

**Criminal Proceedings And Disciplinary Enquiry Can Go On Simultaneously:
Andhra Pradesh High Court**

2022 LiveLaw (AP) 121

HIGH COURT OF ANDHRA PRADESH

RAVI NATH TILHARI, J.

WRIT PETITION No.19655 OF 2011; 25.08.2022

R. Subba Rao versus Chief Vigilance Officer

Counsel for the petitioner: Sri Adhitya Harsha Vardhan

Counsel for the respondents: Ms. K.Durga Lavanya, learned counsel for respondents 1 to 3.

J U D G M E N T

1. Heard Sri Adhitya Harsha Vardhan for M/s. Pillix Law Firm representing the petitioner and Ms. K.Durga Lavanya, learned counsel, representing Sri M.Venkata Krishna Rao, learned counsel for the respondent Nos.1 to 3.

2. This writ petition under Article 226 of the Constitution of India has been filed for the following relief:-

“It is therefore prayed that this Hon’ble Court may be pleased to issue a writ, order or direction more particularly one in the nature of writ of mandamus or any other appropriate writ declare the action of the respondents in proceeding with the departmental enquiry in pursuance of the Memorandum of Charges Dated 15-06-2010 before conclusion of the criminal case pending against the petitioner before Hon’ble Special Judge for CBI Cases, Visakhapatnam in C.C.No.43 of 2010 as illegal, arbitrary and in violation of principles of natural justice apart from being violative of Articles 14, 20 & 21 of Constitution of India and consequently direct the respondents not to proceed with the departmental enquiry against the petitioner till the conclusion of the proceedings in C.C.No.43 of 2010 pending on the file of the Hon’ble Special Judge for CBI Cases, Visakhapatnam and pass such other order or orders as this Hon’ble Court may deem fit and proper in the interest of justice.”

3. The petitioner was appointed in the respondent Corporation namely the Cotton Corporation of India Limited, Government of India undertaking (in short “the Corporation”) as Junior Cotton Purchase Officer on 03.12.1979 and worked in various places in the State of Andhra Pradesh and retired on attaining the age of superannuation on 28.02.2011.

4. The Central Bureau of Investigation (for short “the CBI”), Visakhapatnam had registered cases against the petitioner and his family members in FIR R.C.No.10(A)/2006-CBI, VSP for the alleged possession of disproportionate assets and FIR R.C.No.11(A)/2006 CBI, VSP for Criminal Conspiracy, cheating and abuse of the official position, both dated 17.06.2006. During investigation the petitioner is said to have appeared, in which his statement was recorded and the CBI filed charge sheet before the Court of Special Judge for CBI cases, Visakhapatnam under Sections 13 (2) read with 13 (1) (e) of the Prevention of Corruption Act, 1988 read with Section 109 of the Indian Penal Code (for short, “the IPC”), 1860, upon which the Court had taken cognizance and allotted CC.No.43 of 2010, dated 17.09.2010.

5. The Corporation respondent No.1 initiated the disciplinary proceedings against the petitioner under the Cotton Corporation of India Limited Conduct, Discipline and Appeal Rules, 1975 (in short, “the Rules 1975”) and appointed the respondent No.2, the Branch Manager and disciplinary authority, as the Enquiry Officer *vide* proceedings No.CCI/VIG/WGL/2358-2010 dated 12.04.2010. The disciplinary

authority issued a Memorandum of Charges dated 15.06.2010 to the petitioner, with a direction to submit a written statement of his defence in answer to the charges, to which the petitioner submitted reply on 18.07.2010 informing that the petitioner's medical condition was not good and sought time till he became medically fit. The petitioner was suspended *vide* order dated 22.11.2010 with immediate effect under Rule 20 (i) (a) & 20 (i) (b) of the Rules, 1975. The respondent No.2 *vide* order dated 30.01.2011 appointed the respondent No.3 the Enquiry Officer to enquire into the charges framed against the petitioner. The Presenting Officer was also appointed.

