
(2002) 07 PAT CK 0154
In the Patna High Court
Case No : C.W.J.C. No. 7008 of 2002

Sitaram Choudhary

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 23-07-2002

Acts Referred:

Citation : (2002) 07 PAT CK 0154

Final Decision : Dismissed

Judgement

Chandramauli Kr. Prasad, J.—In this application prayer of the Petitioner is to quash the departmental proceeding pending against him.

2. Shorn of unnecessary details, facts giving rise to the present case are that during the relevant time the Petitioner was posted as Ranger at Lalganj and it has been alleged that on 11.12.1997, he was caught red handed while accepting a bribe of Rs. 1,500/- from the owner of a truck (sic)ring Registration No. B.H.G. 5222. Accordingly Vigilance Case No. 42 of 1997 has registered against, him and he was taken into custody. By order dated (sic) 1998 he was put under suspension. (sic) challenged the same by filing a writ (sic)cation before this Court; which was (sic)stered as C.W.J.C. No. 4916 of 1999 (sic) learned single Judge of this Court order dated 16.8.1999 quashed the (sic) of suspension. Thereafter a departmental enquiry was initiated against him and memo of charges (Annexure-4) was served on him. Later on by memo dated 1.12.2000 (Annexure-6) one Sri Ashok Prasad, Conservator of Forest, Gaya Division and Sri Parsuram Ram, Divisional Forest Officer, Patna were appointed as Enquiry and Presenting officers respectively. Charge against the Petitioner in the departmental enquiry is that he took bribe of a sum of Rs. 1,500/- which is punishable u/s 7 of the Prevention of Corruption Act, 1988. In the criminal case instituted against the Petitioner, the allegation is one and the same.

3. Mr. Ravinder Nath Dubey, appearing on behalf of the Petitioner, submits that the same allegation is the subject matter of trial in Vigilance Case No. 42 of 1997 and for the same allegation departmental proceeding has been initiated against

him and as such departmental proceeding is fit to be quashed. I do not find any force in this submission of the learned Counsel. Nothing prevents the employer to conduct departmental proceeding in respect of the same allegation which is subject matter of investigation or trial in a criminal case. It is well settled that in a criminal case the charge has to be proved beyond reasonable doubt to record the order of conviction but the same standard of proof is not required for the departmental proceeding. What to talk of pendency, even acquittal in a criminal case does not bar continuance of a departmental proceeding. Reference in this connection can be made to a decision of the Supreme Court in the case of Nelson Motis Vs. Union of India and another, wherein it has been held as follows:

So far the first point is concerned, namely whether the disciplinary proceeding 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 proceeding. 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.

4. When acquittal in a criminal case does not stand in the way of continuation of departmental proceeding by no stretch of imagination it can be said that its pendency would bar the same.

5. Mr. Dubey then contends that the departmental proceeding initiated against the Petitioner is fit to be stayed till the conclusion of the trial. He points out that charge in the departmental proceeding and Vigilance Case No. 42 of 1997 instituted against him is one and the same and in that view of the matter the departmental proceeding is not fit to be continued. In support of his submission he has placed reliance on the order of a Division Bench of this Court dated 9.7.1991 passed in C.W.J.C. No. 4009 of 1991 (Annexure-5). In the said case it has been held as follows:

From a perusal of this writ application and the counter affidavit it appears that the charges in the present departmental proceeding against the Petitioner and the allegation in the criminal case against him bearing Hajipur Town P.S. Case No. 10/85 under Sections 409 and 420 I.P.C. are verbatim the same. It has been settled by the Apex Court that in such cases the departmental proceeding cannot continue.

6. Reliance has also been placed on a decision of a learned single Judge of this Court in the case of Ajay Kumar Prasad v. Bihar State Electricity Board and Ors. [2002 (4) P.L.J.R. 303] and my attention (sic) has been drawn to paragraph 12 of the judgment which reads as follows:

In the present case I have already noticed above, both departmental proceedings and criminal case are based on identical and similar set of facts and the charge in

the criminal case against the delinquent employee is grave in nature which involves complicated question of law and fact and also the evidence in both the proceedings is common without there being any variance. Thus, in my opinion, the principle decided in the aforesaid case of State of Bihar v. Ram Lakhan Singh (supra) has got no application to the facts of the present case. However, this Court does not feel inclined to go into the validity of the initiation of the departmental proceeding itself. Moreover, they said question has not been pressed by the learned Counsel for the Petitioner.

7. The question as to whether during the pendency of a criminal case a departmental proceeding against an employee can or cannot be continued is a point which is not res Integra and has come up for consideration before the Supreme Court in its various judgments which are being referred to hereinafter.

8. In the case of The Delhi Cloth and General Mills Ltd. Vs. Kushal Bhan, the allegation against the employee was that he had stolen the cycle of another employee of the Company. For that a departmental proceeding was initiated against him and he was also criminally prosecuted for the said charge. Ultimately in the departmental enquiry the employee was dismissed from service but in the meanwhile he was acquitted in the criminal case. The employer filed an application before the Tribunal for the approval of the order of dismissal and the employee produced the order of acquittal and on consideration of the same the Tribunal refused to approve the order of dismissal.

The matter ultimately travelled to the Supreme Court and an argument was advanced on behalf of the employee that principles of natural justice require that an employer should wait at least for the decision of the criminal Court before taking disciplinary action. The Supreme Court answered the aforesaid question in the following words:

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 Shri Bimal Kanta Mukherjee v. Messrs. Newsman's Printing Works 1956 Lab 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. The present, however, is a case of a very simple nature and so the employer cannot be blamed for the Court adopted by him. In the circumstances, there was in our opinion no failure of natural justice in this case and if the Respondent did not choose to take part in the enquiry no fault can be found with that enquiry.

