

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK JAIN

ON THE 17th OF JULY, 2025

WRIT PETITION No. 35898 of 2024

PIYUSH SAHU

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

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Appearance:

*Shri S.R. Tamrakar - Senior Advocate with Shri Pranay Shukla -
Advocate for the Petitioner.*

*Shri Mohan Sousarkar - Government Advocate for the
Respondent/State.*
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ORDER

The present petition has been filed by the Sub Inspector M.P. Police and he has put to challenge, the charge-sheet issued to him vide Annexure P-2.

2. It is contended by learned senior counsel for the petitioner that the impugned charge sheet is bad in law because on the same set of allegations, the petitioner is also facing a Criminal Prosecution and therefore, the petitioner cannot be vexed twice for the same cause because there is commonality of charges between the Criminal Case and in the Departmental Enquiry and if the petitioner is asked to participate in the Departmental Enquiry, he would be required to disclose his defence in the Departmental Enquiry before the witnesses are examined in the Criminal Case.

3. It is vehemently argued that in the Criminal Case the accused has a right to remain silent whereas in Departmental Enquiry there is no such right and presumption may be drawn against him if he remains silent and does not put forth his defence. It is argued that since he would be required to cross examine the Departmental witnesses in the Departmental enquiry, his defence to be taken in Criminal trial would be disclosed and the witnesses in the Criminal trial may cover up the defence of the petitioner in their statements in Criminal case and this would be to grave prejudice of the petitioner because upon disclosure of defence in the Criminal case, he stands to be having greater chances convicted in the Criminal case. Then not only that would have a bearing on his service career but it shall also affect the personal liberty of the petitioner. Therefore, it is argued that the chargesheet issued during pendency of the Criminal case is bad in law.

4. It is further argued that in fact the chargesheet could not have been issued because there is commonality of charges in the Criminal case and the Departmental proceedings and the Department ought not to have issued the chargesheet or because if he is ultimately acquitted in Criminal case, then naturally it would have bearing in the Departmental Proceedings and the petitioner cannot be made to face two proceedings for the same cause.

5. *Per contra*, it is contended by learned counsel for the State that the charges are not similar and therefore, no relief can be granted to the petitioner either to quash the chargesheet or to postponement of cross examination of common witnesses in Departmental Enquiry till such time those witnesses are cross-examined in the criminal trial.

6. Heard.

7. In the present case, first this Court proceeds to examine whether the charges are common or not so that the further grounds of the petitioner may be considered. The basic facts creating dispute in the present case are that the petitioner was Investigating Officer of Crime No.450/2024 registered at Police Station, Bina, District Sagar against some private persons.

8. In the FIR registered against the petitioner in the Criminal case, the allegation against the petitioner is of demand of bribe from the accused persons and Vehicle owners during investigation of the said crime. In the FIR registered against the petitioner under Section 7 of Prevention of Corruption Act, 1988 the allegation against the petitioner is that one bus met with an accident and the petitioner was demanding Rs.50,000/- from the owner of the said bus for releasing the said bus in custody of the owner. The petitioner was Investigating Officer in the crime in connection to which the bus had been seized by the Police.

9. In the Departmental charge sheet Annexure P-2, the allegation is that the said bus met with the accident in which a number of animals had died and the petitioner did not carry out proper investigation of the said incident. Another charge in the departmental charge sheet Annexure P-2 is that the petitioner did not release the said vehicle in custody of the owner and did not carry out his duties as Investigating Officer of the case.

10. It is evident from perusal of the FIR in the Criminal case and the Departmental Charge-sheet that in the FIR of the Criminal Case, the allegation is of demand of bribe to help the accused persons and vehicle

owners in the pending investigation in Criminal Case. The Criminal case is not concerned with what actual help the petitioner did to the said accused persons and to the Vehicle owner. The criminal case is relating to demand of bribe from the Vehicle owner and nothing else. The act of the petitioner in helping or not helping the accused persons and releasing or not releasing the bus of the Vehicle owner is not within the scope of criminal trial and the scope of Criminal Trial is on the question of demand of bribe.

11. On the other hand, Departmental charge-sheet has been issued by the Employer alleging that the petitioner did not carry out his duties as Investigating Officer and in-charge of Police Post. Taking of bribe is not part of the Departmental Charge-sheet and Departmental charge-sheet is restricted to the petitioner not discharging his duties as Investigating Officer and Police Post incharge.

