

(2018) 01 MAD CK 0294

In the Madras High Court

Case No : 14205 of 2009 and M P(MD)No 1 of 2010

S.Sivamurugan

APPELLANT

Vs

The Commissioner of Police

RESPONDENT

Date of Decision : 10-01-2018

Acts Referred:

[Constitution of India](#), [Article 226](#) -

Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955, Rule 3(b)

Citation : (2018) 01 MAD CK 0294

Hon'ble Judges : S.M.Subramaniam

Bench : Single Bench

Advocate : G.Thalaimutharasu, M.Muthu

Final Decision : Disposed Off

Judgement

1. The relief sought for in this writ petition is for a direction to direct the respondent to defer with the departmental proceedings initiated against the

petitioner in view of Charge Memorandum issued by him in P.R.No. 41/2008 u/r.3(b) of Tamil Nadu Police Subordinate Service (D & A) Rules

dated 5.10.2008 till concluding the criminal case registered against the petitioner in Crime No.98/2008 pending on the file of the learned Judicial

Magistrate No.V, Tirunelveli.

2. The learned counsel for the petitioner states that the writ petitioner was initially appointed to the post of Grade II Police Constable on

15.04.1997 and further upgraded to the post of Grade I Police Constable in the year 2004. A charge-memo was issued against the writ petitioner

under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, dated 05.10.2008.

3. The charges against the writ petitioner are as under:-

VERNACULAR MATTER OMITTED

4. Annexure-2 of the charge memo impugned provides statement of imputation and Annexure-3 of the charge-memo enumerates the list of

documents and Annexure-4 of the charge-memo denotes the list of witnesses to be examined. Thus, this Court is of the opinion that there is no

infirmity whatsoever in respect of the charge-memo issued against the writ petitioner.

5. The sole contention raised by the writ petitioner is that a criminal case was registered against the writ petitioner and the charges both in the

criminal case as well as in the Departmental proceedings are same and therefore, the Departmental proceedings are to be kept in abeyance.

6. In other words, the learned counsel for the petitioner states that unless the criminal case is concluded, the departmental proceedings cannot be

allowed to be go on. In the event of proceedings with the departmental proceedings, the right of the writ petitioner to defend the case will be

prejudiced.

7. The learned counsel for the petitioner contended that simultaneous proceedings of both the Departmental Disciplinary Proceedings as well as the

Criminal Proceedings are impermissible and therefore, the Departmental proceedings are to be kept in abeyance, till the final orders passed in the

criminal case registered against the writ petitioner. Such a proposition advanced by the learned counsel for the petitioner is untenable, in view of the

legal principles settled by the Supreme Court of India.

8. It is not as if in all the cases, the Departmental Proceedings are to be kept in abeyance during the pendency of the criminal case. Only on an

exceptional circumstances, the Department may kept the Disciplinary Proceedings in abeyance. In all other case, the Disciplinary Authorities

competent are at liberty to proceed with the departmental proceedings even during the pendency of the criminal case. A mere pendency of the

criminal case is not a bar for the respondent to proceed with the departmental disciplinary proceedings under the Tamil Nadu Police Subordinate

Service (Discipline and Appeal) Rules.

9. Considering the nature of the charges framed against the writ petitioner, this Court is of the opinion that even the first charge states that the writ

petitioner was un-authorisedly absent while on duty. This charge is certainly un-

connected with the criminal case. Other charges also though related to the criminal case, there is no impediment to proceed with the departmental proceedings.

10. In view of the above, the charge-memo impugned contains list of allegations, statement of imputations, list of documents and list of witnesses.

Thus, an independent enquiry by the Disciplinary Authorities are certainly possible and there is no reason to prolong and protract the departmental proceedings.

11. The charge-memo can be challenged on a limited ground and on a exceptional circumstances, a judicial review against the charge memo is

certainly limited. A charge memo can be challenged if the same was issued by an incompetent authority having no jurisdiction, an allegation of mala

fides is raised if the same is in violation of statutory rules. Even in case of raising the allegation of mala fides, the authority against whom such an

allegation is raised, has to be impleaded as a party respondent in the writ proceedings in his personal capacity. In the absence of any such legal

grounds, no charge memo can be entertained by way of writ petition.

12. Intermittent intervention in the disciplinary proceedings is not preferable. However, only on exceptional circumstances, this Court can issue a

direction against the proceedings and not in a routine manner. Mere issuance of a call letter to the writ petitioner directing him to participate in the

domestic enquiry will not give any cause of action to move this writ petition under Article 226 of the Constitution of India. Thus, the writ petition is

absolutely misconceived and the grounds raised in this writ petition cannot be considered.

