

(2011) 08 GUJ CK 0079

In the Gujarat High Court

Case No : Special Civil Application No. 9920 of 2011

Manik B. Patil

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 02-08-2011

Acts Referred:

Prevention of Corruption Act, 1988 — Section 13(1), 13(2), 7
Railway Protection Force Rules, 1987 — Rule 146.2, 146.4, 153

Citation : (2011) 08 GUJ CK 0079

Hon'ble Judges : V.M. Sahai, J;G.B. Shah, J

Bench : Division Bench

Advocate : Pinky M. Trivedi, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

G.B. Shah, J.—We have heard the learned Counsel Ms. Pinky M Trivedi for the Petitioner. In this Special Civil Application, the prayers sought for by Petitioner are as under:

- (a) To allow the present petition;
- (b) To issue a writ of mandamus and/or any other appropriate writ, order or direction staying the further departmental proceedings against the Petitioner pursuant to the charge sheet dated 21.6.2011 (Annexure B).
- (c) To declare the action of the authorities in proceeding with the departmental proceedings pursuant to the charge sheet dated 21.6.2011 at Annexure B without awaiting the outcome of criminal case on the basis of which charge sheet is filed as illegal;
- (d) Pending admission, final hearing and disposal of this petition to say the departmental proceedings initiated against the present Petitioner vide charge sheet dated 21.6.2011 at Annexure B;

2. The facts of the case in nutshell for the purpose of deciding the controversy

involved in the present petition are as under:

The Petitioner was appointed as Constable in Railway Protection Force and subsequently promoted as Assistant Sub-Inspector-RPF and is serving as Assistant Sub-Inspector in Railway Protection Force (in short, "RPF") at present. When the Petitioner was serving at the Surat post, on 6.4.2011, the Anti Corruption Bureau, Surat raided the place. The Petitioner was arrested for accepting Rs. 1000/- as illegal gratification from one outsider named Amarbabu Kachawa and accordingly criminal case against the Petitioner being CR. No. 05/2011 was registered with ACB police station, Surat. Thereafter the Petitioner was suspended and was asked to give daily attendance at Valsad post. Meanwhile charge sheet was issued to the Petitioner for conducting the departmental proceedings against the Petitioner and the charge shown in the charge sheet at page 26 reads as under:

CHARGE SHEET

(SEE RULE 153 OF RPF RULES, 1987)

CHARGE

Shri Manek Patil, ASPF/ST post is hereby charged for:

1. He left his duty area on 6.4.2011 without intimation and permission of competent authority and reached traffic police chowki in front of ST railway station, where he was arrested by PI/ACB/Surat.
2. Acting in a manner which brought discredit to the reputation of the force, as he was arrested by PI/ACB/ST on 6.4.2011 vide CR ST/ACB/CR-05/11 Dt. 06.04.2011 under Sections 7, 13(1)(d) and 13(2) of PC Act, 1988 for accepting Rs. 1000/- as illegal gratification.

Thus, he violated Rule 146.2(ii) and 146.4 of RPF Rules, 1987.

STATEMENT OF ALLEGATION

As per report of IPF/ST vide No. RPF/ST. Spl. Occ/3/11 dt. 07.04.11, 04.05.11 and 08.05.11, and Asstt. Director (H.Q) ACB/Gujarat State, Ahmedabad's letter No. Surat City ACB PS CR No. 05/11/255/2011 dated 07/04/2011 that Shri Manek Patel ASI/RPF/ST was arrested by PI/ACB/ST at 19.00 hrs on 06.04.2011 vide CR ST/ACB.CR-05/11 dt. 06.4.11 u/s 13(1)(d) and 13(2) of PC Act, 1988 for accepting Rs. 1000/- as illegal gratification from one outsider named Amarbabu Kachawa @ Amru R/o Bhartana, Surat. By his above Act, he brought discredit to the reputation of the Force.

He was on duty in the shift of 07.00 hrs. to 19.00 hrs on 06.04.11 at ST post as duty officer, he left duty area without intimation and permission of competent authority and reached at new traffic police chowki in front of ST station, where he was arrested by PI/ACB/ST.

Thus he has violated Rule 146.2 (ii) and 146.4 of RPF Rules, 1987.