12. Therefore, in the opinion of this Court, the Police in the FIR and the Department as employer have kept themselves within their own spheres by the Department restricting itself to the petitioner not properly investigating the offence and not discharging his duties as Investigating Officer and Police Post in-charge while on the other hand, the Criminal FIR is restricted to the petitioner demanding bribe from the Vehicle owner whose Vehicle was involved in the said Crime which was being investigated by the Petitioner. It is clear that there is no similarity or commonality of charges in Criminal trial and in Departmental enquiry.

13. Therefore, in the opinion of this Court, the Petitioner has failed to establish that what prejudice would be caused by cross-examination of

Departmental witnesses or any other witnesses to be produced by Department in Departmental Enquiry before those witnesses are examined in the criminal trial.

14. In the Departmental enquiry, the petitioner is only required to explain that his activities as Police Post Incharge and Investigating Officer were in accordance with law and nothing else. He is not expected to explain or defend the allegation of demand and acceptance of bribe. The cross examination of witnesses to be produced by Department would therefore in no manner prejudice the defence of the petitioner in the criminal trial which may be held at some uncertain time in future.

15. The learned counsel for the petitioner has heavily relied on the judgment of Hon'ble Supreme Court in the case of *Captain M. Paul Antony Vs. Bharat Gold Mines, 1999 (3) SCC 679* so also in the case of *G.M. Tank Vs. State of Gujarat and Anr.* reported in *(2006) 5 SCC 446*. Though this Court has already come to conclusion that effectively the commonality of charges and witnesses in the departmental enquiry and criminal trial are not such that it warrants postponement of departmental enquiry till the witnesses are examined in the criminal trial, still this Court proceeds to deal with the legal issue raised by learned counsel for the petitioner.

16. Even the judgment in the case of *G.M. Tank (supra)* has been subsequently considered by the Hon'ble Supreme Court in various cases. Later three judges Bench of Supreme Court in the case of *Shashi Bhushan Prasad Vs. Inspector General Central Industrial Security Force and others (2019) 7 SCC 797* had the occasion to consider the judgment of *G.M. Tank*

(*supra*) and after considering the law on the subject has held as under:-

'19. We are in full agreement with the exposition of law laid down by this Court and it is fairly well settled that 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 an offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. 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. Even 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 whereas in the departmental enquiry, penalty can be imposed on the delinquent on a finding recorded on the basis of "preponderance of probability". Acquittal by the court of competent jurisdiction in a judicial proceeding does not ipso facto absolve the delinquent from the liability under the disciplinary jurisdiction of the authority. This what has been considered by the High Court in the impugned judgment [Shashi Bhusan Prasad v. CISF, 2008 SCC OnLine Ori 544 : 2008 Lab IC 3733] in detail and needs no interference by this Court.

21. It may not be of assistance to the appellant in the instant case for the reason that the charge levelled against the appellant in the criminal case and departmental proceedings of which detailed reference has been made were on different sets of facts and evidence having no nexus/co-relationship. The kind of criminal act/delinquency which he had committed in discharge of his duties in the course of employment. That apart, much before the judgment of the criminal case could be pronounced, the departmental enquiry was concluded and after the enquiry officer had held him guilty, he was punished with the penalty of dismissal from service.

22. The judgment in G.M. Tank case [G.M. Tank v. State of Gujarat, (2006) 5 SCC 446 : 2006 SCC (L&S) 1121] on which the learned counsel for the appellant has placed reliance was a case where this Court had proceeded on the premise that the charges in the criminal case and departmental enquiry are grounded upon the same sets of facts and evidence. This may not be of any assistance to the appellant as we have observed that in the instant case the

charge in the criminal case and departmental enquiry were different having no nexus/co-relationship based on different sets of facts and evidence which has been independently enquired in the disciplinary proceedings and in a criminal trial and acquittal in the criminal proceedings would not absolve the appellant from the liability under the disciplinary proceedings instituted against him in which he had been held guilty and in sequel thereto punished with the penalty of dismissal from service."

