

THE HIGH COURT OF MADHYA PRADESH
WP No. 910/2017
Balbeer Singh Gurjar vs. State of MP & Anr.
&
WP No.19653/2017
Balbeer Singh Gurjar Vs. State of MP & Others

Gwalior, dtd. 21/01/2019

Shri Anil Mishra, counsel for the petitioner in both writ petitions.

Shri Vivek Jain, Government Advocate for the State.

This common order shall also dispose of WP 19653/2017 filed by Balbeer Singh Gurjar.

The controversy involved in both the petitions lies in a narrow compass.

According to the petitioner, he was appointed on the post of Platoon Commander in Special Armed Force and he was serving with the said Department. Thereafter, the petitioner applied for the post of Sub-Inspector, District Police in response to the advertisement issued by Professional Examination Board in the year 2016. The petitioner appeared in online test, which was held on 06/09/2016. It is the allegation of the prosecution that during search, the petitioner was found to be using unfair means and prohibited gadgets like one mobile I-phone, one smart watch, blue tooth and one remote and he also refused to give his search and tried to run away. Accordingly, the police registered the criminal case against the petitioner in Crime No.320/2016, at Police Station Jhansi Road, Gwalior for offence under Section 3/4 of the Examination Act and under Section 66 of the

Information Technology Act.

It is the contention of the petitioner that the police, after completing the investigation, has filed the charge sheet. In Writ Petition No.910/2017, the petitioner has challenged the initiation of Departmental Enquiry as well as the charge sheet issued in the said Departmental Enquiry. The charge sheet issued against the petitioner in a Departmental Enquiry is Annexure P1, according to which the following charges have been levelled against him:-

आरोप

“दिनांक 06.09.2016 को एनआरआईसीईएम कॉलेज ग्वालियर में पुलिस उपनिरीक्षक भर्ती (ऑन लाईन) परीक्षा में सम्मिलित होकर परीक्षा के दौरान अनुचित व निषेधित साधनों (मोबाईल आईफोन-5, एक ब्लूटूथ डिवाइस, एक स्मार्टवॉच एवं एक रिमोट) का उपयोग करना एवं तलाशी से मना कर भागने का प्रयास करते हुए पुलिस विभाग की छवि धूमिल करने के साथ ही म0प्र0 पुलिस रेग्यूलेशन की धारा-64 की उपधारा-(3) एवं (11) का उल्लंघन कर स्वयं को पुलिस सेवा के अयोग्य बनाना।

दिनांक 05.09.2016 अपराह्न से 06.09.2016 अपराह्न तक स्वीकृत शुदा 01 दिवस आकस्मिक अवकाश उपरांत कर्तव्य पर उपस्थित नहीं होते हुये बिना किसी सूचना के लगातार अनुपस्थित रहकर कर्तव्य के प्रति घोर लापरावाही एवं उदासीनता को आचरण प्रदर्शित करना।

पूर्व में अनुशासनहीनता एवं कर्तव्य से अनुपस्थित/फरार रहने पर 02 बार दण्डित किये जाने के बावजूद भी अपने आचरण में कोई सुधार नहीं करते हुए उसकी पुनरावृत्ति करना।”

WP No.910/2017 came up for hearing before the Coordinate Bench of this Court and by order dated 20/02/2017, by way of interim order, it was directed that the proceedings in the Departmental Enquiry shall remain in abeyance till next date of hearing.