6. It is the further case of the petitioner that the venue of the departmental enquiry was changed from one place to another from time to time of which, the petitioner was not aware. However, it is admitted that Enquiry Officer sent summons through Special Messenger which was received by the petitioner's son on 28.04.2011 and in response the petitioner addressed a letter dated 01.05.2011 to the Enquiry Officer to keep the enquiry in abeyance till disposal of the criminal cases. The Enquiry Officer in the meeting dated 03.05.2011 requested the respondent No.2 to furnish the documents to the petitioner and fixed 24.05.2011 for further steps and thereafter the enquiry was posted for 07.06.2011 and again to 05.07.2011 for appearance of the petitioner personally.

7. Challenging the departmental proceedings *vide* Memorandum of Charges dated 15.06.2010, the present Writ Petition has been filed to declare the same as illegal, arbitrary and in violation of the principles of natural justice as also Articles 14, 20 and 21 of the Constitution of India on the ground that before conclusion of the criminal case in C.C.No.43 of 2010, the same cannot be proceeded with.

8. *Vide* interim order dated 16.09.2011 passed in W.P.M.P.No.23763 of 2011 in the present petition, the interim stay of the departmental proceedings until further orders was granted.

9. Sri Adhitya Harsha Vardhan, learned counsel for the petitioner submitted that the departmental proceedings and the criminal proceedings initiated against the petitioner are based on same set of facts and the charges framed in the criminal case are grave in nature involving complicated questions of law and fact and if the petitioner is asked to disclose his defence in the departmental proceedings, prejudice would be caused to him; the witnesses are also same and hence the simultaneous continuation of the departmental enquiry proceedings to the criminal proceedings is liable to be set aside.

10. Sri Adhitya Harsha Vardhan, has placed reliance on the judgments in the cases of, ***State Bank of India & Others v. Neelam Nag***¹, ***Kusheshwar Dubey v. M/s. Bharat Coking Coal Ltd and Others***²³, ***Rubina Bano v. State of Chhattisgarh***³, ***G.M.Tank v. State of Gujarat and Others***⁴⁵, ***D.Ravi Babu v. Director General of Police, AP and Others***⁵.

11. Ms. K.Durga Lavanya, learned counsel, representing Sri M.Venkata Krishna Rao, learned counsel for the respondents submitted that the charge levelled against the petitioner before the CBI Court is with regard to the possession of the

¹ CDJ 2016 SC 826

² (1988) 4 SCC 319

³ SCC Online CHH 1276

⁴ (2006) 5 SCC 446

⁵ SCC OnLine AP 855 : (2021) 6 ALD 44

disproportionate assets to the tune of Rs.1,06,78,571/- (one crore six lakh seventy eight thousand five hundred seventy one), whereas the charge in the disciplinary proceedings is with regard to non-intimation of movable and immovable properties in the name of the petitioner and his family members which are undervalued and the charge is of misconduct; of not maintaining absolute integrity and devotion to duty and unbecoming of a public servant, under different rules of the Cotton Corporation of India (Conduct, Discipline & Appeal Rules, 1975) (in short „the Rules, 1975“).

12. Ms. K.Durga Lavanya further submitted that the pendency of the criminal case is not a bar to conduct departmental enquiry. Both the proceedings are entirely different, the standard of proof, the mode of enquiry and the rules governing the enquiry and trial are different and consequently the departmental proceedings deserves to be concluded notwithstanding pendency of the criminal proceedings.

13. Ms. K.Durga Lavanya placed reliance on the judgments in the cases of **Lalit Popli v. Canara Bank and others**⁶, **Ajitkumar Nag v. General Manager (PJ), Indian Oil Corporation Ltd**⁷.

14. Learned counsel for the respondent further submitted that though the petitioner retired from service on attaining the age of superannuation on 28.02.2011 but as per the service rules of the Corporation, the disciplinary proceedings can continue and concluded even after retirement of the delinquent employee.

15. It has not been disputed by the learned counsel for the petitioner that after retirement of the employee, the departmental proceedings can continue and be concluded under the Rules 1975 nor any submission has been advanced on this aspect.

16. I have considered the submissions advanced by the learned counsels for the parties and perused the material on record.