13. The Honourable Supreme Court of India in the case of Union of India and others Vs. Upendra Singh, reported in (1994) 3 SCC 357 and the

paragraph 6 which is extracted hereunder:

6. In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or

particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary

to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the

functions of the disciplinary authority. The truth or otherwise of the charges is a

matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the court/tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court. It would be sufficient to quote the decision in H.B. Gandhi, Excise and Taxation Officer-cum- Assessing Authority, Kamal v. Gopi Nath & Sons. The Bench comprising M.N. Venkatachaliah, J. (as he then was) and A.M. Ahmadi, J., affirmed the principle thus : (SCC p. 317, para 8) ""Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorized by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself.

14. In the case of Secretary, Ministry of Defence and Others Vs. Prabhash Chandra Mirdha [Civil Appeal No.2333 of 2007, Decided on May 29, 2012], the Apex Court of India held that normally, a Charge sheet is not liable to be quashed as it does not adversely affect the rights of an employee and does not give rise to any cause of action. A writ lies only when some right of a party is infringed. The charge sheet does not infringe the right of a party. It is only when a final order imposing punishment or otherwise, it may have a cause of action. Hence, writ petition challenging charge sheet by itself is not maintainable. However, it can be quashed on the ground that issuing authority being not competent to issue the same.

15. In the case of Union of India vs. Kunishetty Satyanarayana [(2006) 12 SCC 28], it was held that writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not be ordinarily exercised by

quashing a charge sheet. No doubt, in some very rare and exceptional cases, the High Court can quash a charge sheet if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal.

16. The main ground raised by the writ petitioner is that simultaneous proceedings are impermissible. In this regard, this Court is of the firm opinion that the charge-memo initiated against public service shall be proceeded with, within a reasonable period of time and the same should reach its logical conclusion in all respects. The delinquent officials cannot be allowed to protract and prolonging the disciplinary proceedings for an unspecified period. Filing the writ petition at each and every stage on a flimsy grounds need not be entertained. Even, if there are certain procedural lacuna, the delinquents are at liberty to raise all the points before the disciplinary proceedings or after the conclusion of the disciplinary proceedings. Entertaining the writ petition in each and every case would certainly affect the conclusion of the disciplinary proceedings, which is not desirable in all circumstances.

17. Government servants play a significant role in running the administration of the country. They are important constituents of the administrative set up of the nation. They are pillars of the Government departments on whose shoulders the responsibility to implement the Government policies lies. They provide public services to the citizens at the grass root level and in the same way, they forward grievances of the public, their representations and demands to higher ups for their effective resolution. The Government employees have different work culture and responsibilities as compared to their counterparts in private sector. They are smartly paid and have some kind of perquisites given to them but at the same time, they have heavy responsibilities towards the Government in particular and public in general. However, when the Government servants deviate from the established rules of conduct, the departmental disciplinary proceedings will be initiated. It is the need of the hour to analyse whether conducting departmental proceedings and criminal proceedings would amount to double jeopardy or such simultaneous proceedings are to be continued simultaneously.

18. The departmental authorities are free to exercise such lawful powers as are conferred on them by the departmental rules and regulations.

19. In the case of Sri Bhagwan Ram v. The State of Jharkand, State of Bihar and others(2017), it is well-settled that a domestic enquiry and a

criminal trial can proceed simultaneously and the decision in the criminal case would not materially affect the outcome of the domestic enquiry. The

nature of both the proceedings and the test applied to reach a final conclusion in the matter, are entirely different.

20. In the case of Dr.Bharathi Pandey-Deputy General Manager V. Union of India[Special Civil Application No.15602 of 2013], the Apex Court

held that it is clear that the departmental inquiry proceedings in every case need not be stayed till the criminal proceedings against the petitioner are

concluded. It may be done in case of grave nature involving complicated questions of facts and law. The advisability and desirability has to be

determined considering facts of each case.

21. In the case of Ajith Kumar Das v. Union of India and Others[W.P. (C) NO.4036 of 2017], the Court held that the departmental enquiry is to

maintain discipline in 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 guideline as inflexible rules in which the departmental

proceeding may or may not be stayed pending trial in criminal case against the delinquent officer. There would be no bar to proceed simultaneously

with the departmental proceeding and trial of a criminal case unless the charge in a criminal trial is of grave nature involving complicated questions

of fact and law. Offence generally implies infringement of public as distinguished from mere private right punishable under criminal law, when trial

for criminal offence is conducted it should be in accordance with the proof of offence as per the evidence defined under the provisions of the

evidence act. Converse in the case of departmental enquiry in a departmental proceeding relates to conduct of breach of duty of the delinquent

officer who punish him for his misconduct defined under the relevant statute/rule or law that strict standard of rule or applicability of Evidence Act

stands excluded in a settled legal position.