It is submitted by the counsel for the petitioner that after the interim order was passed, then the respondents in order to by-pass the interim order, has issued another charge sheet on the following

charges:-

आरोप

“1— थाना झॉसी रोड ग्वालियर में पंजीबद्ध अपराध क्र0-320/16 में दिनांक 06.09.16 को गिरफ्तार होने संबंधी कोई लिखित सूचना नहीं देकर म0प्र0 सिविल सेवा (आचरण) नियम, 1965 के नियम 3 के उपनियम (एक) एवं (दो) का उल्लंघन करना।

2— उप अधीक्षक, केन्द्रीय जेल ग्वालियर द्वारा दी गई जानकारी के अनुसार जेल में निरूद्ध अवधि दि0 07.09.2016 (अपराह) से 13.12.2016 तक कुल 97 दिवस के दौरान विभाग को सूचना देने व पत्राचार करने की सुविधा होने के बावजूद भी जेल में बंद रहने संबंधी कोई सूचना विभाग को नहीं देकर विभागीय कर्तव्यों के प्रति लापरवाही एवं उदासीनता प्रदर्शित कर म0प्र0 सिविल सेवा (आचरण) नियम 1965 के नियम 3 के उपनियम (एक), (दो) एवं (तीन) का उल्लंघन करना।

3— दिनांक 14.12.16 को थाना झॉसी रोड ग्वालियर से रिहा होने संबंधी कोई लिखित सूचना नहीं देकर म0प्र0 सिविल सेवा (आचरण) नियम 1965 के नियम 3 के उपनियम (एक) एवं (दो) का उल्लंघन करना।

4— जेल से दिनांक 14.12.16 को रिहा होने के उपरांत निलंबन अवधि के दौरान उपस्थित रहने हेतु आदेशित किये गये मुख्यालय में सीधे वाहिनी मुख्यालय, दतिया उपस्थित नहीं होते हुए बिना किसी सूचना के दिनांक 30.12.16 तक 17 दिवस अनाधिकृत रूप से अनुपस्थित रहते हुए विभागीय कर्तव्य की घोर उपेक्षा कर स्वयं को पुलिस सेवा के अयोग्य बनाना।

5— उप निरीक्षक (विसबल) जैसे जिम्मेदार पद पर पदस्थ रहते हुए दिनांक 31.12.2016 से दिनांक 01.03.17 (अपराह) तक कुल 61 दिवस कर्तव्य पर उपस्थित नहीं होते हुए विभाग के प्रति लेशमात्र भी निष्ठावान नहीं होकर म0प्र0 पुलिस रेग्यूलेशन की धारा-64 की उपधारा (3) एवं (11) का उल्लंघन करना।

6— दिनांक 11.04.17 को प्रातः 0700 बजे आयोजित जनरल परेड में उपस्थित नहीं होते हुए दिनांक 12.04.17 के 1100 बजे तक अपनी मनमर्जी से 01 दिवस बिना किसी पूर्व सूचना एवं वरिष्ठ अधिकारी की अनुमति के अनाधिकृत रूप से अनुपस्थित रहकर स्वैच्छाचारिता करना।

7— पूर्व में अनुशासनहीनता एवं कर्तव्य से अनुपस्थित/फरार रहने पर 02 बार दण्डित किये जाने के बावजूद भी अपने आचरण में कोई सुधार नहीं करते हुए लगातार उसकी पुनरावृत्ति कर घोर अनुशासनहीनता एवं उद्दण्डता का प्रदर्शन करना।”

The aforesaid charge sheet has been challenged by the petitioner in Writ Petition No.19653/2017.

It is submitted that subsequent charge sheet is nothing but

repetition of charges levelled against the petitioner in the initial charge sheet, which is the subject matter of Writ Petition No.910/2017, therefore, the petitioner cannot be tried twice for the similar charges, in the Departmental Enquiry. While challenging the first charge sheet which is the subject matter of Writ Petition No 910/2017, it is submitted by the counsel for the petitioner that there are certain witnesses who are common in the Departmental Enquiry as well as in the criminal trial and, therefore, the defence of petitioner is likely to be disclosed in the Departmental Enquiry which would prejudice the petitioner in his criminal trial and, thus, the following reliefs were sought in Writ Petition No. 910/2017:-

- "7.(i) That, the memo of charge Annexure P-1 may kindly be quashed.
- (ii) That, any other proceeding in pursuant to Annexure P-1 may kindly be quashed.
- (iii) That, any other relief which is suitable in the facts and circumstances of the case in favour of the petitioner including the costs throughout may also be granted."