(Underlining mine)

9. Another decision, in which this point came up for consideration before the

Supreme Court is in the case of *Tata Oil Mills Co. Ltd. Vs. Its Workmen*, In this case the employees were charged that they waylaid another employee while he was returning home after his duty and assaulted him. A Domestic enquiry was held and the employer decided to dismiss him and the order of dismissal was sent for approval to the industrial Tribunal. In respect of the same charge a criminal case was also instituted. The Tribunal did not approve the order of dismissal and directed for reinstatement of the employees. The question regarding continuance of departmental proceeding came up for consideration before the Supreme Court and it laid down the law in the following words:

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 Raghvan 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. It would be particularly appropriate to adopt such a course where the charge against the workman is of a 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 anything (sic) to say 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. In fairness, we ought to add that Mr. Menon did not seek to justify this extreme position. Therefore, we must hold that the Industrial Tribunal was in error when it characterised the result of the domestic enquiry as mala fide partly because the enquiry was not stayed pending the criminal proceeding against Raghvan. We accordingly hold that the domestic enquiry in this case was properly held and fairly conducted and the conclusions of fact reached by the Enquiry Officer are based on evidence which he accepted as true. That being so, it was not open to the Industrial Tribunal to consider the same questions of fact and come to a contrary conclusion.

(Underlining mine)

10. This question was also a subject matter of adjudication in the case of *Kusheshwar Dubey Vs. Bharat Coking Coal Ltd. and Others*, In the said case the allegation against the employee was that he physically assaulted a supervising officer and the said allegation was subject matter of a disciplinary proceeding as also criminal prosecution. The employee filed petition for injunction for staying further proceeding in the departmental proceeding which was granted by the trial Court. The appeal filed by the employer against the said order failed but the High Court in exercise of its revisional jurisdiction held that the trial Court as also the lower appellate Court were wrong in granting injunction in favour of the opposite

party. When the matter travelled to the Supreme Court it held that the criminal action and the disciplinary proceedings were grounded upon the same set of facts and the High Court was not right in interfering with the trial Court's order of injunction, which was affirmed in appeal. However, while reversing the order of the High Court the Supreme Court observed as follows:

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 rush 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, straight-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.

(Underlining mine)

11. In the case of State of Rajasthan Vs. B.K. Meena and others, it came up for consideration before the Supreme Court as to the nature of cases and the consideration which should weigh, in staying the departmental enquiry till the conclusion of the criminal trial. On consideration of its earlier decisions, the Supreme Court laid down the law in the following words:

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 situations, 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 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 around 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 question 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 not also 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 consideration 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 holding high public offices 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 advise 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 interest of administration demand that 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 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 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 proceeding. 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 the various principles laid down in the decisions referred to above.

(Underlining mine)

12. In the case of *Depot Manager, Andhra Pradesh State Road Transport Corporation Vs. Mohd. Yousuf Miya, etc.*, this question has been answered in the following words:

There would 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, 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 Evidence Act. The evidence required in the departmental enquiry is not regulated by 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 304A and 338 I.P.C. Under these circumstances the High Court was not right in staying the proceedings.

13. From the decisions of the Supreme Court, referred to above, the following principles are deducible:

- (i) There is no legal bar for both proceedings i.e. criminal case and departmental proceeding to go on simultaneously;
- (ii) The principles of natural justice do not require that an employer must wait for the decision of a criminal case before taking action against an employee;
- (iii) The defence of the employee shall be prejudiced, is not a valid ground for staying the disciplinary proceeding unless and until the charge is not only for grave nature but the case also involve complicated questions of law and fact;
- (iv) Departmental proceeding shall not be stayed in a case in which the criminal trial is likely to be unduly delayed;
- (v) Stay of departmental proceeding should not be a matter of course;
- (vi) It is not in the interest of administration that accused of serious misdemeanor should be continued in office indefinitely awaiting the result of criminal proceeding. It only serves the interest of guilty and dishonest;
- (vii) The result of the departmental proceeding during the pendency of criminal case cannot be said to be malafide;

(viii) If the 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.

14. Before I proceed to apply the aforesaid principles in the facts of the present case, I must state that no strait jacket formula is available for its application in a given case. It is not possible to lay down a hard and fast rule in this regard as in my opinion to hazard such a principle shall be fraught with danger and may create greater hardship as individual situation may vary from case to case.

15. Here in the present case, as found earlier, the allegation against the Petitioner is of taking bribe. In my opinion, the allegation against the Petitioner is of grave nature but certainly it does not involve complicated questions of law and fact. As has been often observed, while in the departmental proceeding the standard of proof is one of preponderance of probabilities in a criminal case the charge has to be proved by the prosecution beyond reasonable doubt. The plea of the Petitioner that his defence in the criminal case may be prejudiced does not appeal to me as in my considered opinion the charge does not involve complicated questions of law and fact.

16. It is well known that criminal cases drag on endlessly. They hardly reach a prompt conclusion and bogged down on one or other ground. It would be an understatement to say that criminal trial in this State is unduly delayed. The fact of the matter is that vigilance case reaches the final stage at the trial Court in a decade, in few cases but in many it is more than the said period. Here in the present case, the case was instituted on 10.12.1997 and no progress has been made in the trial. I am of the considered opinion that in the facts of the present case it would be traversity of justice to stay the departmental proceeding on the ground of pendency of the criminal case. It has to be borne in mind that interests of administration and good Government demand that these proceedings are concluded expeditiously, charge of misdemeanour is enquired into promptly and undesirable elements are thrown out swiftly. The disciplinary proceedings are (sic)meant not really to punish the guilty but to keep the administrative machinery unpol(sic)ted by removing the pollutants.

17. In the result, I do not find any merit in the application and it is dismissed in limine.