioner went there and hit Mr. Meena, the respondent no. 6, from his back by knife. Mr. Meena sustained bleeding injury on the left side of the back and tried to snatch the knife from the petitioner to save himself but the petitioner again attacked him with knife. This time the respondent no. 6 sustained bleeding injury in his wrist and in both arms. On the next day i.e., March 24, 2016, the respondent no. 6 lodged an FIR in the South Police Station, Asansol, District Burdwan, and a case under Sections 324 / 326 / 307 / 353 and 427 of the Indian Penal Code has been initiated against the petitioner. The petitioner was brought to the Railway hospital for medical check-up where the doctor examined him for ascertaining drunkenness.

6. On April 30, 2016, the prosecution submitted a charge-sheet

against the petitioner under Sections 324 / 307 / 353 of the Indian Penal Code before the Court of the learned Chief Judicial Magistrate, Burdwan at Asansol. It has been alleged in the charge-sheet in the criminal case that on March 23, 2016 at 11 a.m. the petitioner came in a drunken condition and felled bicycle of a staff, abused him and a departmental proceeding has been taken against him. For the said reason, he took revenge against the respondent no. 6 with a knife as a result of which the complainant received injury on his back and left hand.

7. On August 28, 2016, the petitioner submitted a representation against the Memorandum dated June 22, 2016, by which he had denied the charges and requested the authority not to proceed with the departmental proceeding till the finalization of the criminal case. On September 2, 2016, the respondent no. 4 issued a speaking order and intimated his decision to initiate a departmental proceeding, against the petitioner, and enquiry officer was appointed to conduct the same.

8. On September 12, 2016, the petitioner again submitted a further representation to the respondent no. 4 with the similar prayer as made in the earlier representation. On September 19, 2016, the respondent no. 4 issued a letter intimating him the date, time and venue of the departmental enquiry with an advice to attend the same.

9. Finally, on September 22, 2016, the respondent no. 4 informed the petitioner that there was no bar in simultaneously conducting the departmental enquiry against an employee while a criminal case has been registered against him.

10. It is a grievance of the petitioner that on May 2, 2016, his wife lodged a complaint against the respondent no. 6 and two other persons under Sections 323 / 324 / 326 / 307 / 120B of the Indian

Penal Code. A criminal case had been lodged against these persons in respect of the self-same incident that had taken place on March 23, 2016. But no departmental proceeding has been initiated against them, but the petitioner alone is facing the charge.

11. Mr. Chakarborty, the learned Advocate appearing for the petitioner, submitted that charges of the petitioner have already been framed and very soon the trial would commence. Since the criminal case and the departmental enquiry are based on the same set of facts, it is necessary that the departmental proceeding should be stayed as otherwise the petitioner will have to disclose his defence.

12. The Court had given the respondent no. 3 an opportunity to file a report in the form of an affidavit in response to the allegations made in the writ petition. Mr. Banerjee, however, specifically submitted that the respondents did not wish to file any report.

13. By this writ petition, the petitioner has inter alia prayed for a writ in the nature of mandamus, commanding the respondents to rescind and cancel the impugned letter dated September 22, 2016, issued by the respondent no. 4. Along with that the petitioner has also prayed for cancellation or withdrawal of the charge-sheet, dated September 2, 2016.

14. That the facts of the case both before the departmental enquiry and in the criminal trial is identical and based on the same set of facts is an admitted one. As a matter of fact, it is upon the complaint lodged by the respondent no. 6 in respect of the alleged incident on March 23, 2016, at 2.10 p.m. that the departmental enquiry has been initiated against the petitioner and the criminal case has been started against him.

15. The question to be addressed is whether the petitioner was

justified in seeking a postponement of the departmental proceeding during the pendency of the criminal case. As mentioned earlier, the issue has been variously addressed by courts on various occasions which defies any attempt to follow a single formula, except that the fate of each such case must necessarily depend upon the facts of a particular case.

