

(2024) 11 MP CK 0009
In the Madhya Pradesh High Court
Case No : Writ Petition No. 9262 of 2021

Om Shankar Soni

APPELLANT

Vs

The State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 12-11-2024

Acts Referred:

Constitution of India 1950 — Article 20(2), 226
Indian Penal Code 1860 — Section 304-A, 338

Citation : (2024) 11 MP CK 0009

Hon'ble Judges : G. S. Ahluwalia, J

Bench : Single Bench

Advocate : Prashant Singh Kaurav, Shailendra Singh Kushwaha

Final Decision : Dismissed

Judgement

G. S. Ahluwalia, J

This petition, under Article 226 of the Constitution of India, has been filed seeking following relief(s):-

(i) That, the impugned charge sheet dated 01.04.2021 contained in Annexure - P/1 issued by the Respondent No. 3 is patently illegal and without jurisdiction, may kindly be quashed declaring the same as void ab-initio, in the interest of justice.

(ii) That, the respondents be further directed not to proceed with the departmental enquiry in view of charge sheet Annexure - P/1, which is contrary to the service jeopardize and contrary to the provisions of Article 20(2) of Constitution of India, and the same is amounting to double jeopardize.

(iii) Cost of the petition be awarded or any other order or direction deemed fit in the circumstances of the case be issued in the favour of the petitioner.

2. The solitary contention of counsel for the petitioner is that on the similar allegations, the petitioner is facing criminal trial and therefore departmental

enquiry should not be allowed to continue.

3. This Court, by interim order dated 26.07.2021, had directed that "Till the next date of hearing, respondents are permitted to proceed with departmental enquiry but they are restrained to pass any final order". This interim order is still in force and more than three and a half years have passed.

4. Counsel for the petitioner fairly conceded that only charges have been framed in the trial. Thus, it is clear that there is no substantial progress in the trial and the petitioner is enjoying the stay on the departmental enquiry.

5. Now, the only question for consideration is that whether the criminal case as well as the departmental enquiry can go on simultaneously on similar charges or not and even if the departmental enquiry is stayed then whether the same can be stayed for an indefinite period or not?

6. The Supreme Court in the case of Avinash Sadashiv Bhosale (Dead) Through LRs Vs. Union of India and others reported in (2012) 13 SCC 142 has held as under:-

"54. This Court recently reiterated the legal principle that departmental proceedings can be conducted simultaneously to the criminal trial in Karnataka SRTC v. M.G. Vittal Rao [(2012) 1 SCC 442: (2012) 1 SCC (L&S) 171]. In this case, making reference to almost all the previous precedents, this Court has reiterated the legal position as follows:

54.1. There is no legal bar for both proceedings to go on simultaneously.

54.2. The only valid ground for claiming that the disciplinary proceedings may be stayed would be to ensure that the defence of the employee in the criminal case may not be prejudiced. But even such grounds would be available only in cases involving complex questions of facts and law.

54.3. Such defence ought not to be permitted to unnecessarily delay the departmental proceedings. The interest of the delinquent officer as well as the employer clearly lies in a prompt conclusion of the disciplinary proceedings.

54. 4. Departmental proceedings can go on simultaneously to 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.

54.5. In our opinion, the principles culled out by this Court would be a complete answer to all the submissions made by Mr Jain."

7. The Supreme Court in the case of State Bank of India and Others Vs. Neelam Nag and another reported in (2016) 9 SCC 491 has held as under:-

"13. We have heard the learned counsel for the parties at some length. The only question that arises for consideration is no more res integra. It is well settled that there is no legal bar to the conduct of the disciplinary proceedings and criminal trial simultaneously. However, no straitjacket formula can be spelt out

and the Court has to keep in mind the broad approach to be adopted in such matters on case -to-case basis. The contour of the approach to be adopted by the Court has been delineated in a series of decisions.”

8. The Supreme Court in the case of Shashi Bhushan Prasad v. CISF, reported in (2019) 7 SCC 797 has held as under:-

“17. The scope of departmental enquiry and judicial proceedings and the effect of acquittal by a criminal court has been examined by a three-Judge Bench of this Court in A.P. SRTC v. Mohd. Yousuf Miya. The relevant paragraph is as under: (SCC pp. 704-05, para 8)

“8. ... The purpose of departmental enquiry and of prosecution are two different and distinct aspects.

The criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public (sic duty), as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Evidence Act. Converse is the case of departmental enquiry. The enquiry in a departmental proceeding relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. The enquiry in the departmental proceedings relates to the conduct of the delinquent officer and proof in that behalf is not as high as in an offence in criminal charge. It is seen that invariably the departmental enquiry has to be conducted expeditiously so as to effectuate efficiency in public administration and the criminal trial Will take its own course. The nature of evidence in criminal trial is entirely different from the departmental proceedings. In the former, prosecution is to prove its case beyond reasonable doubt on the touchstone of human conduct. The standard of proof in the departmental proceedings is not the same as of the criminal trial. The evidence also is different from the standard point of the Evidence Act. The evidence required in the departmental enquiry is not regulated by the Evidence Act. Under these

circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances. In this case, we have seen that the charge is failure to anticipate the accident and prevention thereof. It has nothing to do with the culpability of the offence under Sections 304-A and 338 IPC. Under these circumstances, the High Court was not right in staying the proceedings.” (emphasis supplied)

18. The exposition has been further affirmed by a three-Judge Bench of this Court in *Ajit Kumar Nag v. Indian Oil Corpn. Ltd.* This Court held as under: (SCC p. 776, para 11)

“11. As far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with the Rules and Regulations in force. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused “beyond reasonable doubt”, he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of “preponderance of probability”. Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal court, the impugned order dismissing him from service deserves to be quashed and set aside.”