It is further submitted that the allegations in the Departmental Enquiry as well as in the criminal trial are same, based on the same set of evidence, then in the light of the judgment passed by the Supreme Court in the case of **Capt. M. Paul and Antony vs. Bharat Gold Mines and Another**, reported in **AIR 1999 SC 1416** and **Kailash Chandra Agrawal vs. State of MP**, reported in **(1987) 3 SCC 513**, the further proceedings in the Departmental Enquiry be kept in abeyance. It is further submitted that merely because the the criminal case has been instituted against the petitioner, the same cannot be a

basis for initiating a Departmental Enquiry on the similar allegations. It is further submitted that no opportunity of hearing was given to the petitioner in the preliminary enquiry. By challenging the second charge sheet dated 16/07/2017 which is the subject-matter of the Writ Petition No.19653/2017, it is submitted by the counsel for the petitioner that since the charges levelled in the subsequent charge sheet are identical and are similar and are, in fact, embedded in the charges levelled in the first charge sheet dated 21/11/2016, which is the subject-matter of Writ Petition No.910/2017, therefore, the said charge sheet is also liable to be quashed and the petitioner has prayed the following reliefs in Writ Petition No.19653/2017:-

" 7.(I) That, Hon'ble Court may kindly be pleased to the Memo or Charge Sheet (Annexure P1) may kindly be quashed.

(II) That, any other proceedings in pursuant to Charge Sheet (Annexure P/1) may kindly be quashed."

Per contra, it is submitted by the counsel for the State that so far as the disclosure of defence in the Departmental Enquiry is concerned, the further proceedings in the Departmental Enquiry were stayed by this Court by order dated 20/02/2017 passed in Writ Petition No.910/2017 and near about two years have passed and the Supreme Court in the cases of **Kendriya Vidyalaya Sangathan and Others vs. T. Srinivas**, reported in **(2004) 7 SCC 442**, **Hindustan Petroleum Corporation Ltd. and Others vs. Sarvesh Berry** reported in **(2005) 10 SCC 471**, **Avinash Sadashiv Bhosale (Dead) through LRs. vs. Union of India and Others**, reported in **(2012) 13**

SCC 142, Stanzen Toyotetsu India Private Limited vs. Girish Vs. and Others, reported in **(2014) 3 SCC 363** and **State Bank of India and Others. vs. Neelam Nag and Another**, reported in **(2016) 9 SCC 491**, has specifically held that Departmental Enquiry cannot be stayed for an indefinite period.

So far as the subsequent charge sheet dated dated 16/07/2017 is concerned, it is submitted by the counsel for the State that it cannot be said that the charges levelled in the subsequent charge sheet dated 16/07/2017 are embedded in the charges, which have been levelled in the first charge sheet dated 21/11/2016, whereas the charges levelled in the subsequent charge sheet are based on the subsequent misconduct of non-disclosure of arrest of the petitioner as well as non-disclosure of information to the Department about his detention in jail and etc.

Considered the submissions made by the counsel for the parties.

The Supreme Court in the case of **Kendriya Vidyalaya Sangathan** (supra) has held as under:-

"**8.** On a reading of M.Paul Anthony's case (supra) it is noted that there is consensus of judicial opinion on the basic principle that proceedings in a criminal case and departmental proceedings can go on simultaneously, however this court noticed that certain exceptions have been carved out to the said basic principle.

9. In [State of Rajasthan vs. B.K.Meena & Ors.](#) (1996) 6 SCC 417), this court held:(SCC P. 417)

"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."(Emphasis supplied)

10. 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.