17. The Hon'ble Supreme Court in the case of ***Karnataka Power Transaction Corporation Limited Vs. C. Nagaraju and another 2019 (10) SCC 367*** has held in para 11 that benefit can be claimed only if evidence before the criminal court and the departmental inquiry is exactly the same. In such circumstances acquittal of the employee by criminal court can be given weight by the disciplinary authority. It has further been held that acquittal of employee due to non-availability of any evidence before the criminal court would not come to rescue of the employee in the matter of dismissal on the basis of report of enquiry officer before whom there is ample evidence. The following has been held in para 11 :

"11. Reliance was placed by the High Court on a judgment of this Court in G.M. Tank [G.M. Tank v. State of Gujarat, (2006) 5 SCC 446 : 2006 SCC (L&S) 1121] whereby the writ petition filed by Respondent 1 was allowed. In the said case, the delinquent officer was charged for an offence punishable under Section 5(1)(e) read with Section 5(2) of the PC Act, 1988. He was honourably acquitted by the criminal court as the prosecution failed to prove the charge. Thereafter, a departmental inquiry was conducted and he was dismissed from service. The order of dismissal was upheld [G.M. Tank v. State of Gujarat, 2003 SCC OnLine Guj 487] by the High Court. In the appeal filed by the delinquent officer, this Court was of the opinion that the departmental proceedings and criminal case were based on identical and similar set of facts. The evidence before the criminal court and the departmental proceedings being exactly the same, this Court held that the acquittal of the employee by a criminal court has to be given due weight by the disciplinary authority. On the basis that the evidence in both the criminal trial and departmental inquiry is the same, the order of dismissal of the appellant therein was set aside. As stated earlier, the facts of this case are entirely different. The acquittal of Respondent 1 was due to non-availability of any evidence before the criminal

court. The order of dismissal was on the basis of a report of the inquiry officer before whom there was ample evidence against Respondent 1."

18. It is also settled in law that the scope of inquiry in criminal case and in departmental enquiry is altogether different. The standard of proof in criminal case is proof beyond reasonable doubt whereas in departmental proceeding the standard of proof is preponderance of probability.

19. The Supreme Court in the case of ***Management of Bharat Heavy Electricals Limited Vs. M.Mani 2018 (1) SCC 285*** has held that employee can seek automatic reversal of dismissal order upon acquittal in criminal case only in such cases where the dismissal is founded upon conviction in criminal case. Where dismissal is not founded upon conviction in criminal case but is founded upon independent domestic inquiry carried out by the management/ employer, there cannot be any automatic reinstatement. The following has been held therein:-

'32. The answer to the aforementioned submission lies in the law laid down by this Court in Karnataka SRTC [Karnataka SRTC v. M.G. Vittal Rao, (2012) 1 SCC 442 : (2012) 1 SCC (L&S) 171] . At the cost of repetition, we may say that in the case on hand, the dismissal orders had not been passed on the basis of employees' conviction by the criminal court which later stood set aside by the superior court. Had it been so, then the situation would have been different because once the conviction order is set aside by the superior court, the dismissal order which was solely based on passing of the conviction order also stands set aside. Such was not the case here.

33. In the case on hand, the appellant employer had conducted the departmental enquiry in accordance with law independently of the criminal case wherein the enquiry officer, on the basis of the appreciation of evidence brought on record in the enquiry proceedings, came to a conclusion that a charge of theft against the delinquent employees was proved. This finding was

based on preponderance of probabilities and could be recorded by the enquiry officer notwithstanding the order of criminal court acquitting the respondents."

20. The Supreme Court in the case of *Stanzen Toyotetsu India Private Limited Vs. Girish V. and others* reported in (2014) 3 SCC 636 has held as under:-

"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)

21. The Supreme Court in the case of *Shashi Bhushan Prasad v. CISE*, reported in (2019) 7 SCC 797 has held as under :

"17. The scope of departmental enquiry and judicial proceedings and the effect of acquittal by a criminal court have been examined by a three-Judge Bench of this Court in A.P. SRTC v. Mohd. Yousuf Miya. The relevant paragraph is as under: (SCC pp. 704-05, para 8)

"8....The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The 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 (sic 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 Evidence Act. Converse is the case of departmental enquiry. The enquiry in a departmental proceeding 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. 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 the Evidence Act. The evidence required in the departmental enquiry is not regulated by the 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 304-A and 338 IPC. Under these circumstances, the High Court was not right in staying the proceedings.”

supplied)

18. *The exposition has been further affirmed by a three Judge Bench of this Court in Ajit Kumar Nag v. Indian Oil Corpn. Ltd. This Court held as under: (SCC p. 776, para 11)*

“11. As far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with the Rules and Regulations in force. 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 the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the 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”. Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal court, the impugned order dismissing him from service deserves to be quashed and set aside.”