17. In view of the submissions advanced, the following point arises for consideration:

Whether the departmental proceedings against the petitioner can be continued and concluded during pendency of the criminal proceedings against him?

18. The law on point of continuance and conclusion of the departmental proceedings pending criminal proceedings is no more res integra.

19. Recently, in **K.Sridhar Vs. Andhra Pradesh State Road Transport Corporation**⁸, this Court after considering the judgments of Hon“ble Apex Court on the point, reiterated the settled legal position that the disciplinary proceedings and the criminal proceedings may continue simultaneously and pendency of the criminal proceedings is no legal bar in conducting departmental proceedings. This Court further held that the gravity of the charge is not by itself enough to determine the question unless the charge involves complicated questions of law and fact and even when the charge is found to be serious involving complicated questions of law and fact and there is likelihood of the prejudice to be caused to the delinquent employee in criminal proceedings, the Court has to keep in consideration that the criminal trials prolong indefinitely and the departmental proceedings cannot be suspended or

⁶ (2003) 3 SCC 583

⁷ (2005) 7 SCC 764

⁸ W.P.No.8031 of 2021 decided on 04.07.2022

delayed unduly, and even where the departmental proceedings have been stayed they can be resumed even pending criminal proceedings.

20. It is apt to refer Paragraphs 14 to 23 of K.Sridhar (supra) as under:-

*“14. In **Capt.M. Paul Anthony** (Supra), the Hon’ble Apex Court, on review of the case laws on the subject, identified the broad principles for application in a given case. It is apt to refer paragraph No.22 of **Capt. M. Paul Anthony** (supra) as under:*

“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.”

15. In **Stanzen Toyotetsu India Pvt. Ltd** (supra), the Hon’ble Apex Court held as under in paragraphs 10 to 16:

*“10. The relatively recent decision of this Court in **Divisional Controller, Karnataka State Road Transport Corporation v. M.G. Vittal Rao**⁹, is 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.”

11. We may also refer to the decision of this Court in **Capt. M Paul Anthony** (supra), where this Court reviewed the case law on the subject to identify the following broad principles for application in the facts and circumstances of a given case:

⁹ (2012) 1 SCC 442

“(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 honor may be vindicated and in case he is found guilty, administration may get rid of him at the earliest.”

12. *In Hindustan Petroleum Corporation Limited v. Sarvesh Berry¹⁰ the respondent was charged with possessing assets disproportionate to his known sources of income. The question was whether disciplinary proceedings should remain stayed pending a criminal charge being examined by the competent criminal Court. Allowing the appeal of the employer-corporation this Court held: (SCC p.475, para 8)*

“8... So, a 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 a grave nature involving complicated questions of fact and law..... Under these circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defense 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.” (emphasis supplied)

13. *It is unnecessary to multiply decisions on the subject for the legal position as emerging from the above pronouncements and the earlier pronouncements of this Court in a large number of similar cases is well settled that disciplinary proceedings and proceedings in a criminal case can proceed simultaneously in the absence of any legal bar to such simultaneity. It is also evident that while seriousness of the charge leveled against the employees is a consideration, the same is not by itself sufficient unless the case also involves complicated questions of law and fact. Even when the charge is found to be serious and complicated questions of fact and law that arise for consideration, the Court will have to keep in mind the fact that departmental proceedings cannot be suspended indefinitely or delayed unduly.*

¹⁰ (2005) 10 SCC 471

14. In **Paul Anthony** (*supra*) this Court went a step further to hold that departmental proceedings can be resumed and proceeded even when they may have been stayed earlier in cases where the criminal trial does not make any headway.

15. To the same effect is the decision of this Court in **State of Rajasthan v. B.K.Meena**¹¹, where this Court reiterated that there was no legal bar for both proceedings to go on simultaneously unless there is a likelihood of the employee suffering prejudice in the criminal trial. What is significant is that the likelihood of prejudice itself is hedged by providing that not only should the charge be grave but even the case must involve complicated questions of law and fact. Stay of proceedings at any rate cannot and should not be a matter of course. The following passage is in this regard apposite: (B.K. Meena case), SCC pp.422-23, paras 14-15)

“14.....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, 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 questions 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. While it is not possible to enumerate the various factors, for and against the stay of disciplinary proceedings, we found it necessary to emphasize 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.