11. In the instant case, from the order of the tribunal as also from the impugned order of the High Court, we do not find that the two forums below have considered the special facts of this case which persuaded them to stay the departmental proceedings. On the contrary, reading of the two impugned orders indicates that both the tribunal and the High Court proceeded as if a departmental enquiry had to be stayed in every case where a criminal trial in regard to the same misconduct is pending. Neither the tribunal nor the High Court did take into consideration the seriousness of the charge which pertains to acceptance of illegal gratification and the desirability of continuing the appellant in service inspite of such serious charges levelled against him. This Court in the said case of State of Rajasthan (supra) has further observed that the approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. It held that 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 are established and, if established, what sentence should be imposed upon him. The court in the above case further noted that the

standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are distinct and different. On that basis, in the case of State of Rajasthan the facts which seems to be almost similar to the facts of this case held that the tribunal fell in error in staying the disciplinary proceedings."

The Supreme Court in the case of **Hindustan Petroleum Corporation (supra)** has held as under:-

"**11.** There can be no straight jacket 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 delinquent official. He cannot be permitted to, on one hand, prolong 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 Supreme Court in the case of **Avinash Sadashiv Bhosale (supra)** has held as under:-

"**54.** This Court recently reiterated the legal principle that departmental proceedings can be conducted simultaneously to the criminal trial in the case of Divisional Controller, Karnataka State Road Transport Corporation Vs. M.G.Vittal Rao (2012) 1 SCC 442. In this case, making reference to almost all the previous precedents, this Court has reiterated the legal position as follows:-

54.1. There is no legal bar for both proceedings to go on simultaneously.

54.2. 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.

54.3. 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.

54.4. 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.

54.5. In our opinion, the principles culled out by this Court would be a complete answer to all the submissions made by Mr. Jain."

The Supreme Court in the case of **Stanzen Toyotetsu India**

Private Limited (supra) has held as under:-

"8. We have heard learned counsel for the parties at some length. The only question that falls for determination in the above backdrop is whether the Courts below were justified in staying the on-going disciplinary proceedings pending conclusion of the trial in the criminal case registered and filed against the respondents. The answer to that question would primarily depend upon whether there is any legal bar to the continuance of the disciplinary proceedings against the employees based on an incident which is also the subject matter of criminal case against such employees. It would also depend upon the nature of the charges in the criminal case filed against the employees and whether the case involves complicated questions of law and fact. The possibility of prejudice to the employees accused in the criminal case on account of the parallel disciplinary enquiry going ahead is another dimension which will have to be addressed while permitting or staying such disciplinary enquiry proceedings. The law on the subject is fairly well- settled for similar issues and has often engaged the attention of this Court in varied fact situations. Although the pronouncements of this Court have stopped short of prescribing any strait-jacket formula for application to all cases the decisions of this Court have identified the broad approach to be adopted in such matters leaving it for the Courts concerned to take an appropriate view in the peculiar facts and circumstances of each case that comes up before them. Suffice it to say that there is no short cut solution to the problem. What is, however, fairly well settled and was not disputed even before us is that there is no legal bar to the conduct of the disciplinary proceedings and a criminal trial simultaneously.

9. In [Depot Manager, Andhra Pradesh State Road Transport Corporation vs. Mohd. Yousuf Miyan](#)(1997) 2 SCC 699, this Court declared that the purpose underlying departmental proceedings is distinctly different from the purpose behind prosecution of offenders for commission of offences by them. While criminal prosecution for an offence is launched for violation of a duty that the offender owes to the society, departmental enquiry is aimed at maintaining discipline and efficiency in service. The difference in the standard of proof and the application of the rules of evidence to one and inapplicability to the other was also explained and highlighted only to explain that conceptually the two operate in different spheres and are intended to serve distinctly different

purposes.

10. The relatively recent decision of this Court in *Divisional Controller, Karnataka State Road Transport Corporation v.M.G. Vittal Rao*(2012) 1 SCC 442, 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 v. Bharat Gold Mines Ltd*, (1999) 3 SCC 679 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:(SCC p. 691, para 22)

“(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 *HPCL v. Sarvesh Berry* (2005) 10 SCC 471 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.....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.