19. We are in full agreement with the exposition of law laid down by this Court and it is fairly well settled that two proceedings criminal and departmental are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on an offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. The degree of proof which is necessary to order a conviction is different from the

degree of proof necessary to record the commission of delinquency. Even the rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused beyond reasonable doubt, he cannot be convicted by a court of law whereas in the departmental enquiry, penalty can be imposed on the delinquent on a finding recorded on the basis of "preponderance of probability". Acquittal by the court of competent jurisdiction in a judicial proceeding does not ipso facto absolve the delinquent from the liability under the disciplinary jurisdiction of the authority. This what has been considered by the High Court in the impugned judgment¹ in detail and needs no interference by this Court.

20. The judgment in M. Paul Anthony case on which the learned counsel for the appellant has placed reliance was a case where a question arose for consideration as to whether the departmental proceedings and proceedings in a criminal case on the basis of same sets of facts and evidence can be continued simultaneously and this Court answered in para 22 as under: (SCC p. 691)

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

(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 the 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."

9. The Supreme Court in the case of Depot Manager, A.P. SRTC v. Mohd. Yousuf

Miya, reported in (1997) 2 SCC 699 has held as under :

"8. We are in respectful agreement with the above view. The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public (sic duty), as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Evidence Act. Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. The enquiry in the departmental proceedings relates to the conduct of the delinquent officer and proof in that behalf is not as high as in an offence in criminal charge. It is seen that invariably the departmental enquiry has to be conducted expeditiously so as to effectuate efficiency in public administration and the criminal trial will take its own course. The nature of evidence in criminal trial is entirely different from the departmental proceedings. In the former, prosecution is to prove its case beyond reasonable doubt on the touchstone of human conduct. The standard of proof in the departmental proceedings is not the same as of the criminal trial. The evidence also is different from the standard point of the Evidence Act. The evidence required in the departmental enquiry is not regulated by the Evidence Act. Under these circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances. In this case, we have seen that the charge is failure to anticipate the accident and prevention thereof. It has nothing to do with the culpability of the offence under Sections 304-A and 338, IPC. Under these circumstances, the High Court was not right in staying the proceedings."

10. The Supreme Court in the case of Kusheshwar Dubey v. Bharat Coking Coal Ltd., (1988) 4 SCC 319 has held as under :

"6. In the Delhi Cloth & General Mills case it was pointed out by this Court: (SCR p. 230)

"It is true that very often employers stay enquiries pending the decision of the criminal trial courts and that is fair; but we cannot say that principles of natural justice require that an employer must wait for the decision at least of the criminal trial court before taking action against an employee. In Bimal Kanta Mukherjee v. Newsman's Printing Works this was the view taken by the Labour Appellate Tribunal. We may, however, add that if the case is of a grave nature or involves questions of fact or law, which are not simple, it would be advisable for the employer to await the decision of the trial court, so that the defence of the employee in the criminal case may not be prejudiced."

In Tata Oil Mills case Gajendragadkar, C.J., spoke for a three-Judge Bench thus: (SCR p. 562)

"There is yet another point which remains to be considered. The Industrial Tribunal appears to have taken the view that since criminal proceedings had been started against Raghavan, the domestic enquiry should have been stayed pending the final disposal of the said criminal proceedings. As this Court has held in Delhi Cloth and General Mills Ltd. v. Kushal Bhan 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."

In Jang Bahadur case this Court said: (SCR p.137)

"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 proceeding 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, a 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."

7. The view expressed in the three cases of this Court seem to support the position that while there could be no legal bar for simultaneous proceedings being taken, yet, there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case. In the latter class of cases it would be open to the delinquent employee to seek such an order of stay or injunction from the court. Whether in the facts and circumstances of a particular case there should or should not be such simultaneity of the proceedings would then receive judicial consideration and the court will decide in

the given circumstances of a particular case as to whether the disciplinary proceedings should be interdicted, pending criminal trial. As we have already stated that it is neither possible nor advisable to evolve a hard and fast, straitjacket formula valid for all cases and of general application without regard to the particularities of the individual situation. For the disposal of the present case, we do not think it necessary to say anything more, particularly when we do not intend to lay down any general guideline.”

Thus, in the light of the judgment passed by the Supreme Court in the case of Shashi Bhushan Prasad (supra), it is clear that if the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they are stayed on account of the pendency of a criminal case, can be resumed and proceeded with so as to conclude that at an earliest date so that if the employee is found not guilty his honour may be vindicated and in case if he is found guilty, the administration may get rid of him at the earliest.

11. In the present case, the interim order was passed on 26.07.2021. As already pointed out, 3-1/2 years have passed from the date of interim order. There is no progress at all in the criminal trial. According to the petitioner himself, only charges have been framed. Accordingly, in the light of the judgment passed by the Supreme Court in the case of Shashi Bhushan Prasad (supra), this Court is of the considered opinion that the department enquiry cannot be kept in abeyance for an indefinite period.

12. Accordingly, this petition is dismissed on the ground that there cannot be an indefinite stay on the departmental enquiry. The interim order dated 26.07.2021 is hereby vacated. Respondents are directed to conclude the departmental enquiry within a period of two months from today.