15. ... Indeed, in such cases, it is all the more in the interest of the charged officer that the proceedings are expeditiously concluded. Delay in such cases really works against him.” (emphasis supplied)

16. 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 an advisable course in cases where the criminal charge against the employee is grave and continuance of the disciplinary proceedings is likely to prejudice their defense before the criminal Court. Gravity of the charge is, however, not by itself enough to determine the question unless the charge involves complicated question of law and fact. The Court examining the question must also keep in mind that criminal trials get prolonged indefinitely especially where the number of accused arraigned for trial is large as is the case at hand and so are the number of witnesses cited by the prosecution. The Court, therefore, has to draw a balance between the need for a fair trial to the accused on the one hand and the competing demand for an expeditious conclusion of the on-going disciplinary proceedings on the other. An early conclusion of the disciplinary proceedings has itself been seen by this Court to be in the interest of the employees.”

16. In **Neelam Nag** (*supra*), the Hon'ble Apex Court reiterated that there is no legal bar to the conduct of the disciplinary proceedings and criminal trial simultaneously. It was further

¹¹ 1996(6) SCC 417

held that, no straightjacket formula can be spelt out and the Court has to keep in mind the broad approach to be adopted in such matters on case to case basis.

17. In **Mohd Yousuf Miya** (supra), the judgment upon which learned standing counsel placed reliance, the Hon'ble Apex Court held in paragraphs 7 and 8, as under:

"7. The rival contentions give rise to the question: whether it would be right to stay the criminal proceedings pending departmental enquiry?

This Court in Meena's case had elaborately considered the entire case law including Kusheshwar Dubey's case relieving the necessity to consider them once over. The Bench, to which one of us, K. Venkataswami, J., was a member, had concluded thus:

"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 not also an invariable rule. It is only a factor which will go into the scales while judging the advisability or desirability of staying 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 even 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 whether 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 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 if disciplinary proceedings, we found it necessary to emphasis 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."

There is yet another reason. The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. 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 under the Prevention of corruption Act (and [the Indian Penal Code](#), if any) are established and, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. Staying of disciplinary proceedings pending criminal proceedings, to repeat, should not be a matter of course but a considered decision. Even if stayed at one stage, the decision may require reconsideration if the criminal case gets unduly delayed."

8. We are in respectful agreement with the above view. The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence in 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. 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 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 of 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](#) IPC. Under these circumstances, the High Court was not right in staying the proceedings."

18. In **A. Peddanna** (supra), upon which the learned counsel for the petitioner placed reliance, this Court held that the underlying principle for and against the continuation of departmental and criminal proceedings simultaneously is that irrespective of the similarity or identity of the charge in both sets of proceedings, the requirement of law is that the delinquent employee must not be required to reveal the defense, available to him in the criminal proceedings, in the departmental proceedings.

19. Recently, in **Pravin Kumar vs. Union of India**¹², the Hon'ble Apex Court held that it is beyond debate that criminal proceedings are distinct from civil proceedings. It is both possible and common in disciplinary matters to establish charges against a delinquent official by preponderance of probabilities and consequently terminate his services. But the same set of evidence may not be sufficient to take away his liberty under our criminal law jurisprudence. Such distinction between standards of proof amongst civil and criminal litigation is deliberate, given the differences in stakes, the power imbalance between the parties and the social costs of an erroneous decision. Thus, in a disciplinary enquiry, strict rules of evidence and procedure of a criminal trial are inapplicable, like say, statements made before enquiry officers can be relied upon in certain instances. It was further held that the employer always retains the right to conduct an independent disciplinary proceeding, irrespective of the outcome of a criminal proceeding.

20. In **G.L. Ganeswara Rao** (supra), relied upon by the learned standing counsel, the same principle of law as mentioned above has been applied by a Division Bench of this Court.

21. Thus, it is well settled in law that the disciplinary proceedings and criminal proceedings may continue simultaneously and pendency of the criminal proceedings is no legal bar in conducting the departmental proceedings, unless there is a statutory provision barring the continuation of the disciplinary proceedings in such circumstances.

