

IN THE HIGH COURT OF MADHYA PRADESH AT
JABALPUR

BEFORE
HON'BLE SHRI JUSTICE ATUL SREEDHARAN
ON THE 7th OF FEBRUARY, 2022

WRIT PETITION No. 453 of 2022

Between:-
HARISH CHANDRA HINUNIA

.....PETITIONER

(By Sanjay Agrawal, learned counsel)

AND

- FOOD CORPORATION OF INDIA THROUGH GENERAL MANAGER
1. REGLOFFICE CHETAK BUILDING M.P.NAGAR ZONE-II, BHOPAL (MADHYA PRADESH)
 2. MANAGING DIRECTOR FOOD CORPORATION OF INDIA VIGILANCE DIVISION HEADQUARTERS 16-20 BARAKHAMBA LANE (DELHI)
 3. EXECUTIVE DIRECTOR (SZ) FOOD CORPORATION OF INDIA ZONAL OFFICE SOUTH VIGILANCE HADDOWS RD. THOUSAND LIGHTS WEST GANDHI NAGAR CHENNAI (TAMIL NADU)

.....RESPONDENTS

(By Shri Mukesh Kumar Agrawal, learned counsel)

(Heard through Video Conferencing)

This petition coming on for admission and interim relief this day, the court passed the following:

ORDER

The present petition has been filed by the petitioner who is aggrieved by the departmental proceedings against him on the identical charges by the CBI in the criminal case which

has been registered against him, where Charge Sheet No.3/2021 is pending before the competent court for adjudication. The case is one where the petitioner was allegedly apprehended red-hand taking bribe for the clearance of bills of complainant M/s. Sandeep Kapoor Security Agency.

2. Learned counsel for the petitioner has taken two grounds in this case. The first one is that the illegal gratification demanded and received from Sandeep Kapoor is identical to that of article of Charge No.1. The second ground taken by him is that the departmental charge-sheet, which has been served upon him, has been prepared on the basis of a vigilance report whereby those who carried out the vigilance investigation were junior in rank to the petitioner which, according to the learned counsel for the petitioner, is impermissible.

3. Learned counsel for the petitioner has also referred to the short reply given by respondent-FCI in which there is no averment traversing the submission in the petition that Article No.1 in the departmental charge-sheet is identical to the allegation in the charge-sheet against the petitioner in the criminal case. He has also submitted that the said short reply is also silent and has not controverted the contention of the petitioner that the vigilance investigation was carried out by the officers who were junior to the petitioner.

4. Learned counsel for the petitioner has also relied upon the judgment of the Supreme Court in **Capt. M. Paul**

Anthony v. Bharat Gold Mines Ltd. and another (1999) 3 SCC 679.

5. *Per contra*, learned counsel for the respondent submits that the witnesses and the charge in the CBI charge-sheet are not identical to that of Article 1 in the charge-sheet initiating departmental enquiry. However, upon perusing the list of witnesses in the criminal case filed by the CBI, which is at page no.71, and the names of the witnesses in the departmental charge-sheet, which is at page no.103, we find that the names of Animesh Kumar, Shiv Dayal Dwivedi, Vishnu Yadav and Deepak Purohit, who have been named by the CBI as witnesses to prove the allegation of demand and acceptance of bribe are the same in the departmental charge-sheet where the same witnesses are given by the department to prove the charge of demand and acceptance of bribe against the petitioner, which is Article of charge No.1.

6. Learned counsel for the petitioner has referred to orders of a learned co-ordinate Bench of this court at page no.18 of the reply wherein the order dated 21.12.2016 passed in Writ Petition No.8464/2016 (Chandra Shekhar Kushwaha v. State of Madhya Pradesh) where a similar contention was put forth before the learned co-ordinate Bench that the articles of Charge No.2 and that of the criminal proceedings are one and the same. The learned co-ordinate Bench examined the judgment of the Supreme Court rendered in ***Capt. M. Paul Anthony*** (supra) and came to the conclusion that the charge

in that particular case was not complex. The criminal proceedings against the petitioner in that case was under section 509 IPC where the only allegation against him was that he outraged the modesty of the complainant by removing the blanket from her body. There was even a specific finding in that order that the allegations in both the matters are different (i.e. in the departmental enquiry and the criminal case). It also held that the allegations are based on simple facts and that the petitioner was unable to show that any complicated questions of fact and law were involved in that case.

