

Reserved on 16.08.2021

Delivered on 08.10.2021

Case :- WRIT - A No. - 6978 of 2021

**Petitioner :-** Rinku Singh

**Respondent :-** State Of U.P. And 2 Others

**Counsel for Petitioner :-** Shadab Ali

**Counsel for Respondent :-** C.S.C.

**Hon'ble Saral Srivastava,J.**

1. Heard learned counsel for the petitioner and Dr. Amarnath Singh, learned Standing Counsel for respondent nos.1 to 3.
2. The petitioner by means of the present writ petition has prayed for the following relief:-

*“(i). Issue a writ, order or direction in the nature Certiorari to quash departmental proceeding under Rule 14(1) of the U.P. Police Officers of Subordinate Ranks (Punishment and Appeal) Rules-1991 related to Case Crime No.109 of 2019, under Sections 392, 406 I.P.C., Police Station-Nagal, District Saharanpur, pending against the Petitioner before Respondent no.3.*

*(ii). Issue a writ, order or direction in the nature of mandamus commanding and directing the Respondents especially Respondent No.3 not to proceed further departmental proceeding against the Petitioner under Rule 14(1) of the U.P. Police Officers of Subordinate Ranks (Punishment and Appeal) Rules-1991 related to Case Crime No.109 of 2019, under Sections 392, 406 I.P.C., Police Station-Nagal, District Saharanpur, pending before him.”*

3. The brief facts of the case are that petitioner is a Police Constable. He was posted in Surveillance Cell G.R.P., Agra. One Mohd. Akhtar lodged an F.I.R. against one Basheer and some unknown person under Sections 406 and 392 of I.P.C alleging that at about 3.00 A.M on 13.05.2019, he had looted Rs.8,34,700/- from his brother when he was sleeping along with his friends on the roof of a house behind the *Dhaba of Mulla Ji* in village Umah, P.S. Nagar, District Saharanpur. The police arrested Basheer and other persons. During the investigation, the accused admitted loot, and further stated that the loot was committed with the help of Constable Rinku Singh i.e. the petitioner. The looted money was

recovered from the possession of the accused and accordingly, police converted the case under Sections 395 and 412 of I.P.C.

4. According to the petitioner, he was not named in the F.I.R. and his name surfaced during the confessional statement of accused persons. The petitioner filed Criminal Misc. Writ Petition No.14957 of 2019 against the F.I.R. dated 13.05.2019 in which this Court stayed the arrest of the petitioner till submission of a police report under Section 173(2) of Cr. P.C by order dated 29.05.2019. The police after investigation submitted charge sheet.

5. The Magistrate Deoband, Saharanpur took cognizance of the charge sheet, and accordingly, a Criminal Case No.579 of 2019 (State Vs. Basheer Khan and Others) was registered which is pending before the Additional Civil Judge (J.D.)/Judicial Magistrate, Deoband, District Saharanpur.

6. It appears that a departmental proceeding had also been initiated against the petitioner on account of his involvement in the criminal case and accordingly, a charge sheet dated 21.08.2019 has been issued to the petitioner on the following charges:-

*“प्रतिसार उप निरीक्षक जी०आर०पी० लाइन अनुभाग आगरा श्री छोटे सिंह की आख्या दिनांकित 14.05.2019 के माध्यम से दिनांक 13.05.2019 को पुलिस उपाधीक्षक रेलवे आगरा अनुभाग आगरा के आदेशानुसार आप तीनों कर्मचारीगणों को आपके कार्यालय में तलाशा गया, न मिलने पर आपकी रपट गैरहाजिरी दिनांक 13.05.2019 को रपट संख्या 16 समय 20:35 बजे जीआरपी लाइन अनुभाग आगरा के रोजनामचा आम मे अंकित करायी गयी। और दिनांक 14.05.2019 को दैनिक समाचार पत्र के अवलोकन से पाया कि निरीक्षक 052010095 ना०पु० ललित कुमार त्यागी व आरक्षी 299/062494410 शायर वेग व आरक्षी 2378/062531098 रिन्कू सिंह के विरुद्ध थाना नागल जनपद सहारनपुर मे मु०अ०सं० 109/2019 धारा 406,392 आईपीसी तर्मीम धारा 395/412 आईपीसी में नाम प्रकाश मे आया है एवं निरीक्षक 052010095 ना०पु० ललित कुमार त्यागी की दिनांक 13.05.2019 को समय 21:05 बजे गिरफ्तारी हुई एवं 1,44,000/- रुपया बरामद हुआ। तथा दोनो आरक्षी गिरफ्तार नहीं किये गये है। आपका यह कृत्य पुलिस विभाग जैसे अनुशासित बल की स्वच्छ छवि को धूमिल करता है। और एतद्द्वारा आपके द्वारा घोर लापरवाही/ अनुशासनहीनता / स्वेच्छाचारिता का परिचय दिया गया है।”*