22. Crime is an act of commission, in violation of law or misconduct of public duty. The departmental enquiry is to maintain discipline in service and officials of the public service. In criminal cases, strict rules of evidence are applicable. In departmental proceedings, the rules of evidence do not strictly apply. The delinquent employee is liable to be punished on proof of misconduct. The disciplinary authority is under a statutory obligation to ensure that the delinquent employee does not get any undue benefit because of long pendency of criminal proceedings. It is, expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible and the authority need not to await the outcome of the decision of the investigating/prosecuting agency or court trial.

23. There are no inflexible rules, in which the departmental proceedings may be stayed pending trial in criminal case against the delinquent officer, but, mainly what is required to be seen is whether the departmental enquiry would definitely prejudice the defence of the delinquent employee at a time in a criminal case if the charge in the criminal trial is of grave nature involving complicated questions of fact and law. If it is so, the stay of the disciplinary proceedings may be a possible course. However, the gravity of the charge is not by itself enough to determine the question, unless the charge involves complicated question of law and fact. Even when the charge is found to be serious involving complicated questions of fact and law as also the likelihood of the prejudice to be caused to the delinquent in criminal proceedings, the Court has to keep in consideration that the criminal trials get prolonged indefinitely, and the departmental proceedings cannot be suspended indefinitely or delayed unduly and has to draw a balance between the need for a fair trial to the accused delinquent on the one hand and an expeditious conclusion of the on-going disciplinary proceedings on the other as it is always in the interest of the employee and the employer both because if the employee is not guilty, his honour should be vindicated at the earliest possible and if he is guilty he should be dealt with properly according to law as it would not be in the interest of the administration to continue with such employee awaiting the result of the criminal proceedings. Each case requires to be considered in the back drop of its own facts and circumstances."

21. In **Lalit Popli** (supra), upon which learned counsel for the respondents placed reliance, the Hon'ble Apex Court has held that "it is fairly well settled that the approach and objective in criminal proceedings and the disciplinary proceedings are altogether

¹² (2020) 9 SCC 471

distinct and different. In the disciplinary proceedings the preliminary question is whether the employee is guilty of such conduct as would merit action against him, whereas in criminal proceedings the question is whether the offences registered against him are established and if established what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial are conceptually different.” It has been held further that “in case of disciplinary enquiry the technical rules of evidence have no application. The doctrine of “proof beyond doubt” has no application. Preponderance of probabilities and some material on record are necessary to arrive at the conclusion whether or not the delinquent has committed misconduct.”

22. In **Ajitkumar Nag** (supra), upon which also learned counsel for the respondents placed reliance, the Hon^{ble} Apex Court held that “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 a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. 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 a 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”.”

23. In view of the settled law, the Court has to draw a balance between the need for a fair trial to the accused on the one hand and an expeditious conclusion of the ongoing disciplinary proceedings on the other hand as it is always in the interest of the employee and the employer both that the departmental proceedings be brought to an expeditious conclusion at an early date in as much as if the employee is not guilty, his honour should be vindicated at the earliest possible and if he is guilty he should be dealt with properly according to law.

24. The charges framed against the petitioner vide the charge memo in departmental enquiry, Ex.P1 show that he is charged for his acts unbecoming of public servant in not intimating movable and immovable properties; not maintaining absolute integrity and devotion to duty as constituting misconduct under different rules i.e., Rule 4 (1), (i) (iii), (v), 13 (i) (ii), 14, 16 (i) (iii) and 18 etc of the Rules 1975. The charge in the departmental proceedings is different from the charges under Sections 13 (2) read with Section 13 (1) of the Prevention of Corruption Act read with Section 109 IPC.