7. Similarly, learned counsel for the respondent has also relied upon the judgment of a learned co-ordinate Bench of this court dated 8.12.2021 passed in Writ Petition No.26534/2021 (Sheshdhar Badgaiyan v. State of Madhya Pradesh and others) wherein in similar situation, this court again relied upon the judgment of **Capt. M. Paul Anthony** (supra) and the learned co-ordinate Bench held that the criminal proceeding was different from the disciplinary proceeding and, therefore, permitted both of them to proceed.

8. Heard the learned counsels for the parties and perused the documents filed along with the petition and the reply.

9. Before going to decide the main issue, it is essential to refer to the judgment of the Supreme Court in **Capt. M. Paul Anthony** (supra). In that case, the petitioner was a security officer in the respondent-company, which was a Government

undertaking, and was placed under suspension pending disciplinary proceedings and criminal proceedings were also initiated against him on the ground that in a police raid mining sponge gold ball weighing 4.5 grams and 1276 grams of “gold-bearing sand” were recovered from his house. On the basis of said recovery, criminal proceedings were also initiated against the petitioner along with departmental proceedings. The Supreme Court held that departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar. It also held that if the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in criminal case against a delinquent employee is of a grave nature, which involves complicated questions of law and fact, it is desirable to stay the departmental proceedings till conclusion of the criminal case. It also held that the question whether the nature of the charge in a criminal case is grave involving complicated questions of fact and law, will depend upon the nature of the offence, the nature of the case against the employee, based upon evidence and material collected against him during investigation or as reflected in the charge-sheet. It further held that if the criminal case does not proceed or is not disposed of expeditiously, the departmental proceedings, even if they were stayed on account of pendency of criminal case, can be resumed and proceeded with.

10. In this case, the charge against the petitioner is under section 120-B read with section 7 of the Prevention of Corruption Act. The offence under section 7 is far more complexed in nature than the offences pointed out in the orders of the co-ordinate Benches, which refused to stay the proceedings of the departmental enquiry during the pendency of the criminal trial. In an offence under section 7 of the Prevention of Corruption Act, first of all, the demand for bribe has to be proved. Secondly, the acceptance of the bribe has to be established. Thirdly, the tape recording of the demand has to be proved in the light of section 65-B of the Evidence Act. Fourthly, the seizure of the article from the accused has also to be established and fifthly, it must be established beyond reasonable doubt that the office occupied by the accused was such that under the power of the said office he was in a position to favour the complainant in the discharge of his official function.

11. One more aspect that has not been gone into is that whether, the proceedings in a criminal trial and the proceedings in a departmental enquiry are based on the same identical charge are to be proved by the same set of witnesses then, if the departmental enquiry is allowed to proceed, there is a chance of the defence of the

accused being disclosed in the course of the departmental enquiry which, if it comes to the knowledge of the prosecution in the criminal trial, goes to gravely prejudice the defence of the accused in the criminal trial. This is also an aspect that must be taken into consideration when deciding such an issue.

12. Under the circumstances, as far as Article-1 of the departmental charge-sheet is concerned, the same is identical to the charge in the criminal case against the petitioner. Moreover, the said charge in the departmental enquiry are to be proved by the same set of witnesses who are testifying on behalf of the CBI in the criminal trial against the petitioner.

13. Under the circumstances, the law laid down in **Capt. M. Paul Anthony** (supra) will squarely apply in the facts and circumstances of this case and, therefore, the department is prohibited from proceedings against the petitioner as far as Article-1 of the departmental charge-sheet is concerned. The department, however, is at liberty to proceed with Article No.2 of the charge-sheet which has no relevance, commonality or intended purpose to allegations in the charge sheet against the petitioner before the court trying the criminal case.

Under the circumstance, this **petition is disposed of** as herein above.

(Atul Sreedharan)
Judge

ps/pnm