
(2016) 08 JH CK 0004
In the Jharkhand High Court
Case No : W.P (S) No. 5023 of 2015

Manoj Kumar

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 01-08-2016

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (2016) 3 AIRJharR 624

Hon'ble Judges : Mr. H.C. Mishra, J.

Bench : Single Bench

Advocate : Mr. Pandey Neeraj Rai and Mr. Rohit Ranjan Sinha, Advocates, for the Petitioners; Mr. Yogesh Modi, J.C to A.A.G, for the Respondents

Final Decision : Disposed Off

Judgement

Mr. H.C. Mishra, J.—; Learned counsel for the petitioner is permitted to add the Enquiry Officer as respondent No.5 in this case.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondent State.

3. The petitioner, who was posted as District Fisheries Officer, Ranchi, has been subjected to disciplinary proceeding by order bearing memo No.1907 dated 12.2.2015, issued by the competent authority. The Memo of Charges relate to the offence allegedly committed by the petitioner under Sections 7 & 13 (2) of the Prevention of Corruption Act, for which, a FIR was also lodged, being Vigilance P.S Case No. 28 of 2013 against the petitioner. The petitioner has preferred this writ application with a prayer that until the conclusion of the trial in Vigilance P.S Case No. 28 of 2013, the departmental proceeding against the petitioner be stayed.

4. The petitioner had also given representation to the Conducting Officer in the departmental proceeding on 23.6.2015, as contained in Annexure-7 to the writ application, in which, it was prayed that the departmental proceeding be stayed,

pending the decision in the criminal case. In the said representation, the petitioner relied upon the decision of the Hon"ble Supreme Court of India, in Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. & Anr, reported in (1999) 3 SCC 679, wherein it was held as follows :-

"22. The conclusions which are deducible from various decisions of this Court referred to above are :

(i)

.....

(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."

5. Pursuant to the representation dated 23.6.2015, it appears that the Conducting Officer sought instructions from the department, and the State Government in its Department of Agriculture, Animal Husbandry and Cooperative, by letter No. 1072 dated 10.8.2015, as contained in Annexure-9 to the writ application, informed the Conducting Officer that in the same case, the Hon"ble Supreme Court of India has held that the department proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously though separately, and accordingly, the Conducting Officer was directed by the State Government to get the departmental proceeding concluded at the earliest.

6. Learned counsel for the petitioner has submitted that the departmental proceeding against the petitioner is at the fag end of its stage, inasmuch as, all the evidences have been adduced and even the final arguments have been made and now only the Enquiry Officer is to give his findings. It is also submitted by the learned counsel for the petitioner that since all the materials have now been brought on record in the departmental proceeding before the Enquiry Officer, it is a fit case in which the Enquiry Officer should take a decision, taking into consideration the gravity of the Charge, as also the fact whether any complicated question of law and fact are involved in the matter, so as to make it desirable that the departmental proceeding be stayed in view of the aforesaid decision of the Hon"ble Supreme Court.

7. In this connection, learned counsel for the petitioner has also placed reliance upon the decision of the Hon"ble Supreme Court of India in Stanzen Toyotetsu

India Private Limited v. Girish V. & Ors., reported in (2014) 3 SCC 636, wherein it has been held as follows:-

"16. Suffice it to say 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 their defence before the criminal court. Gravity of the charge is, however, not by itself enough to determine the question unless the charge involves complicated question of law and fact. The Court examining the question must also keep in mind that criminal trials get prolonged indefinitely especially where the number of accused arraigned for trial is large as is the case at hand and so are the number of witnesses cited by the prosecution. The Court, therefore, has to draw a balance between the need for a fair trial to the accused on the one hand and the competing demand for an expeditious conclusion of the ongoing disciplinary proceedings on the other. An early conclusion of the disciplinary proceedings has itself been seen by this Court to be in the interest of the employees."

8. Learned counsel for the petitioner submitted that in view of the fact that the State Government has directed the Conducting Officer to conclude the departmental proceeding by the letter as contained in Annexure-9 to the writ application, it would be appropriate that a direction be given to the Enquiry Officer to take a decision in the matter before submitting the enquiry report, without being prejudiced by the letter of the State Government as contained in Annexure-9.

9. Learned counsel for the State, on the other hand, has opposed the prayer, submitting that it is now well settled principle of law that there is no legal bar to the holding of the disciplinary proceedings and the criminal trial simultaneously, and there is no illegality in the same. Learned counsel accordingly, submitted that no case is made out for staying the departmental proceeding against the petitioner and taking into consideration the allegations against the petitioner, it is in the interest of justice that both of them should be concluded at the earliest.

10. Having heard the learned counsels for both sides and upon going through the records, I find that the offence alleged against the petitioner is serious in nature. Though by now it is well settled question of law that there is no legal bar to the holding of the disciplinary proceedings and the criminal trial simultaneously, and both the criminal trial as well as the departmental proceeding can go side by side separately, in view of the submission of the learned counsel for the petitioner that the departmental proceeding is in its conclusion stage and all the evidences and arguments have already been advanced, I am of the considered view that the Enquiry Officer in the departmental proceeding is in a better position to determine on the basis of the materials on record, whether in the present case the charge against the petitioner is such grave in nature and such complicated questions of law and fact are involved in the matter so as to make it desirable to

stay the departmental proceeding until the criminal trial is concluded, in view of the law laid down by the Apex Court in Capt. M. Paul Anthony's case (supra). The Enquiry Officer shall take the decision, drawing the balance between the need for a fair trial to the accused on the one hand and the competing demand for an expeditious conclusion of the ongoing disciplinary proceedings on the other, as held by the Apex Court in S.T.I. Ndia Private Limited (supra).

11. Accordingly, the Enquiry Officer respondent No.5, is directed to take the decision on the basis of the materials brought on record before him during the enquiry, whether the present case is such in which it shall be desirable to stay the departmental proceeding against the petitioner until the criminal trial against the petitioner is concluded, in view of the discussions as above. If the respondent No.5 comes to the conclusion that the case in hand is one in which the disciplinary proceedings should be stayed, he shall stay the departmental proceeding till the conclusion of the criminal trial, without being prejudiced by the letter dated 10.8.2015 issued by the State Government, as contained in Annexure-9 to the writ application. If, however, on the basis of the materials on record, the Enquiry Officer comes to the conclusion that no case is made out for staying the disciplinary proceedings, he shall proceed with the departmental proceeding against the petitioner and submit the enquiry report, whereupon appropriate decision shall be taken by the Disciplinary Authority in accordance with law.

12. This writ application is accordingly, disposed of with the directions as above.