25. In **Hindustan Petroleum Corporation Ltd and others vs. Sarvesh Berry**¹³, the criminal cases against the delinquent employee involved Section 13 (1) (e) of Prevention of Corruption Act, the Hon^{ble} Apex Court held that the onus is on the accused to prove that the assets found were not disproportionate to the „known sources of income”, which expression, as per the explanation to Section 13 (1) of the Prevention of Corruption Act means income derived from any lawful source and such

¹³ (2005) 10 SCC 471

receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant. The Hon^{ble} Apex Court held that, how the assets were acquired and from what sources of income, is within the special knowledge of the accused. Therefore, there is no question of any disclosure of defence in the departmental proceedings. In the criminal case, the accused has to prove the source of acquisition. He has to specifically account for the same.

26. In *Hindustan Petroleum Corporation Ltd* (supra), the High Court had stayed the departmental proceedings pending conclusion of the criminal charge. The Hon^{ble} Supreme Court held that the High Court was not justified in staying the departmental proceedings.

27. It is apt to refer Para Nos.13 and 14 of *Hindustan Petroleum Corporation Ltd* (supra) as under:-

*“13. It is to be noted that in cases involving [Section 13](#) (1)(e) of the [P.C. Act](#), the onus is on the accused to prove that the assets found were not disproportionate to the known sources of income. The expression 'known sources of income' is related to the sources known to the authorities and not the accused. The Explanation to [Section 13\(1\)](#) of the P.C. Act provides that for the purposes of the Section, "known sources of income" means income derived from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant. How the assets were acquired and from what source of income is within the special knowledge of the accused. **Therefore, there is no question of any disclosure of defence in the departmental proceedings.** In the criminal case, the accused has to prove the source of acquisition. He has to satisfactorily account for the same. Additionally, issues covered by charges 2 and 3 cannot be the subject matter of adjudication in the criminal case.*

14. That being the position, the High Court was not justified in directing stay of the departmental proceedings pending conclusion of the criminal charge. As noted in Capt. M. Paul Anthony's case (supra) where there is delay in the disposal of a criminal case the departmental proceedings can be proceeded with so that the conclusion can be arrived at, at an early date. If ultimately the employee is found not guilty, his honour may be vindicated and in case he is found guilty, the employer may get rid of him at the earliest.”

28. On a specific enquiry made by the Court regarding the stage of the criminal case, Sri Adhitya Harsha Vardhan, learned counsel for the petitioner submitted that in C.C.No.43 of 2010, the wife of the petitioner is also one of the accused, A2. Her application under Section 239 Cr.P.C for discharge being CrI.M.P.No.2073 of 2017 in C.C.No.43 of 2010 was rejected by order dated 13.04.2018 and challenging the said order, she filed CrI.Rc.No.2345 of 2018 in which on I.A.No.1 of 2018 vide order dated 07.09.2018, the further proceedings in C.C.No.43 of 2010 including the appearance of the petitioner therein i.e. A2, has been stayed by this Court so far as that petitioner/A2 is concerned. However, he further submitted that in view to the said interim order, the entire criminal proceedings are held up and are not proceeding.

29. In *Indian Overseas Bank, Anna Salai v. P. Ganesan*¹⁴ the question for consideration was whether pendency of a criminal case by itself would be a sufficient ground for stay of the departmental proceedings, the Hon^{ble} Apex Court laid down that the departmental proceedings pending criminal proceedings does not warrant an automatic stay. If there are additional charges against the delinquent officers including the charges of damaging the property belonging to the bank which was not the subject

¹⁴ (2008) 1 SCC 650

matter of allegations in a criminal case, the departmental proceedings should not have been stayed.

30. In *Indian Overseas Bank* (supra) wherein the respondents had moved the High Court for quashing of the order taking cognizance of offence against them in the criminal proceedings in which the criminal proceedings were stayed, the Hon^{ble} Apex Court, most importantly, held that in such a case even applying the principle laid down in *Capt.M.Paul Anthony* (supra), the judgment of the High Court which stayed the departmental proceedings, could not be sustained.

31. In *Indian Overseas Bank* (supra), the Hon^{ble} Apex Court referred the case of *Hindustan Petroleum Corporation Ltd. (supra)* in which it was held that there can be no straitjacket formula as to in which case the departmental proceedings are to be stayed. There may be cases where the trial of the case gets prolonged by the dilatory method adopted by the delinquent official. He cannot be permitted, on one hand, to prolong the criminal case and at the same time contend that the departmental proceedings should be stayed on the ground that the criminal case is pending. The Hon^{ble} Apex Court observed that in *Hindustan Petroleum Corporation Ltd. (supra)*, the departmental proceedings were allowed to continue despite the fact that the delinquent officer therein had been charged for commission of an offence under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988.

