
(2012) 03 SHI CK 0006
In the High Court Of Himachal Pradesh
Case No : CWP No. 3698 of 2011-D

Shamsher Singh

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 14-03-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 307

Citation : (2012) 03 SHI CK 0006

Hon'ble Judges : Dev Darshan Sood, J

Bench : Single Bench

Advocate : Bimal Gupta, for the Appellant; P.K. Sharma, A.A.G. with Ms. Shubh Mahajan, for the Respondent

Judgement

Dev Darshan, J.—The petitioner has challenged show cause notice, Annexure P-9 which has been issued to him calling upon him to show cause as to why his services be not dispensed with. It is not disputed before me that departmental proceedings were instituted against the petitioner for imposing major penalty under the CCS (CCA) Rules. It is also not disputed before me that for the same act, proceedings u/s 307 of the IPC are pending against the petitioner in the Court of learned Sessions Judge, Chamba. Submission was made by the learned counsel appearing for the petitioner that parallel proceedings should and ought not to be allowed. Learned counsel placed reliance upon the judgment of the Supreme Court in Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, to urge that such courses should be avoided. In that case it was held that:-

13. As we shall presently see, there is a consensus of judicial opinion amongst the High Courts whose decisions we do not intend to refer in this case, and the various pronouncements of this Court, which shall be copiously referred to, on the basic principle that proceedings in a criminal case and the departmental proceedings can proceed simultaneously with a little exception. As we understand, the basis for this proposition is that proceedings in a criminal case and the departmental proceedings operate in distinct and different jurisdictional

areas. Whereas in the departmental proceedings, where a charge relating to misconduct is being investigated, the factors operating in the mind of the Disciplinary Authority may be many such as enforcement of discipline or to investigate the level of integrity of the delinquent or the other staff, the standard of proof required in the those proceedings is also different than that required in a criminal case. While in the departmental proceedings the standard of proof is one of preponderance of the probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubts. The little exception may be where the departmental proceedings and the criminal case are based on the same set of facts and the evidence in both the proceedings is common without there being a variance.

14. The first decision of this Court on the question was rendered in *The Delhi Cloth and General Mills Ltd. Vs. Kushal Bhan*, , in which it was observed as under (para 3 of AIR) :

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. M/s. Newsman's Printing Works* 1956 L AC 188, 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.

15. This was followed by *Tata Oil Mills Co. Ltd. Vs. Its Workmen*, , in which it was, inter alia, laid down as under :

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 the *The Delhi Cloth and General Mills Ltd. Vs. 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.

16. The question cropped up again with a new angle in *Jang Bahadur Singh Vs. Baij Nath Tiwari*, , as it was contended that initiation of disciplinary proceedings during the pendency of a criminal case on the same facts amounted to contempt of Court. This plea was rejected and the Court observed as under:

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.

17. These decisions indicate that though it would not be wrong in conducting two parallel proceedings, one by way of disciplinary action and the other in the criminal Court, still it would be desirable to stay the domestic inquiry if the incident giving rise to a charge framed against the employee in a domestic inquiry is being tried in a criminal Court. The case law was reviewed by this Court in *Kusheshwar Dubey v. M/s. Bharat Coking Coal Ltd.* (1988) 4 SCC 319 and it was laid down as under :

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 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 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, strait-jacket 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.

The Court further observed as under :

8. 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.

18. Then came the decision in *Nelson Motis Vs. Union of India* and another, , which laid down that the disciplinary proceedings can be legally continued even where the employee is acquitted in a criminal case as the nature and proof required in a criminal case are different from those in the departmental proceedings. Besides, the Court found that the acts which led to the initiation of departmental proceedings were not exactly the same which were the subject matter of the criminal case. The question was not considered in detail. The Court

observed (para 5 of AIR) :

5. So far the first point is concerned, namely whether the disciplinary proceedings could have been continued in the face of the acquittal of the appellant in the criminal case, the plea has no substance whatsoever and does not merit a detailed consideration. The nature and scope of a criminal case are very different from those of a departmental disciplinary proceeding and an order of acquittal, therefore, cannot conclude the departmental proceedings. Besides, the Tribunal has pointed out that the acts which led to the initiation of the departmental disciplinary proceeding were not exactly the same which were the subject matter of the criminal case.

(Emphasis supplied)

19. The entire case law was reviewed once again by this Court in *State of Rajasthan v. B. K. Meena*, (1996) 6 SCC, wherein it was laid down as under:

14. 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 certain situation, it may not be "desirable", "advisable" or "appropriate" to proceed with the disciplinary enquiry when a criminal case is pending on identical charge. The staying of disciplinary proceedings, it is emphasised, is a matter to be determined having regard to the facts and circumstances of a given case and that no hard and fast rules can be enunciated in that behalf. The only ground suggested in the above decisions as constituting 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 the 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 in to 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 repeated 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 that undesirable elements

are thrown out and any charge of misdemeanour is inquired in to 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 proceedings. 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 criminal 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.

20. This decision has gone two steps further to the earlier decisions by providing :

1. The "advisability", "desirability" or "propriety" of staying the departmental proceedings "go in to the scales while judging the advisability or desirability of staying the disciplinary proceedings" merely as one of the factors which cannot be considered in isolation of other circumstances of the case. But the charges in the criminal case must, in any case, be of a grave and serious nature involving complicated questions of fact and law.

2. One of the contending considerations would be that the disciplinary enquiry cannot - and should not be - delayed unduly. If the criminal case is unduly delayed, that may itself be a good ground for going ahead with the disciplinary enquiry even though the disciplinary proceedings were held over at an earlier stage. It would not be in the interests of administration that persons accused of serious misdemeanour should be continued in office indefinitely awaiting the result of criminal proceedings.

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

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, administration may get rid of him at the earliest.

(p.687- 691)

In particular, learned counsel has emphasized that since criminal proceedings and departmental proceedings are based on identical evidence, no disciplinary enquiry could be initiated against the petitioner which should be held in abeyance. I cannot accept this proposition in such a wide terms as expressed. Nonetheless, I find that the petitioner is facing serious criminal charges in proceedings u/s 307 where he has been charged for having caused serious injury to his colleague by use of AK-47 rifle during the course of his duty. Other submissions is that the evidence relied upon in the criminal proceedings is practically the same evidence which has been relied upon in the departmental proceedings. Be that as it may, since the charges against the petitioner are serious in nature, this petition is disposed of with the directions (a) that Annexure P-9 will be kept in abeyance till the conclusion of the criminal proceedings whereafter these proceedings shall revive from the point of issuance of Annexure P-9. This judgment does not at all pronounce on the factual and legal aspect of the departmental proceedings which have been initiated against the petitioner and (b) that the criminal case which has been instituted against the petitioner be concluded at the earliest as possible. Let copy of this judgment be sent to the Court of learned Sessions Judge forthwith.