

(2013) 07 JH CK 0073

Jharkhand High Court

Case No: Writ Petition (S) . No. 566 of 2013

Rana Umesh Singh

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision: July 22, 2013

Citation: (2014) 1 AJR 829

Hon'ble Judges: Shree Chandrashekhar, J

Bench: Single Bench

Advocate: Rohit Roy, for the Appellant; Pravin Kr. Rana, J.C. to A.G., for the Respondent

Judgement

Shree Chandrashekhar, J.

The petitioner has approached this Court seeking stay of Chatra District Departmental Proceeding No. 67 of 2012 till the adjudication of Chatra Sadar P.S. Case No. 157 of 2012 corresponding to G.R. No. 766 of 2012. The brief facts of the case are that, the petitioner was appointed as a Constable in the year, 1982. A preliminary enquiry was conducted and it was detected that one Kumar Vijay Singh was found illegally adjusted in the service while the petitioner was working in the office of Inspector of Police-I, district-Chatra. An Enquiry Report dated 12.09.2012 was submitted in which it was found that the petitioner conspired with some other persons and got the said Kumar Vijay Singh illegally adjusted by Chatra District Order No. 841 of 2005 corresponding to Memo No. 762/ra.ka. dated 15.10.2005. An F.I.R. was lodged on 12.09.2012 under Sections 419, 420, 465, 467, 468, 471 and 379 read with Section 120B I.P.C. A departmental proceeding was also initiated against the petitioner vide Memo dated 21.10.2012. In these facts, the petitioner has approached this Court seeking stay of departmental proceeding till the adjudication of the criminal case.

2. A counter-affidavit has been filed on behalf of the respondents, in which a stand has been taken by the respondents that a criminal case was filed and a departmental proceeding was initiated against the petitioner, only after conducting preliminary enquiry, in which, it was found that the petitioner is guilty of forging

documents and illegally getting the brother-in-law of his elder brother namely, Kumar Vijay Singh, appointed. The respondents have relied on several decisions of the Hon"ble Supreme Court in support of the contention that it is not the requirement in law that till the conclusion of the criminal case, the departmental proceeding should be stayed.

3. Heard counsel for both the parties and perused the documents on record.

4. The learned counsel appearing for the petitioner has raised a contention that in view of the decision of the Hon"ble Supreme Court in [Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another](#), which has been followed by the Hon"ble Supreme Court in subsequent cases and which still holds the Held, the departmental proceeding against the petitioner should be kept at abeyance till the conclusion of the criminal case. Relying on the orders as contained in Annexure-4 (series) passed by the respondents, the learned counsel appearing for the petitioner has submitted that the department itself has adopted a similar policy in the cases of other delinquent employees however, in the case of the petitioner the request for staying the departmental proceeding has not been accepted by the respondents.

5. The learned counsel appearing for the respondents submitted that the charge against the petitioner is grave and the orders, as contained in Annexure-4 (series) on which the petitioner has placed reliance, are the cases in their own facts and it appears that in those cases, the charges against the delinquent employees are of different nature.

6. A perusal of the documents on record would indicate that the allegations against the petitioner in the criminal case, i.e. Chatra Sadar P.S. Case No. 157 of 2012 corresponding to G.R. No. 766 of 2012 and the charges leveled in the Charge Memo dated 21.10.2012, are not the same though, based on similar set of facts.

7. Now, before adverting to the contention raised by the learned counsel for the petitioner that, till the adjudication of the criminal case, the departmental proceeding should be stayed, it would be useful to refer to decision in [Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another](#), The learned counsel appearing for the petitioner has relied on para 22 of the judgment, which is extracted below:

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, the administration may get rid of him at the earliest.

8. In para 22(i) of "Capt. M. Paul Anthony" (supra), the Hon"ble Supreme Court has observed that the departmental proceeding and the proceeding in a criminal case can proceed simultaneously as there is no bar in both being conducted simultaneously, though separately. In the case of "Capt. M. Paul Anthony" (supra), the Hon"ble Supreme Court has referred to various decisions on the subject in the following paragraphs:

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 to 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 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 doubt. 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 *Delhi Cloth & General Mills Ltd. v. Kushal Bhan* in which it was observed as under:

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. Newsman's Printing Works* 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. v. 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 *Delhi Cloth and General Mills Ltd. v. 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 v. 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 willful 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 enquiry if the incident giving rise to a charge framed against the employee in a domestic enquiry is being tried in a criminal court. The case-law was reviewed by this Court in *Kusheshwar Dubey v.*

Bharat Coking Coal Ltd. and it was laid down as under: (SCC p. 323, para 7)

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 a 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. As we have already stated that 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. 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: (SCC p. 323, para 8)

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 v. Union of India* 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: (SCCp. 714, para 5)

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 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.

(emphasis supplied)

19. The entire case-law was reviewed once again by this Court in State of Rajasthan v. B.K. Meena wherein it was laid down as under: (SCC pp. 422-23, para 14)

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 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 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 into consideration all the facts and circumstances of the case. The ground indicated in D.C.M. and Tata Oil Mills 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 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 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 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 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 the various principles laid down in the decisions referred to above.

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

1. The "advisability", "desirability" or "propriety" of staying the departmental proceedings "go into 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, A.P. SRTC v. Mohd. Yousuf Miya again 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 fact and law.