32. Here, it is apt to refer paragraph No.26 in the case of *Indian Overseas Bank, Anna Salai* (supra), wherein the Hon^{ble} Apex Court observed and held as under:-

“26. Reliance placed by Mr Prakash on Hindustan Petroleum Corpn. Ltd. [(2005) 10 SCC 471 : 2005 SCC (Cri) 1605] is not apposite. There were certain special features which were noticed by this Court. In that case itself it was held: (SCC p. 476, para 11)

*“11. There can be no straitjacket formula as to in which case the departmental proceedings are to be stayed. **There may be cases where the trial of the case gets prolonged by the dilatory method adopted by the delinquent official. He cannot be permitted to, on one hand, prolong the criminal case and at the same time contend that the departmental proceedings should be stayed on the ground that the criminal case is pending.**”*

(emphasis supplied)

Therein the departmental proceedings were allowed to continue despite the fact that the delinquent officer therein had been charged for commission of an offence under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988.”

33. In *Capt M.Paul Anthony* (supra), the Honorable Apex Court laid down that if the criminal trial 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 at an early date.

34. In view of the settled legal position that if a criminal case is unduly delayed that may itself be a good ground for going ahead with the disciplinary proceedings; as also that the delinquent official cannot be permitted to prolong the criminal case on the one hand and at the other hand to contend that the disciplinary proceedings be stayed on the ground that the criminal case is pending, this Court does not find it a case for stay on disciplinary proceedings on the ground of pendency of the criminal proceedings, which are pending since 2010 without making any progress in view of the fact that in Cr.R.C.No.2345 of 2018 filed by the petitioner’s wife, who is Accused No.2, with the petitioner in criminal case, there is stay of those proceedings, may be with respect to Accused No.2, but because of that, the entire criminal proceedings have come to

stand still, to the benefit of the petitioner as well. The criminal trial under the circumstances would take long time and the disciplinary proceedings cannot be stayed indefinitely awaiting decision in criminal proceedings.

35. The Court now proceeds to consider the judgments upon which reliance is placed by the learned counsel for the petitioner.

36. In ***Neelam Nag*** (supra), upon which the learned counsel for the petitioner placed reliance in support of his contention for deferment of the disciplinary proceedings pending criminal proceedings, the Hon^{ble} Apex Court, clearly held that the disciplinary proceedings cannot brook any further delay which were already pending for more than 10 years in that case. Learned counsel emphasized that the Hon^{ble} Apex Court directed stay of the disciplinary proceedings and closure of recording evidence of the witnesses cited in the criminal trial.

37. The principle of law as laid down by Hon^{ble} the Apex Court in ***Neelam Nag*** (supra) is the same that the disciplinary proceedings cannot be directed to be prolonged indefinitely and that there is no legal bar to the conduct of the disciplinary proceedings and criminal trial simultaneously.

38. In ***Neelam Nag*** (supra) while directing stay of the disciplinary proceedings further direction was given that the criminal case shall be decided expeditiously, not later than one year, by taking effective steps and on day to day basis, with further direction that if the trial is not completed within one year, the enquiry officer shall resume the disciplinary proceedings and the protection given to the delinquent employee shall stand vacated. In the present case, in view of the interim order in CrI.Rc.No.2345 of 2018 by this Court, any occasion for this Court to issue any such direction to expedite the criminal proceedings does not arise.

39. The learned counsel for the petitioner placed reliance in ***Kusheshwar Dubey*** (supra) to contend that the criminal action and the disciplinary proceedings being grounded upon the same set of facts and therefore, the disciplinary proceedings should remain stayed and not be proceeded with.