16. In *State of Rajasthan vs. B.K. Meena*, reported in (1999) 3 SCC 679, the Supreme Court observed that the prejudice of the defence of the employee in the criminal case was the only ground for staying disciplinary proceeding. The validity of the ground was the pre-condition to be determined by the nature of the case. This can be done only in cases of grave nature involving questions of fact and law. The issue concerning desirability and propriety of staying the disciplinary enquiry has to be determined in each case taking into consideration the facts and circumstances of the case and not as a matter of course.

17. A very common stand, frequently taken by an employer opposing the employee's prayer for staying the departmental proceeding during the pendency of the criminal case, is based on the observations made in *Capt. M. Paul Antony vs. Bharat Gold Mines Ltd .*, reported in AIR 1999 SC 1416. There the Supreme Court had indicated certain fact situations which should govern the question whether departmental proceeding should be deferred when a criminal trial was on. In Paragraph 22 of the judgment, the Supreme Court deduced from various judgments and summarized the position:

"(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 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."

18. Mr. Banerjee has relied on the case in Deputy Inspector

General of Police and Another Vs. S. Samuthiram, reported in AIR

2013 SC 14. That case had relied on and quoted the criteria as laid down in the case of Capt. M. Paul Anthony (Supra).

19. In the case of M/s. Stanzen Toyotetsu India Private Limited

Vs. Girish V. and Others, reported in AIR 2014 SC 989, also relied

on by the respondent, the Supreme Court again had the occasion to deal with the said issue, viz., whether a departmental enquiry

should be stayed pending conclusion of criminal case instituted in respect of the very same incident. After holding that there was no

legal bar to conduct disciplinary proceedings and criminal trial

simultaneously, the Supreme Court held that it would depend

upon the nature of charges in the criminal case and whether the

case involves complicated questions of law and facts. The

possibility of prejudice to the employee accused in the criminal

case on account of parallel disciplinary enquiry going ahead is

another dimension which will have to be addressed while

permitting or staying such disciplinary proceeding. After

considering several judgments delivered on the issue, the Supreme Court summed up the legal position that disciplinary proceedings and proceedings in a criminal case can proceed simultaneously in the absence of any legal bar. "It is also evident", the Supreme Court observed, "that while seriousness of the charge levelled against the employees is a consideration the same is not by itself sufficient unless the case also involves complicated questions of law and fact." At the same time, the Supreme Court observed that while there is no legal bar to the holding of the disciplinary proceedings and the criminal trial simultaneously, stay of disciplinary proceedings may be an advisable course in cases where the criminal charge against the employee is grave and continuance of the disciplinary proceedings is likely to prejudice the defence of the employee before the criminal court.

20. The response of the respondent no. 4 in his communication dated September 22, 2016, to the petitioner turning down his prayer for postponing of the criminal case vary closely follows the language of the Supreme Court in paragraph 22(1) of the judgment that departmental proceeding and criminal case can proceed simultaneously as there was no bar in their being conducted simultaneously, though separately. However, the subsequent parameters set out in the said paragraph clearly indicates that the permissibility of simultaneously conducting a departmental proceeding and criminal case is also not an absolute, universal and non-relaxable one.

21. A closer look of the law summarized in paragraph 22 of Capt. M. Paul Antony (Supra), also makes it quite clear that there may be cases and cases, circumstances and circumstances and facts and facts where the absence of absolute bar cannot be applied as an absolute proposition. It has also been laid down that if the

departmental proceeding 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 the complicated questions of law and fact, it will be desirable to stay the departmental proceeding till the criminal case is concluded. This again in turn will depend upon the nature of an offence, the nature of the case initiated against the employee and the materials collected against him. The Supreme Court, however, cautioned that it has also to be borne in mind that the departmental enquiry cannot be unduly delayed and if the criminal case does not proceed or is being delayed the departmental proceeding, even if it was once stayed, can be resumed.

