

(1999) 12 AHC CK 0056
In the Allahabad High Court
Case No : C.M.W.P. No. 42518 of 1999

Radhey Shyam Pandey

APPELLANT

Vs

State of U.P. and another

RESPONDENT

Date of Decision : 21-12-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 1 AWC 722 : (2000) 85 FLR 227 : (2000) 2 LLJ 1256 : (2000) 2 UPLBEC 975

Hon'ble Judges : M. Katju, J;D.R. Chaudhary, J

Bench : Division Bench

Advocate : S.C., Tiwari and Ram Shanker Dwivedi, for the Appellant;

Final Decision : Dismissed

Judgement

M. Katju, J.—Heard learned counsel for the parties.

2. The petitioner was appointed as a Junior Engineer in the Rural Engineering Services of the U. P. Government and was promoted as Assistant Engineer and subsequently given charge of Executive Engineer from 14.7.1997. He was placed under suspension by the order dated 22.12.1998 on grave charges of financial irregularities along with others. An F.I.R. was also filed against him and others at police station Kotwali, Ballia on 19.2.1998 vide Annexure-1 to the petition. The petitioner has been charged for embezzlement of an amount of Rs. 34,98.622. True copy of the F.I.R. is Annexure-2 to the petition. True copy of the suspension order dated 22.12.1998 is Annexure-3 and true copy of the charge-sheet is Annexure-4 to the writ petition. Thus, both, criminal and departmental proceedings are going on against the petitioner.

3. It is alleged in paragraph 18 of the writ petition that both criminal and departmental proceedings are based on identical and similar facts and hence the departmental proceedings should be stayed till the completion of the criminal case. In paragraph 20 of the petition, it is alleged that if departmental

proceedings is allowed to continue that will prejudice the petitioner in the criminal case. In paragraph 21, it is alleged that in the criminal proceeding, the charges are to be proved by the prosecution without compelling the accused to give his version while in the departmental proceedings, the petitioner is bound to disclose his version and that will prejudice the petitioner in the criminal case. The petitioner has relied on the decision of the Supreme Court in Capt. M. Paul Anthony v. Bharat Cold Mines Limited and others, 1999 (2) ESC 1009. and has prayed that departmental proceedings be stayed.

4. After hearing the learned counsel for the parties and considering the facts in great detail, we are not inclined to stay the departmental proceeding.

5. The question whether the departmental proceedings should be stayed when a criminal case is going on the same facts has received the attention of the Supreme Court in several decisions, many of which have been referred to in M. Paul Anthony's case (supra).

6. In The Delhi Cloth and General Mills Ltd. Vs. Kushal Bhan, , the Supreme Court observed :

"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.We may, however, say that if the case is of a grave nature, or involves questions of law or fact 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 employees in the criminal case may not be prejudiced."

7. Similarly in Tata Oil Mills Co. Ltd. Vs. Its Workmen, , the Supreme Court observed :

"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 and it would be particularly appropriate to adopt such a course where the charge against the workmen is of 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 saying 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."

8. In Kusheshwar Dubey Vs. Bharat Coking Coal Ltd. and Others, , the Supreme Court observed :

"There could be no legal bar for simultaneous proceedings being taken, yet, there may be cases where it would be appropriate to defer disciplinary proceeding awaiting disposal of the criminal case. Whether in the facts and circumstances of 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. 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."

The Supreme Court further observed in the same case :

"In the instant case, the criminal action and the disciplinary proceedings are grounded upon the same set of facts. We are of the view that the disciplinary proceedings should have been stayed and the High Court was not right in interfering with the trial court's order of injunction which had been affirmed in appeal."

9. In *State of Rajasthan Vs. B.K. Meena and others*, , the Supreme Court observed :

"It would be evident from the above decisions that each of them starts with the indisputable proposition that there is no legal bar for both proceedings to go on simultaneously and then say that in a certain situation, it may not be "desirable", "advisable" or "appropriate" to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. The staying of disciplinary proceeding, it is emphasised is a matter to be determined having regard to the facts and circumstances of a given case and no hard and fast rules can be enunciated in that behalf. The only ground suggested in the above decisions as constituted a valid ground for staying the disciplinary proceedings is that the defence of the employee in the criminal case may not be prejudiced. This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law. In our respectful opinion. It means that not only charges must be grave but that the case must involve complicated questions of law and fact. Moreover, "advisability", "desirability" or "propriety", as the case may be, has to be determined in each case taking into consideration all the facts and circumstances of the case. The ground indicated in *The Delhi Cloth and General Mills Ltd. Vs. Kushal Bhan*, and *Tata Oil Mills Co. Ltd. Vs. Its Workmen*, , is also not an invariable rule. It is only a factor, which will go into the scales while judging the advisability or desirability of staying the disciplinary proceedings. 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 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 repeatedly 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 undesirable elements are thrown out and any charge of misdemeanour is enquired into promptly. The disciplinary proceedings are meant not really to punish the guilty 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 proceeding. 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 periods 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 proceedings. Stay of disciplinary proceedings cannot be, and should not be. a matter of course. All the relevant factors, for and against, should be weighed and a decision taken keeping in view of the various principles laid down in the decisions referred to above."

