



GAHC010146122019

Page No.# 1/12



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/4436/2019

GOLAP SARMA

S/O- LT TARUN CH. SARMA, R/O- BRICKFIELD COLONY, RAILWAY
QUARTER- FS-II (B), NEAR YABAK SANGHA, LUMDING, P.O. LUMDING,
DIST- HOJAI, ASSAM

VERSUS

THE UNION OF INDIA AND 3 ORS.
REP. BY THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF RAILWAYS,
NEW DELHI, INDIA

2:THE NORTH EAST FRONTIER RAILWAYS
REP. BY THE GENERAL MANAGER
RAILWAY HEADQUARTER
MALIGAON
GHY-11
ASSAM

3:THE CHIEF SECURITY COMMISSIONER
RAILWAY PROTECTION FORCE
N.F.RAILWAYS
MALIGAON
GHY-11
ASSAM

4:THE ASSTT. SECURITY COMMISSIONER
RAILWAY PROTECTION FORCE
N.F.RAILWAYS
LUMDING
DIST- HOJAI
ASSA



Advocate for the Petitioner : MR. S BORA

Advocate for the Respondent : SC, NF RLY

Linked Case : WP(C)/4454/2019

THOKCHOM MADAN SINGH
S/O. SRI THOKCHOM IBOTOMBI SINGH
PERMANENT R/O. VILL. TOUBUL MAIYAI LEIKAI
WARD NO.2
DIST. BISHNUPUR MANIPUR
INDIA.

VERSUS

THE UNION OF INDIA AND 3 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF RAILWAYS
NEW DELHI
INDIA.

2:THE NORTH EAST FRONTIER RAILWAYS
REPRESENTED BY THE GENERAL MANAGER
RAILWAY HEADQUARTER
MALIGAON
GUWAHATI-11
ASSAM.

3:THE CHIEF SECURITY COMMISSIONER
RAILWAY PROTECTION FORCE
N.F. RAILWAYS
MALIGAON
GUWAHATI-11
ASSAM.

4:THE ASSISTANT SECURITY COMMISSIONER

RAILWAY PROTECTION FORCE
N.F. RAILWAYS
LUMDING
DISTRICT- HOJAI
ASSAM.

Advocate for : MR. S BORA

Advocate for : SC



NF RLY appearing for THE UNION OF INDIA AND 3 ORS.

Linked Case : WP(C)/4453/2019

AJIT SINGH
SON OF LATE SATVIR SINGH
PERMANENT RESIDENT OF LADAWAS
P.O. KAKROLISARM
DISTRICT- BHIWANDI
HARYANA
INDIA.

VERSUS

THE UNION OF INDIA AND 3 ORS.
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
NEW DELHI
INDIA.

2:THE NORTH EAST FRONTIER RAILWAYS
REPRESENTED BY THE GENERAL MANAGER
RAILWAY HEADQUARTER
MALIGAON
GUWAHATI-11
ASSAM.

3:THE CHIEF SECURITY COMMISSIONER
RAILWAY PROTECTION FORCE
N.F. RAILWAYS
MALIGAON
GUWAHATI-11
ASSAM.

4:THE ASSISTANT SECURITY COMMISSIONER

RAILWAY PROTECTION FORCE
N.F. RAILWAYS
LUMDING
DISTRICT- HOJAI
ASSAM.

Advocate for : MR. S BORA

Advocate for : SC

NF RLY appearing for THE UNION OF INDIA AND 3 ORS.



**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

Date of hearing : **09.11.2021**

Date of Judgment : **30.11.2021**

JUDGMENT & ORDER

The extraordinary jurisdiction of this Court is sought to be invoked by filing these applications under Article 226 of the Constitution of India whereby the petitioners have questioned the action of the respondent authorities initially a departmental enquiry under Rule 153 of the Railway Protection Force Rules, 1987. Since, the issue is identical in all the three writ petitions, the same are taken up together for disposal by this common Judgment & Order.

2. Before deliberating on the issue raised, it would be convenient if the facts of the three cases are stated in brief.

3. The petitioner in WP(C)/4436/2019 is one Golap Sharma, who is working as a Head Constable, Railway Protection Force (hereinafter called, RPF) and posted at Lumding. It is the case of the petitioner that he was appointed in the year, 1997 and during his service tenure he has received a number of awards. Likewise, the petitioners in WP(C)/4453/2019, Shri Ajit Singh and in WP(C)/4454/2019, Shri Thokchom Madan Singh are also working as Constables in the RPF and posted at Lumding.

