

**(2005) 04 GUJ CK 0055**

**In the Gujarat High Court**

**Case No :** Special Civil Application No. 1495 of 2001

Salim Abdul Sattar Dhada

APPELLANT

Vs

Oriental Insurance Co. Ltd.

RESPONDENT

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**Date of Decision :** 15-04-2005

**Acts Referred:**

Constitution of India, 1950 — Article 226

General Insurance (Conduct, Discipline and Appeal) Rules, 1975 — Rule 25

**Citation :** (2005) 25 GLH 729

**Hon'ble Judges :** R.S. Garg, J

**Bench :** Single Bench

**Advocate :** H.M. Prachchhak, in Special Civil application No. 1495 of 2001, for the Appellant; P.K. Jani in Special Civil Application No. 1495 of 2001, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

R.S. Garg, J.—Heard learned counsel for the parties.

2. The petitioner-Salim Abdul Sattar Dhada is before this Court under Article 226 of the Constitution of India with a prayer that the chargesheet

issued against him (Annexure:D) dated 11.1.2001, be quashed and the petitioner be exonerated of the charges levelled against him and pending

admission, hearing and final disposal of this petition, this Court may issue a direction to the respondent to revoke the chargesheet at its earliest or in

the alternative, stay the disciplinary proceedings initiated against the petitioner by the respondent.

3. Facts leading to the present writ application are that the petitioner, when he was under orders of transfer, was placed under suspension, the

order of suspension is at Annexure:D dated 23rd February, 1995. The petitioner thereafter, came to this Court and challenged the said order in

Special Civil Application No. 11895 of 2000. A learned Single Judge of this Court by his order dated 26.4.2001 dismissed the writ application

observing that there were no reasons to interfere with the order of suspension. It appears that thereafter, on 11.1.2001, a chargesheet was served

upon the petitioner, informing him that disciplinary proceedings against the petitioner would be drawn under Rule 25 of General Insurance (CDA)

Rules, 1975. Articles of Charges and Statement of Imputation of Misconduct against the petitioners were also served upon him. List of documents

was also served. The petitioner thereafter, made an application to the department for supply of certain documents. In the writ application it was

stated that these documents were not supplied to him, but the respondent in counter-affidavit submitted that these documents have already been

supplied to the petitioner.

4. It appears that immediately after finding that the petitioner has committed misconduct on certain charges, a First Information Report was also

made to the C.B.I. The Central Bureau of Investigation, after making complete investigation, filed Chalan/Chargesheet against the interest of the

petitioner. The said criminal matter is pending consideration.

5. It appears that during the pendency of the said criminal action, on certain representations made by the petitioner, his suspension has been

revoked and he has been allowed to join the duties.

6. Though some different reliefs have been claimed in the writ application, but during the arguments, learned counsel for the petitioner submitted

that the inquiry proceedings deserve to be stayed till final disposal of the criminal matter pending before the competent court. Placing strong

reliance upon the judgment of the Supreme Court in the matter of Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and Anr. reported in 1992

(2) SLR 338, it is contended that if the criminal allegation and the departmental charges are on the same facts and the evidence virtually would be

the same to arrive at a finding then causing serious prejudice to the interest of the delinquent, departmental inquiry cannot be continued. On the

other hand, learned counsel for the respondent submitted that the said judgment of the Supreme Court has been considered by the Supreme Court

in the matter of Kendriya Vidyalaya Sangathan and Ors. v. T. Srinivas, reported in GLH 565, and the Supreme Court, after considering the totality

of the facts, observed that before staying the criminal proceedings, the Court must look into the propriety of such stay, because, in a criminal case,

accused would be convicted if the charges are proved against him, while in a departmental inquiry, the department, after considering the gravity of

the misconduct may or may not continue such an employee in services. His submission is that even if foundational facts are identical, then too,

departmental inquiry ordinarily, unless there are compelling reasons, cannot be stayed.

