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**(1998) 02 J&K CK 0041**  
**In the Jammu And Kashmir High Court**  
**Case No : Writ Petition No. 212 of 1998 (S)**

Kirpal Singh

APPELLANT

Vs

State of Jammu and Kashmir

RESPONDENT

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**Date of Decision :** 27-02-1998

**Acts Referred:**

**Citation :** (1998) 2 SCT 233

**Hon'ble Judges :** T.S.Doabia, J

**Bench :** Single Bench

**Advocate :** M.A. Goni, R.P. Sangra, Advocates appearing for the Parties

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## Judgement

T.S. Doabia, J.—Mr. M.A. Goni, Senior A.A.G., has put in appearance on behalf of respondents.

Counsel heard.

2. With the consent of the parties, the petition is taken up for disposal.

3. Proceedings have been initiated against the petitioner under Section 494 of the RPC. These have been initiated at the instance of the first wife of

the petitioner. Simultaneously, the departmental proceedings have also been initiated by the respondent authorities. It has been brought to the notice

of the petitioner that he has prima facie committed an act of violation of J&K Government Employees conduct Rules. Reference has been made to

R. 22 in the communication addressed to the petitioner on 10th February, 1997. The petitioner has submitted his reply. After considering the reply,

the respondent authorities have taken a decision to initiate the departmental action. This decision has been placed on record as Annexure 'F'. It is

this action which is being challenged on the ground that the petitioner cannot be made to face a departmental enquiry when a criminal case is

already pending.

4. The question as to whether the departmental proceedings can be initiated when a criminal complaint is also pending, has thus been raised. This question be examined.

5. The Supreme Court in the case of *Tata Oil Mills Co. Ltd. v. The Workmen*, AIR 1965 SC 155, held that there is no general proposition that

domestic enquiry must be stayed during the pendency of criminal trial. What was highlighted was that the facts of each case should be taken note

of, Gajendragadkar, CJ. speaking for the Court observed as under :

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. It would be particularly appropriate to adopt such a

course where the charge against the workman is of a grave character, because in such a case it would be unfair to compel the workman to disclose

the defence which he may take before the criminal court. But to say that domestic enquiries may be stayed pending criminal trial is very different

from anything (sic) that if an employer proceeds with the domestic enquiry in spite of the fact that the criminal trial is pending, the enquiry for that

reason alone is vitiated and the conclusion reached in such an enquiry is either bad in law or mala fide.

6. Another case which deals with the subject matter is reported as *Jang Bhadur Singh v. Baij Nath Tiwari*, AIR 1969 SC 30. The argument which

was advanced in this case was that holding of domestic enquiry regarding misconduct against an employee during pendency of a parallel enquiry

before a Court would amount to contempt of court. It was argued that parallel enquiries by the domestic tribunal cannot be held. This argument

was negated. The relevant observations contained in para 3 of the above judgment may be noticed in this regard:

The issue in the disciplinary proceedings is whether the employee is guilty of the charges on which it is proposed to take action against him. The

same issue may arise for decision in a civil or criminal proceeding pending in a Court. But the pendency of the court proceedings does not bar the

taking of disciplinary action. The power of taking such action is vested in the disciplinary authority. The civil or criminal court has no such power.

The initiation and continuation of disciplinary proceedings in good faith is not calculated to obstruct or interfere with the course of justice in the pending court proceeding. The employee is free to move the Court for an order restraining the continuance of the disciplinary proceedings. If he obtains a stay order, wilful violation of the order would of course amount to contempt of court. In the absence of a stay order the disciplinary authority is free to exercise its lawful powers.

See also *Tukaram Gaokar v. S.N. Shukla*, AIR 1978 SC 1050.

7. In *Re Shri Mehra*, 1962 MPLJ 363 the Madhya Pradesh High Court held that bona fide holding of a departmental inquiry on a charge of misappropriation against the Government servant would not amount to contempt of court.

8. A Division Bench of Punjab and Haryana High Court speaking through S.S. Sodhi, J. in the case of *B.S. Chaudhry v. Punjab University*, Chandigarh, (1998)4 Legal Reports and Statute (Pb.) 209, after taking note of the decisions of Supreme Court of India observed:

...taking an overall view of the circumstances and the situation as obtained in the present case no exception can be taken to the initiation and continuance of disciplinary proceedings against the petitioner nor is there any warrant for staying them during the pendency of the criminal trial against him.

9. This aspect of the matter was further considered by the Supreme Court of India in case reported as *State of Rajasthan v. B.K. Meena*, 1996(6) SCC 417 : 1996(4) SCT 707(SC). Following observations at page 422 and 423 are relevant and given below:

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 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 guilt 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 period 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.

10. I am accordingly of the opinion that no case has been made out for staying departmental proceedings. This petition is found to be without merit and is dismissed.

11. Petition dismissed.