22. Relying on the State of Rajasthan Vs. B.K. Meena (Supra) the Supreme Court in the case of Depot Manager, Andhra Pradesh State Road Transport Corporation Vs. Md. Yousuf Mia, reported in AIR 1997 SC 2232, laid down certain principles to be borne in mind while deciding the issue such as the present one. Although the difference of scope and fundamental nature between a criminal trial and departmental enquiry was maintained but the overriding consideration was the requirement to consider whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in criminal case. The Supreme Court emphasized that this is a question which cannot be decided irrespective of factual position and has to be considered in each separate case depending on the facts and circumstances of it. The Supreme Court had very specifically held that it was not desirable to lay down any guideline as inflexible rule in which the departmental proceeding may or may not be stayed pending trial in a criminal case against the delinquent officer. There was 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 question of law and fact.

23. Since the Supreme Court had repeatedly held that it is not desirable to lay down any guideline as inflexible rules, there is no rule absolutely staying, a departmental proceeding during a criminal trial. Similarly, there is no absolute rule against the grant of stay of a departmental proceeding against a delinquent facing a criminal charge.

24. That a domestic enquiry can be stayed during the pendency of a criminal trial was recognized by Supreme Court more than half a century ago. In the case of *Tata Oil Millis Company Ltd. Vs. Workman*, reported in AIR 1965 SC 155, the Supreme Court observed that it is always desirable that if an incident giving rise to a charge framed against an employee 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. It would be, particularly, appropriate to adopt such a course where the charge against the workman is of a grave character as in such a case it would be unfair to compel the employee to disclose the defence which he may take in the criminal case. Again in case of *Kusheswar Dube Vs. Bharat Coal Company Ltd.*, reported in AIR 1988 SC 21187, the Supreme Court upheld the order of injunction passed by the trial court restraining the employer from holding the departmental proceeding.

25. Again in the case of *Divisional Controller, Karnataka State Road Transport Corporation Vs. M. G. Vittal Rao*, reported in (2012) 1 SCC 442, the Supreme Court reiterated the legal position that there was no legal bar for both the criminal and the departmental proceeding to go on simultaneously. The only valid ground for claiming that the departmental proceeding may be stayed would be

to ensure that the defence of the employee in the criminal case may not be prejudiced and that too in cases of complex questions of facts and law. While emphasizing the necessity for not unnecessarily delaying the departmental proceeding, the Supreme Court had held that the departmental proceeding can go a simultaneously with 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. This view has been followed by the Supreme Court in the case of Avinash Sadashiv Bhosale Vs. Union of India and Others, reported in (2012) 13 SCC 142.

26. In an earlier judgment in the case of State Bank of India and Others Vs. R. B. Sharma, reported in AIR 2004 SC 4144, the Supreme Court after reiterating the desirability of not laying down any guideline as an inflexible rule on the issue, observed that on basic principles the criminal case and departmental proceedings can go on simultaneously, except where the two proceedings are based on the same set of facts and the evidence in both the proceedings are common. What is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the criminal case.

27. Thus one thing stands out very clearly that even if there is no absolute bar in proceeding with a departmental enquiry simultaneously with a criminal trial, the issue has to be examined in the context of in its own factual background in a given case. A common and consistent point of law underlying all the judgments is that no straight jacket rule can be laid down governing the myriad factual situations with their endless sub-variants as are reflected in each case. Ultimately, it hinges round the factual matrix, the identity of the charges, the nature of the evidence adduced, the nature of the charge and whether the delinquent is

likely to be prejudiced in the criminal case if he has to disclose his defence in the domestic enquiry.

28. If we examine the substratum of the criminal prosecution in the present case as well as initiation of the departmental enquiry, it cannot be gainsaid that both the proceedings relate to and arise out of the same fact, i.e., injuring the respondent no. 6 by a knife as a result of which he sustained bleeding injury in his back and wrist. The fact of the criminal case and the departmental enquiry is the same and the criminal case that is pending against him and the charges framed against the petitioner are also quite serious. He has been charged under S. 324, i.e., voluntarily causing hurt by dangerous weapon or means, S. 307, i.e., attempt to murder, if such act causes hurt to any person and S. 353, i.e., assault or use of criminal force to deter of a public servant from discharging his duties. Thus, the charges are grave and savior ones. It is quite likely that the petitioner will have to disclose his defence at the departmental enquiry and if he does so the same is bound to prejudicially affect him in his defence in the criminal case.