4. It is the common case of the petitioners that on 12.04.2019, an Officer of the RPF had lodged a complaint alleging that on the said date, he along with three other personnel had reached the Patharkhula Station at 01:30 Hrs. and on suspicion had detained one four wheeler and two motorcycles in which, one motorcycle of two persons fled away from the spot. However, they were able to apprehend the driver of the four wheeler and the remaining two wheeler which had fallen on the ground. It has been alleged that after such apprehension they could find that the door of the particular wagon was found in open condition and some rice bags were lying near the said wagons and some bags were found

loaded in the four wheeler. The matter was immediately informed to the higher authorities whereafter a search was conducted and interrogation was made in which the apprehended persons could not give any satisfactory reply they also identified Shri Golap Sharma, Head Constable and also named 7 (seven) other associates. It was also revealed that on duty RPF Staffs were present in the spot and had opened the doors of the concerned wagons. After completion of all other formalities, the case was registered as RFP/POST/LMG Case No. 01(04)/2019 under Section 3(a) of the Railway Property (Unlawful Possession) Act, 1966.

5. Pursuant to the aforesaid accusation, all the three petitioners were placed under suspension in exercise of powers under Section 9 (1) (i) of the RPF Act, 1957 read with Rule 133 of the RPF Rules, 1987 w.e.f. 12.04.2019. Simultaneously, all the petitioners were arrested and were subsequently enlarged on bail by orders passed by this Court. However, it is the case of the petitioners that investigation was in progress and charge sheet yet to be filed. It is the case of the petitioners that at that juncture, they have been served with a memorandum of show cause dated 17.06.2019 proposing to hold the enquiry under Rule 153 of the RPF Rules, 1987 and the enquiry officer was also appointed.

6. It is the case of the petitioners that the enquiry proceedings were conducted in a hasty manner with a pre-conceived mind to dismiss the petitioners from their services. It is the case of the petitioners that the charges in the departmental proceedings are vague, inconsistent and prejudicial to the interest of the petitioners.

7. The projected case of the petitioners is that the allegations in the departmental enquiry is identical and arising out of the same incident wherein the witnesses are common and if the departmental proceedings are allowed to continue, the petitioners would suffer immense prejudice in the criminal case *inasmuch as* he will have to disclose his defence at the time of adducing evidence and cross-examination of the witnesses. The petitioners have accordingly prayed for quashing of the impugned memorandum of charges dated 17.06.2019.

8. This Court while issuing notice in all the three cases vide order dated 26.06.2019 had directed that as an interim measure, the departmental proceedings initiated against the petitioners may not be proceeded. It is submitted that the interim orders are in force and in

compliance with the same, the proceedings have not been taken up.

9. I have heard Shri S. Bora, learned counsel for the petitioners in all the three cases whereas Shri B. Sharma, learned Standing Counsel, N.F. Railways has represented the contesting respondents.

10. Shri Bora, the learned counsel for the petitioners submits that though the principal prayer is for quashing of the departmental proceedings, he is more concerned with the parallel proceedings along with the criminal case. On being confronted with the settled law laid down by the Hon'ble Supreme Court in a catena of decisions including the case of **Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd.**, reported in **(1999) 3 SCC 679**, the learned counsel submits that his main emphasis would be to ensure that the disciplinary enquiry should not be allowed to proceed till the criminal case is brought to a logical conclusion.

11. It is submitted on behalf of the petitioners that both the criminal case and the disciplinary proceedings are based on the same incident and the charges are also identical. It is also submitted that even the witnesses are common. Under such circumstances, if the disciplinary enquiry is allowed to proceed, the petitioners would have to disclose their defence which would cause irreparable loss and legal prejudice in the criminal case *inasmuch as* the prosecution would be in a position to plug the loopholes, in the prosecution case. Submitting that under the present systems of criminal jurisprudence where the burden of proof is entirely upon the prosecution, any disclosure made while defending the disciplinary proceeding would be detrimental to the interest of the petitioners which would be against the established principles of law that an accused is deemed innocent unless proved guilty beyond all reasonable doubts.