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](#) 1996(6) SCC 417, 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, (1996) 6 SCC 417, 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 enunciated in that behalf. The only ground suggested in the above questions as constitution 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. ... 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.

17. The charges leveled against the respondents in the instant case are under [Sections 143, 147,323, 324,356,427, 504, 506, 114](#) read with [Section 149 IPC](#). These are no ordinary offences being punishable with imprisonment which may extend upto 3 years besides fine. At the same time

seriousness of the charge alone is not the test. What is also required to be demonstrated by the respondents is that the case involves complicated questions of law and fact. That requirement does not appear to be satisfied in an adequate measure to call for an unconditional and complete stay of the disciplinary proceedings pending conclusion of the trial. The incident as reported in the first information report or as projected by the respondents in the suits filed by them does not suggest any complication or complexity either on facts or law.

18. That apart the respondents have already disclosed the defense in the explanation submitted by them before the commencement of the departmental enquiry in which one witness has been examined by each of the Enquiry Officers. The charge sheet, it is evident from the record, was filed on 20th August, 2011. The charges were framed on 20th December, 2011. The Trial Court has ever since then examined only three witnesses so far out of a total of 23 witnesses cited in the charge-sheet. Going by the pace at which the Trial Court is examining the witnesses it would take another five years before the trial may be concluded. The High Court has in the judgment under appeal given five months to the Trial Court to conclude the trial. More than fifteen months has rolled by ever since that order, without the trial going anywhere near completion. Disciplinary proceedings cannot remain stayed for an indefinitely long period. Such inordinate delay is neither in the interest of the appellant-company nor the respondents who are under suspension and surviving on subsistence allowance. The number of accused implicated in the case is also very large. We are not suggesting that the incident must be taken to be false only because such a large number could not participate in the incident. But there is a general tendency to spread the net wider and even implicate those who were not concerned with the commission of the offences or who even though present committed no overt act to show that they shared the common object of the assembly or be responsible for the riotous behaviour of other accused persons. Interest of such accused as may be innocent also cannot be ignored nor can they be made to suffer indefinitely just because some others have committed an offence or offences.

19. In the circumstances and taking into consideration all aspects mentioned above as also keeping in view the fact that all the three Courts below have exercised their discretion in favour of staying the on-going disciplinary proceedings, we do not consider it fit to vacate the said order straightaway. Interests of justice would, in our opinion, be sufficiently

served if we direct the Court dealing with the criminal charges against the respondents to conclude the proceedings as expeditiously as possible but in any case within a period of one year from the date of this order. We hope and trust that the Trial Court will take effective steps to ensure that the witnesses are served, appear and are examined. The Court may for that purpose adjourn the case for no more than a fortnight every time an adjournment is necessary. We also expect the accused in the criminal case to co-operate with the trial Court for an early completion of the proceedings. We say so because experience has shown that trials often linger on for a long time on account of non-availability of the defense lawyers to cross-examine the witnesses or on account of adjournments sought by them on the flimsiest of the grounds. All that needs to be avoided. In case, however, the trial is not completed within the period of one year from the date of this order, despite the steps which the Trial Court has been directed to take the disciplinary proceedings initiated against the respondents shall be resumed and concluded by the Inquiry Officer concerned. The impugned orders shall in that case stand vacated upon expiry of the period of one year from the date of the order."

The Supreme Court in the case of **State Bank of India (supra)** has held as under:-

"**13.** We have heard the learned counsel for the parties at some length. The only question that arises for consideration, is no more res- integra. It is well-settled that there is no legal bar to the conduct of the disciplinary proceedings and criminal trial simultaneously. However, no straight-jacket 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. The contour of the approach to be adopted by the Court has been delineated in series of decisions. This Court in [Karnataka SRTC vs. M.G.Vittal Rao \(2012\) 1 SCC 442](#) has summed up the same in the following words:(Scc pp. 449-50, paras 16-17)

"(i) There is no legal bar for both the proceedings to go on simultaneously.