7. In the present matter, the Articles of Charges has levelled the following charges:-

[a] He has disobeyed the lawful and reasonable orders of his superiors;

[b] He has absented himself from his appointed place of work from 23.1.95 to 25.3.97 without permission of Competent authority and;

[c] He has misguided and misrepresented to the competent authority Porbandar under his own signature, prepared claim vouchers and claim

disbursement vouchers twice and thrice in respect of the same claims resulting into the financial loss to the Company to the extent of Rupees

Fifteen lacs approximately.

The police has filed chargesheet levelling the charges against the petitioner that the petitioner, while working and posted as Assistant in Motor

Claim Department of OIC Ltd., Porbandar, prepared more than one claim vouchers/cheques against a single claim with the help of unknown

private persons. By this, after entering into criminal conspiracy with other private persons, he abused his official position as public servant and

dishonestly obtained pecuniary advantage for himself and for others to the tune of Rs.28,88,262/- against these vouchers/cheques.

8. True it is, that the foundational facts are the same. It is also true that the material on which the complainant/department is placing reliance would

be same, but the question still would be that can such employee be suffered by the establishment when the department/establishment/employer is

prima facie satisfied that the employee has committed great/grave misconduct.

9. In the criminal matter, mens rea will have to be seen. If the petitioner proves that he had no criminal intention, but simply committed an act which

was negligent or rash or reckless, criminal court may acquit him but in the departmental matter, such negligent/reckless or rash act may lead to

some punishment.

10. In the matter of Kendriya Vidyalaya Sangathan, the Supreme Court has observed that advisability, desirability or propriety, as the case may, in

regard to a departmental enquiry has to be determined in each case taking into consideration all facts and circumstances of the case.

11. From these observations made by the Supreme Court, it would appear that the Supreme Court was of the opinion that stay of the

departmental proceedings pending the criminal proceedings is not rule of thumb or law of hammer. Before exercising discretion, the Court has to

look into advisability, desirability and/or propriety in regard to a departmental inquiry. If the Court, prima facie, is satisfied that it is advisable and

desirable to stay the departmental proceedings, then, nothing can stop the Court from exercising jurisdiction, but in a case where the Court is of the

opinion, that it would neither be advisable nor desirable nor it would be proper nor would it be judicious on the part of the Court to stay the

proceedings, then the departmental proceedings cannot be stayed. In the said matter, against the respondent of the said matter, charges of illegal

gratification were levelled. On the said charges, he was being prosecuted and at the same time, he was being proceeded with in the departmental

inquiry. The High Court observed that in view of the pendency of the criminal matter, departmental proceedings could be stayed. The Supreme

Court interfered with the order of the High Court, observing that the approach and the objective in the criminal proceedings and the disciplinary

proceedings is altogether distinct and different. The Supreme Court observed that in the disciplinary proceedings, the question is whether the

respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal

proceedings the question is whether the offences registered against him are established and, if established, what sentence should be imposed upon

him. In the present matter, the allegations against the present petitioner are that he played fraud by exploiting his official position, prepared more

than one cheques/vouchers in relation to the very same claim in conspiracy with certain persons and caused illegal loss to the establishment. If on

these charges, the criminal court finds him guilty, then he would certainly be punished. In the departmental inquiry, charge against him is that by

preparing more than one vouchers/cheques in relation to the same claim and by making misrepresentation and misguiding the competent authority,

he caused loss to the establishment. I have already observed that in a criminal case, the criminal intent and mens rea would be most important and

the court will have to look into it. A negligent act in discharge of the duty may not amount to an offence, but a negligent act in discharge of the duty

would certainly be misconduct within the service rules. In the present matter, if the respondents are proposing to continue with the inquiry, then, in

the opinion of this Court, they are absolutely justified, because, by proceeding with the inquiry, they would, at least, be reaching to a conclusion

that the petitioner is guilty of misconduct or not and if guilty, what punishment should be awarded to him.

12. Taking into consideration the totality of the circumstances and the discussion aforesaid, I do not find any merits in this writ application. It is

accordingly dismissed. Rule is discharged. Interim order is vacated.