40. In ***Kusheshwar Dubey*** (supra) also the Hon^{ble} Apex Court held that while there could be no legal bar for simultaneous legal proceedings being taken yet there may be cases where it would be appropriate to defer disciplinary proceedings awaiting criminal cases, depending upon the facts and circumstances of a particular case for which neither it was 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. Therefore, the submission of the learned counsel for the petitioner based on ***Kusheshwar Dubey*** (supra), that in all cases, where both the proceedings are grounded on same set of facts the disciplinary proceedings cannot be proceeded with, cannot be accepted as a proposition of universal application.

41. In ***Rubina Bano*** (supra) upon which also reliance was placed by the learned counsel for the petitioner, the Chhattisgarh High Court held that as the witnesses in the criminal case and the departmental proceedings were similar, if not identical, in the interests of justice, it was more appropriate if the evidence in the departmental enquiry was deferred till the evidences or witnesses in the criminal case were examined.

42. There is no dispute on the principle of law in **Rubina Bano** (supra) but the question is of applicability of law to the facts of each case. Here the criminal proceedings are installed for last more than almost 12 years.

43. In **G.M.Tank** (supra), upon which, the learned counsel for the petitioner placed strong reliance, the departmental proceedings and the criminal case were based on identical and similar set of facts, the charges were one and the same and the only witnesses examined by the enquiry officer were the same as examined in the criminal case. The criminal Court had come to the conclusion that the prosecution failed to prove the guilt beyond reasonable doubt and acquitted the delinquent by judicial pronouncement, after a regular trial and on hot contest. The Hon^{ble} Apex Court held that under those circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand and that when there is an honourable acquittal of the employee during the pendency of the proceedings challenging the order of dismissal, the acquittal requires to be taken note of.

44. Here, the charges in the departmental enquiry and criminal proceedings are different. It is also not a case of acquittal in the same set of facts on same charges and on the same evidence, nor a case of recording a finding by a judicial pronouncement that the charge is not proved, as, such a stage has yet not been reached.

45. In **D. Ravi Babu** (supra) upon which also reliance has been placed by the learned counsel for the petitioner and in particular paragraph-41, it was held by this Court that the cumulative effect of the law declared by various courts and mandatory requirement in Police Standing Order 150, was that it would be appropriate to grant stay of all further proceedings including enquiry report till pronouncement of judgment in criminal cases.

46. In **D. Ravi Babu** (supra), Order 150 of the Police Standing Order, which is a special rule, dealt with the power of the authorities to postpone the decision on the departmental enquiry till pronouncement of judgment in criminal case which was held to prevail over the general rule. In the present case, the police standing order is not applicable. The petitioner is Junior Cotton Purchase Officer in a Corporation. The judgment of this Court in **D. Ravi Babu** (supra) is therefore not applicable. It is settled in law on which there is no dispute that if any rule specifically provides that during pendency of the criminal proceedings; the departmental proceedings be not initiated or be not proceeded with or final order be not passed, then pursuant to the rule position the departmental proceedings are to be stayed. But, that is not the case here, as neither any rule to that effect is placed before this Court nor the Police Standing Order 150 is said to be applicable.

47. In view of the law laid down by the Hon^{ble} Apex Court in various judgments as discussed above, including **Hindustan Petroleum Corporation Ltd** (supra), **Indian Overseas Bank, Anna Salai** (supra) and **Capt. M. Paul Anthony's case** (supra) and considering all the above factors, the disciplinary proceedings in the present case cannot be stalled till the conclusion of the criminal proceedings. Any stay of disciplinary proceedings is not to be granted in a routine manner. It is not a fit case for direction of stay of disciplinary proceedings till decision of the criminal case; particularly when the criminal proceedings are stalled for last 12 years without any progress.

48. For all the aforesaid reasons, the writ petition is dismissed. The respondent Nos.2 and 3 shall conclude the departmental proceedings and pass final orders, after affording opportunity of hearing to the petitioner, inconsonance with the applicable rules, as expeditiously as possible and preferably within a period of six (06) months from the date copy of this judgment is placed before them. The petitioner shall cooperate in the departmental proceedings and if he fails to do so, the respondent Nos.2 and 3 shall be at liberty to complete the proceedings even ex-parte, but with due observance of the prescribed procedure.

No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, shall also stand closed.

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