12. As regards the charge No. 2, the learned counsel for the petitioner has submitted that the said charge of unauthorized absence is a perverse charge inasmuch as there cannot be any unauthorized absence during the period when the petitioners were in custody.

13. In support of his submission, Shri Bora, the learned counsel for the petitioners has placed reliance upon the case of **State Bank of India Vs. R.B. Sharma**, reported in **(2004) 7 SCC 27**, wherein the Hon'ble Supreme Court, after relying upon the earlier cases

including the case of **Capt. M. Paul Anthony (Supra)** has held that proceedings in a criminal case and departmental proceedings can go on simultaneously except where both are based on the same set of facts and the evidence is common.

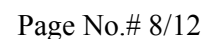
14. Shri B. Sharma, learned Standing Counsel, Railways while opposing the writ petitions fairly submits that there is no dispute with the settled position of law that a disciplinary proceedings in a criminal case based on the same charges and witnesses are common should not be allowed to proceed in parallel. However, what is of paramount significance is that whether the charges are common even though, the same may arise out of the same incident.

15. The Railways Counsel has submitted that so far as the charges in the disciplinary proceedings are concerned, those are not at all similar or identical to that the charge in the criminal case. Drawing the attention of this Court to the memo of charge dated 17.06.2019, so far as the petitioner Shri Golap Sharma is concerned, the first charge is with regard to discreditable conduct and corrupt practice in connection with theft of 98 bags of rice wherein the petitioner was arrested. The second charge is that though the petitioner was released on bail on 24.05.2019, till the issuance of the charge memo dated 17.06.2019 he was found to be unauthorized absent.

16. So far as the petitioner Shri Golap Sharma is concerned, the principal ground regarding the first charge in the memo is discreditable conduct and corrupt or improper practice. As regards the other two petitioners Shri Ajit Singh and Shri Thokchok Madan Singh are concerned, the charges are of gross negligence, gross discreditable conduct and corrupt or improper practice as they had failed to prevent the theft.

Juxtaposition the criminal case, which is registered under Section 3(a) of the Railways Properties (Unlawful Possession) Act, 1966, the learned Standing Counsel, Railway submits that the charges in the said case is of theft of railway property.

17. As regards the ground of challenging charge No. 2 alleging to the same to be perverse, Shri Sharma, the learned Railway Counsel categorically refuted the said ground of challenge terming the same to be perverse. By drawing the attention of this Court to the Charge No. II, it is submitted that the charge of "unauthorized absence" is for the period from when the delinquents were released on bail on 27.05.2019 till the date of issuance of the charge memo



18. Shri Sharma accordingly submits that no case, whatsoever is made out for interference by this Court and accordingly the writ petitions may be dismissed. In support of his submissions, the following decisions are relied upon-

- i. ***Kendriya Vidyalyaya Sangathan & Ors. Vs. T. Srinivas [2004 (6) Supreme 4]***
- ii. ***Stanzen Toyotetsu India Private Limited Vs. Girish V. and Ors. [(2014) 3 SCC 636]***
- iii. ***Shashi Bhusan Prasad Vs. Inspector General Central Industrial Security Force & Ors. [2019 0 AIR(SC) 3586]***
- iv. ***State of Rajasthan Vs. B.K. Meena [(1996) 6 SCC 417]***

19. In the case of ***Kendriya Vidyalaya Sangathan (Supra)***, the Hon'ble Supreme Court after discussing the cases of ***M. Paul Anthony (Supra)*** and ***B.K. Meena (Supra)*** had laid down that the advisability, desirability or propriety with regard to a departmental enquiry has to be determined in each case taking into consideration all the facts and circumstances thereof. It was also held that the view that the departmental enquiry and a criminal trial could not proceed simultaneously is an erroneous view and contrary to the established principle laid down in the subject.

20. In the case of ***Stanzen Tototetsu India Private Limited (Supra)***, an identical issue was under consideration before the Hon'ble Supreme Court. Reiterating the aforesaid law, the following observations have been made in paragraph 16, which is extracted hereinbelow-

“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."

The Hon'ble Court however balanced the equities by extending the interim order of stay for a period of one year so as to complete the criminal trial with a further observation that if the trial was not completed within the aforesaid period of one year, the disciplinary proceedings shall be resumed and concluded.