10. In Depot Manager, Andhra Pradesh State Road Transport Corporation Vs. Mohd. Yousuf Miya, etc., . it was held that there is no bar to proceed simultaneously with the departmental enquiry and trial of a criminal case unless the charge in the criminal case is of a grave nature involving complicated questions of facts and law.

11. In M. Paul Anthony's case (supra), the Supreme Court framed the following conclusions from the aforesaid decision :

(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 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 complicated questions of law and facts, it would be desirable to stay the departmental proceeding 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 facts 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 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, administration may get rid of him at the earliest."

12. We have carefully considered all the aforesaid decisions of the Supreme Court. As observed in some of the decisions, each case has to be seen on its own facts and no hard and fast general guidelines can be laid down.

13. In the present case, the allegation against the petitioner is of embezzlement of an amount of about Rs. 35,00,000 as is evident from both the F.I.R. as well as the charge-sheet, which runs into almost 100 pages and contains as many as 46 charges. A perusal of the same shows that the allegation against the petitioner and his other associates are very serious of embezzling a huge amount of Government money which may run into crores of rupees. The F.I.R. was filed as far back as in 1998 and as yet it appears criminal proceedings are Still going on.

14. In our opinion, in the present case, when there are grave charges against the petitioner and his associates of embezzling huge amount of public funds, the disciplinary proceedings should not be stayed. In our opinion, in deciding whether to stay the departmental proceedings, the nature of the charges has to be carefully seen. For example, if an employee is accused of murder, then it may be advisable to stay the departmental proceeding (keeping the accused under suspension) till the conclusion of the criminal trial. Similarly in cases of offences such as dacoity and assault, the same course of action may be followed. However, there are different kinds of serious charges, and the same course of action cannot be followed for all of them. The charge of murder is a serious charge, but so is the charge of embezzlement of huge amount of public funds. In our opinion while there should be Slay in the departmental proceedings till the pendency of the criminal charge in the former case (while keeping the accused under suspension), there should be no stay of departmental proceeding in the latter case. In our opinion the observation of the Supreme Court in certain decisions that where the criminal proceeding and departmental proceedings are grounded upon the same set of facts. the latter should be stayed cannot be said to be a universal or hard and fast absolute rule. As observed by the Supreme Court itself in several decisions, e.g., in Kusheshwar's case (supra), there cannot be a strait-jacket formula for all cases. In our opinion, in the case of embezzlement or huge financial irregularity the departmental proceeding should not be stayed because in the cases of embezzlement of huge amount of public funds, the entire economic and social system of the country is adversely affected. Everyone knows that there is corruption and financial irregularity on a large scale In our country and this is playing havoc with our economy. On the other hand, offences such as murder, assault, etc. are of a personal nature and do not affect society or the economy as a whole. Hence the observation of the

Supreme Court that if there are grave charges, the departmental proceedings should be stayed pending the criminal trial on the same set of facts cannot be understood to relate to charges like embezzlement of huge amount of public funds or large scale financial irregularities. Any kind of leniency in the latter cases will be wholly misplaced and uncalled for.

15. Moreover, we do not see how the defence of the petitioner in the criminal case will be prejudiced if he is compelled to disclose his defence in the disciplinary proceeding. In our opinion, in such cases of embezzlement of huge amount of public funds, it cannot be said that if the departmental proceeding will go on, the criminal trial will be prejudiced.

16. As observed by the Supreme Court in Kusheshwar's case (supra), there cannot be a hard and fast strait-jacket formula valid for all cases and hence the observation in some cases that departmental proceeding should be stayed if there are grave charges and a criminal trial is pending on the same set of facts cannot be treated as a hard and fast rule applicable in all circumstances. The observations in certain decisions of the Supreme Court that the departmental proceedings should be stayed if there are grave charges and complicated questions of law" and facts are involved is not a hard and fast rule. As observed by the Supreme Court in State of Rajasthan v. B. K. Meena, (supra), the interest of administration demands that undesirable elements are thrown out after a prompt enquiry. Moreover, as observed in the same case, criminal cases often drag on endlessly and this is also a factor for not staying the departmental proceedings. In the present case the F.I.R. was filed on 19.2.1998 and it may take years for the criminal case to be decided.

17. The observations in certain decisions of the Supreme Court that the departmental proceeding should be stayed where both the proceedings are on the basis of the same facts and allegations cannot be treated as an absolute legal proposition, and it is merely one of the factors which may be taken into consideration by the Court in deciding whether to stay the departmental proceeding. After all, the question whether to stay the departmental proceedings when a criminal case is pending is a question that arises when both the proceedings relate to the same set of facts. Hence the decision in M. Paul Anthony's case (supra) cannot be treated to lay down universal hard and fast rules as to when the departmental proceeding should be stayed.

18. In the present case, as already mentioned above, there are allegations regarding embezzlement of huge amount of public funds by the petitioner and his associates. A perusal of the charge-sheet which is almost 100 pages long and contains as many as 46 charges shows that serious allegations of huge financial embezzlement and misappropriation of public funds have been made against the petitioner and his associates. In State of Rajasthan v. B. K. Meena, also, there were grave charges pertaining to misappropriation of huge amount of public funds and this was a factor which the Supreme Court took into consideration while refusing to stay the departmental proceeding.

19. In our opinion, it will not be in the interest of justice to stay the departmental proceeding on the facts of the present case. We are not inclined to exercise our discretion under Article 226 of the Constitution in the present case. The petition is dismissed.