10. In the subsequent years, the Hon"ble Supreme Court though noticed the pronouncement in the case of "Capt. M. Paul Anthony" (supra), however, again reiterated that there is no legal bar in proceeding departmentally against an employee against whom a criminal prosecution has also been launched. The Hon"ble Supreme Court has categorically held that even acquittal in a criminal case is not a bar for initiating a fresh departmental enquiry or even for continuing the departmental enquiry already initiated.

11. In [Suresh Pathrella Vs. Oriental Bank of Commerce](#), the Hon"ble Supreme Court has reiterated that acquittal in a criminal case is not a bar for initiating a departmental proceeding against the delinquent employee and held thus:

In our view, the findings recorded by the learned Single Judge are fallacious. This Court has taken the view consistently that acquittal in a criminal case would be no bar for drawing up a disciplinary proceeding against the delinquent officer. It is well-settled principle of law that the yardstick and standard of proof in a criminal case is different from the disciplinary proceeding. While the standard of proof in a

criminal case is a proof beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probabilities.

12. In [Management, Pandiyan Roadways Corp. Ltd. Vs. N. Balakrishnan](#), the Hon"ble Supreme Court has held:

20. However, there is another aspect of the matter which cannot be lost sight of. The respondent, in the meanwhile, has been acquitted. The factum of his acquittal has been taken into consideration by the Division Bench, which was considered to be an additional factor. Ordinarily, the question as to whether acquittal in a criminal case will be conclusive in regard to the order of punishment imposed upon the delinquent officer in a departmental proceeding is a matter which will again depend upon the fact situation involved in a given case.

21. There are evidently two lines of decisions of this Court operating in the field. One being the cases which would come within the purview of Copt M. Paul Anthony v. Bharat Gold Mines Ltd. and G.M. Tank v. State of Gujarat. However, the second line of decisions show that an honourable acquittal in the criminal case itself may not be held to be determinative in respect of order of punishment meted out to the delinquent officer, inter alia, when: (i) the order of acquittal has not been passed on the same set of facts or same set of evidence; (ii) the effect of difference in the standard of proof in a criminal trial and disciplinary proceeding has not been considered (see Commr. of Police v. Narender Singh, or; where the delinquent officer was charged with something more than the subject-matter of the criminal case and/or covered by a decision of the civil court (see G.M. Tank, Jasbir Singh v. Punjab & Sind Bank and Noida Entrepreneurs" Assn. v. Noida, para 18).

13. In [Narinder Mohan Arya Vs. United India Insurance Co. Ltd. and Others](#), after considering the decision in "Capt. M. Paul Anthony" (supra), the Hon"ble Supreme Court has observed thus,

40. We may notice that in Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. this Court observed: (SCC p. 695, para 35)

35. Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case.

41. We may not be understood to have laid down a law that in all such circumstances the decision of the civil court or the criminal court would be binding on the disciplinary authorities as this Court in a large number of decisions points out that the same would depend upon other factors as well See e.g. Krishnakali Tea Estate v. Akhil Bharatiya Chah Mazdoor Sangh and Manager, Reserve Bank of India v. S. Mani. Each case is, therefore, required to be considered on its own facts.

14. In "[The Managing Director State Bank of Hyderabad and Another Vs. P. Kata Rao](#), the Hon"ble Supreme Court has observed as under,

18. There cannot be any doubt whatsoever that the jurisdiction of superior courts in interfering with a finding of fact arrived at by the enquiry officer is limited. The High Court, it is trite, would also ordinarily not interfere with the quantum of punishment. There cannot, furthermore, be any doubt or dispute that only because the delinquent employee who was also facing a criminal charge stands acquitted, the same, by itself, would not debar the disciplinary authority in initiating a fresh departmental proceeding and/or where the departmental proceedings had already been initiated, to continue therewith.

19. We are not unmindful of different principles laid down by this Court from time to time. The approach that the court's jurisdiction is unlimited although had not found favour with some Benches, the applicability of the doctrine of proportionality, however, had not been deviated from.

20. The legal principle enunciated to the effect that on the same set of facts the delinquent shall not be proceeded in a departmental proceedings and in a criminal case simultaneously, has, however, been deviated from. The dicta of this Court in Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. however, remains unshaken although the applicability thereof had been found to be dependent on the fact situation obtaining in each case.

15. As noticed hereinabove, it is thus settled by a catena of decisions of the Hon"ble Supreme Court that the departmental enquiry as well as the criminal case can proceed simultaneously. I am of the opinion that the observation of the Hon"ble Supreme in "Capt. M. Paul Anthony" (supra) in para 22 with respect to desirability of keeping the departmental enquiry stayed, till the conclusion of the criminal case, is not attracted in the present case. In the case of "Capt M. Paul Anthony" (supra) also, the Hon"ble Supreme Court has finally decided the issue on the basis of the facts and evidence brought on record in the said case. As noticed hereinabove the Hon"ble Supreme Court has observed in "State Bank of Hyderabad & Anr. Vs. P. Kata Rao" (supra) that the legal principle to the effect that on the same set of facts the delinquent shall not be proceeded in a departmental proceeding and in a criminal case simultaneously, has been deviated and each case has to be decided in its own facts. In the present case the allegations in the criminal case and the charge in the departmental enquiry are not the same. In view of the aforesaid, I find that this writ petition lacks merit and hence, it is dismissed.