22. In the case of Avinash Sadashiv Bhosale v. Union of India[(2012) 13 SCC 142], the Court held that there is no legal bar for both proceedings

to go on simultaneously. 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 question of fact and law. 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. 15. The Supreme Court in the case of Karnataka State Road Transport Corporation v. M.G.Vittal Rao[(2012) 1 SCC 442] gave a timely reminder of the principles that are applicable in such situations succinctly summed up in the following words:

- (i) There is no legal bar for both proceedings to go on simultaneously.
- (ii) 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.
- (iii) 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.
- (iv) 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".

23. In the case of NOIDA Entrepreneur Association v. NOIDA and the others[J.T. 2001 (2) SC 620], the Court held that the standard of proof

and nature of evidence in the departmental inquiry is not the same as in criminal case. The purpose of departmental enquiry and of prosecution is

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.

24. In the case of State Bank of India & Ors. Versus R.B.Sharma, [AIR 2004 SC 4144], the Hon"ble Supreme Court reiterated observing that

both proceedings can be held simultaneously. It held, ""the purpose of departmental inquiry and of prosecution is to put a distinct aspect. Criminal

prosecution is launched for an offence for violation of 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 a public duty. The departmental

inquiry is to maintain discipline in the service and efficiency of public service.

25. In the case of Ajith Kumar Nag v. General Manager(PJ), Indian Oil Corporation Ltd., Haldia[2005-7-SCC-764], the Honourable Apex

Court considered the issue of validity of conducting departmental proceeding when the criminal case was pending against the official and held as

follows:

Acquittal by a criminal court would not debar an employer from exercising power in accordance with 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 offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and

to impose penalty in accordance with service Rules. 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 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".

26. In the case of West Bokaro Colliery(Tisco Ltd.) v. Ram Parvesh Singh(2008) 3 SCC 729, the Hon"ble Supreme Court has held in the case of

that since standard of proof required in criminal case are beyond reasonable doubt and what is required in departmental inquiry is only of finding

the guilt on the basis of preponderance of probability, there is no bar in continuing both simultaneously.

27. In the case of S.A.Venkatraman v. Union of India, AIR 1954, SC 375 it has been held by the Supreme Court that taking recourse to both, does not amount to double jeopardy.

1. In Stanzen Toyotetsu India Private Limited v. Girish V. And Other (2014) 3 SCC 636. It was held that suffice it to say that while there is no

legal bar to the holding of the disciplinary proceedings and the criminal trial simultaneously, stay of disciplinary proceedings may be advisable

course in cases where the criminal charge against the employee is grave and continuance of the disciplinary proceedings is likely to plagiarize their

defence before the criminal court.

2. The Supreme Court in State of Rajasthan v. B.K.Meena and Others (1996) 6 SCC 417 held 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. Therefore,

stay of disciplinary proceedings cannot be, and should not be, a matter of recourse.

3. It is also to note that acquittal in criminal proceedings on the same set of charges, per se, does not entitle the delinquent to claim immunity from

disciplinary proceedings, as observed by the Supreme Court in the case of C.M.D.U.C.O. vs. P.C.Kakkar, AIR 2003 SC 1571. In the same

way, departmental proceedings may be continued even after retirement of the employee. (U.P.S.S.Corp.Ltd. vs. K.S.Tandon, AIR 2008 SC

1235)

28. Considering the above judgments, this Court is of the firm opinion that the procedure for taking disciplinary action against a Government

servant is lengthy and detailed one, giving maximum opportunity to the government servant to prove his innocence. A Government employee is

expected to perform his duties with utmost diligence, efficiency, economy and effectiveness. The Government procedures are lengthy in order to

ensure that the Government employees perform their responsibilities without any pressure or exterior considerations. However, at the same time, it

ensures discipline amongst the employees and shows the door to the employees who have become dead wood and do not perform as per

expectations of public in general and his department in particular. Disciplinary proceedings are conducted to ensure that the morale of the employees as a whole is boosted. It ought to be noted that criminal proceedings will last for years and this can lead to loss of evidences and thereby staying departmental disciplinary proceedings from being conducted simultaneously would lead to gross miscarriage of justice. Also, it is pertinent to note the fact that the object of such departmental proceedings is not to penalise but to assist in restoring the morale of Government servants. Thus, it is of utmost importance that the Court has to strike a balance between the need for a fair trial to the accused on one hand and the competing demand for an expeditious conclusion of the ongoing disciplinary proceedings on the other which will not have any adverse impact if is conducted simultaneously.

28. In view of the above pronouncement of the Apex Court of India and in view of the discussion made in the above mentioned paragraphs, this Court is of the opinion that there is absolutely no bar for the disciplinary authorities to proceed with the charge-memo, dated 05.10.2008 and concluded the same after conducting an enquiry and by providing all opportunities to the writ petitioner in accordance with the Rules and pass a final order. Thus, no further adjudication is required in this writ petition.

29. With these observations, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also closed.