(ii) The only valid ground for claiming that the disciplinary proceedings may be stated 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 or 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." (emphasis supplied)

14. The recent decision relied by the appellant in the case of Stanzen (supra), has adverted to the relevant decisions including the case of M.G. Vittal Rao (supra). After adverting to those decisions, in paragraph 16, this Court opined as under: (Stanzen case, SCC p.643)

"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 defence 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 ongoing 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. (emphasis supplied)"

Without entering into the controversy raised by the petitioner that whether the pendency of Departmental Enquiry would disclose his defence or not, this Court is of the considered opinion that this Court

by order dated 20/02/2017, had stayed the further proceedings in the Departmental Enquiry. As held by the Supreme Court in the cases of **Kendriya Vidyalaya Sangathan (supra), Hindustan Petroleum Corporation Ltd.(supra), Avinash Sadashiv Bhosale (supra), Stanzen Toyotetsu India Private Limited (supra) and State Bank of India (supra)**, the Departmental Enquiry cannot be stayed for an indefinite period. There is nothing in the writ petition about the stage of trial. The Departmental Enquiry has already been kept in abeyance for a period of two years and thus, it is held that further proceedings in the Departmental Enquiry cannot be stayed for an indefinite period. Resultantly, the prayer for keeping the Departmental Enquiry in abeyance which is the subject-matter of Writ Petition No.910/2017 during the pendency of the trial, is rejected.

So far as the issuance of subsequent charge sheet dated 16/07/2017 is concerned, it is the stand of the respondents that the said charge sheet has not been issued on the similar charges which have been levelled in the initial charge sheet dated 21/11/2016, but the second charge sheet is ancillary to the first charge sheet because neither the petitioner had informed the Department about his arrest nor he informed the Department about his detention for a period of 97 days nor he informed his Department about his release. Even after his release, he remained on an unauthorized absence as he was directed to report to his Headquarters during his suspension period. Several other charges have also been levelled against the petitioner which cannot be

said to be directly or indirectly embedded in the charges levelled against the petitioner in the first charge sheet dated 21/11/2016.

Considered the submissions made by the counsel for the parties.

The charges levelled in the first charge sheet dated 21/11/2016 and the charges levelled in the subsequent charge sheet dated 16/07/2017 have already been reproduced. From the plain reading of the charges levelled in the second charge sheet dated 16/07/2017, it is clear that those charges have been levelled alleging misconduct of not informing the Department regarding his arrest, detention and release. The charges have also been levelled in the subsequent charge sheet with regard to unauthorized absence and for not regularly attending the General Parade. Another charge has also been levelled in the subsequent charge sheet that in spite of the fact that the petitioner has been punished twice but he has not improved his conduct, which is the indicative of indiscipline. Therefore, in the considered opinion of this Court, the subsequent charge sheet dated 16/07/2017 has not been issued on the similar allegation of the charges which are part of the first charge sheet dated 21/11/2016. Accordingly, this Court is of the considered opinion that that further proceedings in both the Departmental Enquiries cannot be kept in abeyance for an unlimited period and since the Departmental Enquiry has been kept in abeyance for a period of two years, but still the criminal prosecution has not come to an end, therefore, in the light of the judgment passed by the Supreme Court in the cases of **Stanzen Toyotetsu India Private**

Limited (supra) and State Bank of India and Others (supra), no further indulgence can be shown in the matter.

Accordingly, WP 910/2017 and WP 19653/2017 are hereby **dismissed**. The interim order dated 20/02/2017 passed in WP 910/2017 and the interim order dated 17/11/2017 passed in WP 19653/2017 are hereby **vacated**.

(G.S. Ahluwalia)
Judge