7. The petitioner pursuant to the aforesaid charge sheet submitted his reply on 11.01.2020.

8. In the aforesaid factual backdrop, the petitioner has prayed for the reliefs extracted above.

9. Learned counsel for the petitioner has submitted that charge in the criminal case as well as in the departmental proceeding is identical, and in case, the departmental proceeding is allowed to be continued, same shall prejudice the criminal trial of the petitioner, as the petitioner would have to disclose the defence in the departmental proceeding which he wants to take in the criminal proceeding. Accordingly, he submits that in the facts of the present case, it is desirable in the interest of justice that this Court may stay the departmental proceeding till the criminal trial is concluded. In support of his aforesaid contention, he has placed reliance upon Regulations 492 & 493 of Police Regulation. He has also placed reliance upon the interim order passed by this Court in Writ-A No.24162 of 2010.

10. Rebutting the aforesaid contention, learned Standing Counsel would contend that there is no bar in law that the departmental proceeding and criminal trial cannot continue simultaneously. He submits that the purpose of the departmental proceeding and trial by the criminal court is different, and parameters to consider the departmental inquiry and criminal trial are different. He further submits that rules relating to the appreciation of evidence in the two inquiries are also different. The further submission is that finding can be recorded in the preponderance of probabilities in the departmental inquiry and it is not necessary that charge must be proved to the hilt.

11. The further submission is that it is the domain of the disciplinary authority to conclude in the given fact and circumstances whether the continuance of the departmental proceeding would prejudice the criminal trial of the employee, and therefore, he submits that this Court should not exercise its power under Article 226 of Constitution of India to stay the departmental proceeding, as the continuance of departmental proceeding is dependent upon the evidence and material on record.

12. He further submits that Regulations 492 & 493 of Police Regulation do not come in aid to petitioner as the said regulation talks of cases where police official has been judicially tried and judgment in the criminal trial is awaited whereas in the instant case, only charge sheet has been issued. He further contends that charges in the departmental proceeding and criminal trial are not identical since, in addition to the charge of involvement of the petitioner in criminal activity, there is an

additional charge in the departmental proceeding against the petitioner. Thus, he submits that no case for interference by the Court has been made out by the petitioner, and the writ petition deserves to be dismissed.

13. I have considered the rival submissions of the parties and perused the record.

14. The undisputed facts as emanates from the record are that petitioner was implicated in a criminal case bearing Case Crime No.109 of 2019, under Sections 395 and 412 of I.P.C. Simultaneously, a departmental proceeding had also been initiated against the petitioner under Section 7 of Indian Police Act, 1861 in which two charges had been leveled against the petitioner; firstly, petitioner was absent on 13.05.2019 in the G.R.P. Line, Agra and absence of petitioner have been recorded in the general diary through Report No.16, time 20:35. Secondly, it has come to the knowledge of the department through a news item published in the daily newspaper on 14.05.2019 that a criminal case has been lodged against the petitioner along with other constables in which petitioner was arrested at 9:05 P.M. on 13.05.2019 and amount of Rs.1,44,000/- was recovered from him.

15. The Apex Court in the case of Capt. **M. Paul Anthony Vs. Bharat Gold Mines Ltd and Another 1999 (3) SCC 679** has held in paragraph 22 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.”*

16. In the case of **State Bank of India and Others Vs. R.B. Sharma 2004 7 SCC 27**, the Apex Court has explained the object of departmental proceeding and criminal proceeding. Paragraphs 7 & 8 of the said judgment are being extracted herein below:-

*“7. It is a fairly well-settled position in law that on basic principles proceedings in criminal case and departmental proceedings can go on simultaneously, except where departmental proceedings and criminal case are based on the same set of facts and the evidence in both the proceedings is common.*

*8. The purpose of departmental enquiry and of prosecution are two different and distinct aspects. Criminal prosecution is launched for an offence for violation of a duty the offender owes to the society, or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public duty, 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 provisions of the Indian Evidence Act 1872 (in short “the Evidence Act”). Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct or 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. Under these circumstances, what is required to be seen is whether the department 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.”*

17. Similar view has been reiterated by the Apex Court in the case of **Noida Entrepreneurs Association Vs. NOIDA and Others 2007 (2) ADJ 86 (SC)** wherein Apex Court also considered the long line decisions concerning conduct of departmental proceeding and criminal proceeding simultaneously and concluded that purpose of the two proceedings are totally different, therefore, both the proceedings can continue

simultaneously as the departmental proceeding is to maintain discipline and efficiency in public service; criminal proceedings are initiated to punish a person for committing an offence violating the public duty.

**18.** Now, the legal position is well settled that departmental proceeding and the criminal proceeding can continue simultaneously as the object and purpose of the criminal proceeding and disciplinary proceeding are different and they operate in a different field. In the disciplinary proceedings, the rule of the preponderance of probabilities is applied whereas, in the criminal proceeding, the principle of strict standard of proof beyond a reasonable doubt is applicable.