29. It may be mentioned that in that the case of M/s. Stanzen Toyotetsu (Supra) the charges levelled against the employees were under Sections 143 / 147 / 323 / 324 / 356 / 427 / 504 / 506 / 114 and 149 of the Indian Penal Code. The Supreme Court observed that these were no ordinary offences being punishable with imprisonment which may extend up to 3 years besides fine. If the imprisonment up to 3 years is considered to be not an ordinary case, the petitioner in the present case being implicated in a case under Section 307 which is a much graver offence, must necessarily not to be considered involved in an ordinary case either.

30. Thus a very major criteria to be considered for deciding

whether the departmental enquiry shall remain stayed, has been satisfied, in favour of the petitioner, viz., both the cases are grounded on the same facts. On the top of that the person alleged to have received injury is the defacto-complainant. He is the main witness and if one goes by the allegation made against the petitioner there shall be an identity of witnesses inasmuch as the said incident is alleged to have taken place inside the RPF Barrack. The witnesses in the departmental enquiry as mentioned in the charge-sheet are all employees of the Railway Protection Force. The charge-sheet in the criminal case also makes out the case as has been alleged against the petitioner in the charge-sheet in the departmental enquiry.

31. Judged from the settled principles of law, I find no justification for the response of the respondents turning down the petitioner's prayer for stay of the departmental proceedings during the pendency of the criminal case which was not a very correct approach. Without anything more, the view expressed by the respondents that there was no bar in simultaneous conduct of the departmental enquiry and the criminal case is grossly an inadequate one. Merely because there is no absolute bar, it cannot be said that the departmental enquiry must be held simultaneously regardless of the facts. The parameters for deciding the same have been very well-settled by various judgments of the Supreme Court and other courts. The impugned communication does not reflect the same. On the contrary, only a part of the principle of law decided has been picked up without consideration of the other aspects involved in the matter.

32. If the bank had used a part of the principle laid down in various judgments, say Capt. M. Paul Antony (Supra), it was equally important to consider the other principles of law where

circumstances have been recognized as sufficient for not continuing both the proceedings simultaneously. It was certainly expected of them to record why they did not consider the case of the petitioner as coming within the other circumstances where it would not be proper to proceed with the departmental enquiry. The impugned communication of the respondent no. 4 is all the more incomplete as the petitioner's case for seeking stay of the departmental proceedings, viz., prejudice in defence in the criminal case, has not been even touched on by the respondent no. 4. The petitioner made out a definite case for stay of the departmental proceeding. In reply, he was informed of a legal proposition without any reference to how it applied to the present case.

33. The respondent no. 4 could not appreciate that this was a fit case where the departmental enquiry deserved to be stayed during the pendency of the criminal case. The apprehension of the petitioner that in course of the departmental proceeding he will have to take a defence which is likely to adversely affect him in his defence in the criminal case seems to be grounded on reality and is, therefore, eminently justifiable.

34. I find sufficient merit in the writ petition and equally no justification for the respondents' rejecting the petitioner's prayer for postponing the departmental enquiry only on the basis of a part of the legal proposition. The reply given by the respondent no. 4 does not appear to have addressed the issues raised by the petitioner in his application, dated September 12, 2016. The disposal of the petitioner's application by reminding him of a part of the legal position is, without anything more, an incomplete, if not a non-speaking one.

35. In such view of it, the communication made by the respondent no. 4 on September 22, 2016 does not seem to be a

proper disposal of the petitioner's application and the same is hereby set aside and quashed. The respondents are directed not to proceed with the departmental enquiry against the petitioner till the disposal of the criminal case.

36 The writ petition is allowed.

37. There shall be no order as to the costs.

38. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all requisite formalities.