21. In the case of ***Shashi Bhushan Prasad (Supra)***, the issue of continuing with a disciplinary enquiry under the CISF Rules along with a criminal case under Section 302 /392 IPC read with Section 27 of the Arms Act was came up for consideration. The Hon'ble Supreme Court reiterated the existing law that there is no bar for simultaneous proceeding and only if the criminal case is based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of 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.

22. The rival contentions of the learned counsel for the parties have been duly considered and the materials placed before this Court has been carefully examined.

23. First, let us deal with the principal prayer in the writ petitions which are for quashing the disciplinary proceeding on the ground of pendency of a criminal case arising out of the same incident. There is no such law that a disciplinary proceeding cannot be initiated only because of the fact that based on the same incident, a criminal case has been instituted. Therefore, in the opinion of this Court, the principal prayer is not liable for any consideration and accordingly rejected.

24. What remains to be decided is whether the disciplinary proceeding should be allowed to continue during the pendency of the criminal case. The settled law in this context is that

there is no bar for parallel proceedings both in a disciplinary enquiry in a criminal case and only in certain cases, it is desirable that the disciplinary proceedings is kept in abeyance till conclusion of the criminal case. As laid down by the Hon'ble Supreme Court in the case of **Kendriya Vidyalaya Sangathan (Supra)**, everything would depend on the facts and circumstances of the case. In fact, in the said case after discussing the earlier case of **B.K. Meena (Supra)**, the said observation was made which is extracted hereinbelow-

“10. In State of Rajasthan v. B. K. Meena and others (supra), this Court held:

"The only ground suggested in the decisions of the Supreme Court 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. 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 of staying the departmental enquiry has to be determined in each case taking into consideration all the facts and circumstances of the case. 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 Supreme Court's decisions."

11. From the above, it is clear that the advisability, desirability or propriety, as the case may be, in regard to a departmental enquiry has to be determined in each case taking into consideration all facts and circumstances of the case. This judgment also lays down that the stay of departmental proceedings cannot be and should not be a matter of course."

25. As regards what would constitute the relevant facts and circumstances, this Court is of the opinion that though both the proceedings may arise out of the same incident, it is the nature of the charges in both the proceedings which would be pivotal in coming to a conclusion as to whether the disciplinary proceeding is required to be kept in abeyance. This

Court is also reminded of the caveat laid down by the Hon'ble Supreme Court in the case of **Stanzen Tototetsu India Private Limited (Supra)**, that even if the charges are similar and in the criminal case the charge is of grave nature involving complicated questions of law or facts, there should not be a blanket stay on the disciplinary proceedings and an outer limit of one year has been stipulated whereafter such interim order of stay would be automatically vacated.

26. Under the aforesaid backdrop and guidelines, the contents of the charges in both the proceedings are required to be minutely examined. This Court has noticed that while the criminal case is registered under Section 3(a) of the Railway Property (Unlawful Possession) Act, 1966 which involves theft of Railway property, the disciplinary proceeding is upon the charges of gross negligence of duty, gross discreditable conduct and corrupt or improper practice in failure to prevent a theft of rice bags from Railway Wagons.

27. So far as the second charge is concerned, as discussed above, the ground of challenge is not only erroneous but perverse inasmuch as, the unauthorized absence is after the release of the petitioners on bail by the High Court on 27.05.2019 till the date of issuance of the charge memo on 17.06.2019 and not for the period when the petitioners were in custody.

28. This Court finds force in the contention of the learned Standing Counsel, Railways that when the charges in the disciplinary proceeding is different and distinct from the charge in the criminal case, though the same arises from the same incident, the question of staying the disciplinary proceedings till conclusion of the criminal case would not be justified. In any case, under very exceptional circumstances, a disciplinary proceeding can be put to challenge as no embargo can be imposed upon such authority to make an enquiry on charges / allegations against its employees. This Court is also of the further opinion that the present cases do not fall within the exceptions carved out in the case of **Shashi Bhushan Prasad (Supra)** wherein the criminal charge is required to be grave and complicated questions of law and facts are involved. Consequently, the issue of further stay of the disciplinary proceeding for a certain period will not arise.

29. Under the aforesaid facts and circumstances, this Court hold that no case for interference is made out by the petitioners and accordingly the writ petitions are dismissed



and the stay orders operating automatically stand vacated.

30. No order as to cost.

JUDGE

Comparing Assistant