List of witnesses to be examined in the said charge sheet issued by Sr. Divisional Security Commissioner, RPF/W. Rly, Mumbai Central is as under:

LIST OF DOCUMENTS RELIED UPON

- 1) IPF/ST's Report No. RPF/ST/SPL. Occ/3/11 Dtd 7.4.11
- 2) IPF/ST's Report No. Spl. Occ/3/11 Dt.04.05.11
- 3) IPF/ST's Report No. Spl. Occ.3/11 Dtd 08.05.11
- 4) IPF/ST's Report No. ST/C-2/WR/7900272/11 Dt.09.05.11
- 5) ACB/Gujarat's letter No. Surat City ACB PS CR No. 05/11/255/2011 dated 7.4.2011.

WITNESS TO BE EXAMINED

1. Shri I M Shaikh, IPF/ST

2. PI/ACB/Surat

3. Learned Counsel for the Petitioner has vehemently argued that it is well settled law by the Hon''ble Apex Court as well as the High Court that when departmental inquiry is instituted on the basis of a criminal case, the authorities proceeding with departmental proceedings should as a general rule await for the decision in the criminal case, more particularly when the disciplinary proceedings and criminal proceedings arise out of the same transaction. Inviting our attention to the FIR, the learned Counsel has urged that the departmental proceedings and the criminal case are based on same set of facts and evidence of both the proceedings are similar. She has then submitted that many proceedings have been stayed by the department where the case before the criminal court is pending. Moreover, the information supplied by the department in the year 2010 indicates that departmental proceedings have been stayed by the department pending criminal trial. Therefore, similar treatment should be given to the Petitioner also.

3.1. So far as the submissions made by the learned Counsel for the Petitioner that in similarly situated cases, the proceedings have been stayed by the department is concerned, she has placed reliance on the documents at Annexure "C". We have gone through the document at Annexure "C". So far as the order dated 1.2.2010 related to One Subhay Singh is concerned, he was charged for leaving headquarters without permission and acting in a manner which brought discredit to the reputation of the Force and another case related to Lachhu, son of Nagji Vanzara is concerned, he was arrested for illegal sale of tea on the platform. In our view the above cases cannot be equated with the case on hand on which it is alleged that the present Petitioner had been caught red-handedly accepting illegal gratification of Rs. 1000/- and hence there appears no substance in the above submissions made by the leaned counsel for the Petitioner.

4. We have considered the above referred submissions in light of the documents produced by the Petitioner. It is an admitted fact that the charge sheet relating to the criminal case has yet not been filed but the FIR dated 6.4.2011 is on the record. Referring to the said FIR and the charge framed in the departmental proceedings referred above, it does not appear to be identical and similar comparing the same with the FIR forthcoming on the record. Further, as referred above, name of two witnesses have been mentioned in the above referred charge sheet dated 21.6.2011 issued by the department in which neither the complainant nor the eye-witnesses of the above referred criminal case has been cited as witnesses and hence if the Petitioner leads his own evidence in departmental disciplinary proceedings, that will not prejudice the Petitioner seriously in the criminal proceedings pending in the criminal court. On the above issue, learned Counsel for the Petitioner has placed reliance on a decision in Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, It is important to note that in the Full Bench decision in Commissioner of Sales Tax, UP Vs. M/s. Lal Kunwa Stone Crusher (P)Ltd., while deciding the case, the case of Capt. M. Paul Anthony (supra) has also been referred and in para 15 of the said decision the conclusions summarised in para 22 of Capt. M. Paul Anthony's case (supra) has been narrated which reads as under:

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, through 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 say 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 the 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.

5. Having perused each of the conclusions narrated hereinabove and relied on by

the Full Bench of the Apex Court, we are of the opinion that the case of Capt. M. Paul Anthony (*supra*) will not be of applicable in the present case as in Capt. M. Paul Anthony's case (*supra*), the question was whether departmental proceedings should be kept in abeyance during the pendency of a criminal case for which in the conclusion (i) as referred above, it is clearly held that there is no bar in conducting departmental proceedings and proceedings in a criminal case simultaneously. Thus in the given case when the Petitioner was allegedly caught red-handed by the ACB for accepting bribe of Rs. 1000/- as illegal gratification and the criminal case is filed in the ACB police station, in our view, the departmental proceedings can be conducted simultaneously as per the Rules of the department especially when the departmental proceedings and proceedings in the criminal case are not based on identical and similar set of facts. Thus there is no force in the submissions made by the learned Counsel for the Petitioner in arguing that it is the general rule to await for the decision in the criminal case, as conclusion (iii) referred above is very clear that due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

6. In the result, this Special Civil Application No. 9920 of 2011 is devoid of merit and is accordingly dismissed. There shall be no order as to costs.