**19.** The nature of evidence in both criminal and disciplinary proceedings is different. The only exception to this rule that can be culled out from the law elucidated by the Apex Court on the issue of the continuance of disciplinary proceeding and criminal proceeding simultaneously is that disciplinary proceedings may be stayed where criminal charges against the delinquent employee are grave and involves complicated question of facts and law, and continuance of disciplinary proceeding is likely to prejudice the defence of the employee before the criminal court. The gravity of the charge is not by itself enough to determine the question of continuance of departmental and criminal proceedings simultaneously unless the charge involves complicated questions of law and fact.

**20.** This Court in the case of ***Surendra Singh and Another Vs. State of U.P. and Another 2012 (2) ADJ 135 (LB)*** had considered the scope of Regulations 492 & 493 of Police Regulation and this Court succinctly explained the meaning of the word 'has been' and held that expression 'has been' refers to an event which has already occurred. Paragraphs 21, 27, 28 & 29 of the said judgment are being extracted herein below:-

*“21. Regulation 492 clearly says that where a police officer "has been judicially tried". The language is very important. It talks of something which has already happened. The simple language of provision shows where a police officer has been tried judicially and only the judgment is awaited, in such circumstances and in interregnum period, the competent authority should not decide to take further departmental action but should await the decision. In other words, Regulation 492 shall be attracted only when the judicial trial is over but judgment has not been delivered and it is awaited. The words "has been" reflect to something which has performed and accomplished in past and is not continuing in present. The words "has been" refer to the state of affairs as existed in past and it is a present perfect tense. The words "has been" on a plain grammatical*



construction means, without doubt, the existence of past event i.e. the requisite event has already occurred and completed. The expression "has been" and its connotation have been subject of interpretation before Apex Court and this Court, both, at several occasions and it would be useful to refer a few thereof.

27. The above exposition of law clearly shows that the term "has been" in simple language means a thing already happened and here the term "judicially tried" means that police officer concerned's trial in the court of law is already complete but the decision is awaited.

28. Similarly Regulation 493 is attracted when trial is complete and judgment of trial court has also come, resulting in recording a finding in favour of police officer. It restrain the competent authority in such matter to create a situation where a contrary finding can be recorded in departmental proceedings vis a vis court's verdict and the Regulation provides that such a contingency should not occur hence it prohibits such a course to be followed by competent authority.

29. Going by the above discussion it becomes apparently clear that situation in the present cases do not attract either Regulation 492 or 493 in both these matters since the only stage at which the criminal cases proceeding presently are that a charge sheet has been filed against petitioners. The petitioners cannot be said to have undergone judicial trial so far. The trial is still awaited. For the purpose of understanding the meaning of word "Trial" one may simply refer to the provisions of Cr.P.C. and that would clearly show that an accused can be said to have tried when evidence by prosecution and defence has already led and matter has been argued before trial court. This itself leaves inescapable conclusion that both these writ petitions at this stage have to fail."

21. In the light of interpretation given by this Court in the case of **Surendra Singh (supra)** relating to Regulations 492 & 493 of Police Regulation, this Court finds that submission of learned counsel for the petitioner based upon Regulations 492 & 493 of Police Regulation is misplaced and is not sustainable in law, since in the instant case only charge sheet in the criminal case has been filed, and trial is yet to begin.

22. Now, coming to the second limb of argument that whether disciplinary proceeding and the criminal proceeding can proceed simultaneously where both proceedings have been initiated on the same set of charges and evidence in both the proceedings are identical and shall prejudice the criminal proceeding since petitioner would have to disclose the defence which he wants to take in the criminal proceeding. In the opinion of the Court, the said submission is also misconceived for two reasons; firstly, as detailed above, the charge against the petitioner in the criminal proceeding and disciplinary proceeding are not identical as there is one additional charge in the disciplinary proceeding which has been delineated above. Secondly, to succeed, the petitioner has to demonstrate that charge against the petitioner is grave and involves

complicated questions of fact and law, and further if the disciplinary proceeding is continued that would prejudice the criminal trial of the petitioner.

23. In the case in hand, though a bald averment has been made in the writ petition in paragraph 31 that continuance of disciplinary proceeding would prejudice the criminal trial, there is no pleading in the writ petition as to how continuance of disciplinary proceeding would prejudice the criminal trial of the petitioner.

24. As the petitioner has failed to demonstrate that charge against the petitioner is grave and involves complicated questions of fact and law, and further how the continuance of disciplinary proceeding would prejudice the criminal trial of the petitioner, this Court is not inclined to accept the aforesaid submission of learned counsel for the petitioner. At this stage, it is pertinent to mention that early conclusion of the disciplinary proceeding is good in the interest of the employee as well as the department for the reason that if the employee is exonerated from the charges, he may not be out of service unnecessarily and may be reinstated, and if the employee is found guilty, the department will get rid of such employee who is not worth continuing in the employment.

25. Thus, for the reasons given above, the writ petition lacks merit and is accordingly, ***dismissed*** with no order as to costs.

**Order Date :-** 8.10.2021.

Sattyarth