19. *We are in full agreement with the exposition of law laid down by this Court and it is fairly well settled that 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 an offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. 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. Even 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 whereas in the departmental enquiry, penalty can be imposed on the delinquent on a finding recorded on the basis of “preponderance of probability”. Acquittal by the court of competent jurisdiction in a judicial proceeding does not ipso facto absolve the delinquent from the liability under the disciplinary jurisdiction of the authority. This what has been considered by the High Court in the impugned judgment¹ in detail and needs no interference by this Court.

20. The judgment in M. Paul Anthony case on which the learned counsel for the appellant has placed reliance was a case where a question arose for consideration as to whether the departmental proceedings and proceedings in a criminal case on the basis of same sets of facts and evidence can be continued simultaneously and this Court answered in para 22 as under: (SCC p. 691)

“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, the administration may get rid of him at the earliest.”

22. The Supreme Court in the case of *Depot Manager, A.P. SRTC v. Mohd. Yousuf Miya*, reported in *(1997) 2 SCC 699* has held as under :-

“8. We are in respectful agreement with the above view. The purpose of departmental enquiry and of prosecution is two different and distinct aspects. The 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 (sic 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 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. 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 the Evidence Act. The evidence required in the departmental enquiry is not regulated by the 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 304-A and 338, IPC. Under these circumstances, the High Court was not right in staying the proceedings.” (Emphasis supplied)

23. The Supreme Court in the case of *Kendriya Vidyalaya Sangathan and others v. T. Srinivas*, reported in (2004) 7 SCC 442 has held that while staying the departmental proceedings, the Court must take into consideration the seriousness of charges alleged against the employee. Where the charge is in relation to acceptance of illegal gratification by employee and desirability of continuing the delinquent officer in service in spite of such charges against him, the stay of disciplinary proceedings till the conclusion of criminal trial was unsustainable and accordingly has held as under:

“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, a 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 respondent in service in spite of such serious charges levelled against him. This Court in the said case of State of Rajasthan [(1996) 6 SCC 417 : 1996 SCC (L&S) 1455] 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 [(1996) 6 SCC 417 : 1996 SCC (L&S) 1455] the facts which seem to be almost similar to the facts of this case, held that the Tribunal fell in error in staying the disciplinary proceedings.

12. We think the above ratio of law laid down by this Court applies aptly to the facts of the present case also. It is also to be noted that in Capt. M. Paul Anthony case [(1999) 3 SCC 679 : 1999 SCC (L&S) 810] this Court has accepted the principle laid down in Rajasthan case [(1996) 6 SCC 417 : 1996 SCC (L&S) 1455].

13. As stated above, in the case in hand, both the Tribunal and the High Court proceeded as if a departmental enquiry and a criminal trial could not proceed simultaneously, hence, they stayed the departmental enquiry which by itself, in our opinion, is contrary to the principles laid down in the above cited cases. 14. We are of the opinion that both the

Tribunal and the High Court proceeded on an erroneous legal principle without taking into consideration the facts and circumstances of this case and proceeded as if the stay of disciplinary proceedings is a must in every case where there is a criminal trial on the very same charges, in this background it is not necessary for us to go into the second question whether at least Charge 3 by itself could have been permitted to be decided in the departmental enquiry as contended alternatively by the learned counsel for the appellant.”
(Emphasis supplied)

24. In the case of *Union of India and others vs Dalbir Singh* reported in (2021) 11 SCC 321 the Hon’ble Supreme Court has held as under:-

"24. held that 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. 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. It was held as under: 11. As far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with the Rules and Regulations in force. 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 the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the 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. Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal court, the impugned order dismissing him from service deserves to be quashed and set aside.

25.

8.The purpose of departmental inquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offense 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 inquiry 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 the criminal cases 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 inquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offense generally implies infringement of public duty, as distinguished from mere private rights punishable under criminal law. When the trial for a criminal offense is conducted it should be in accordance with proof of the offense as per the evidence defined under the provisions of the Indian Evidence Act, 1872 [in short the Evidence Act]. The converse is the case of departmental inquiry. The inquiry in a departmental proceeding 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 departmental inquiry 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)

25. In the case of *SBI Vs. Neelam Nag* reported in (2016) 9 SCC 491 it has been held that the delinquent may not claim postponement of witnesses in criminal trial in such a manner that it would unnecessarily delay the departmental proceedings and an

equitable balance has to be drawn between expeditious conclusion of ongoing disciplinary proceedings on one hand and fair trial to the accused on the other hand.

26. In the case of *Hindustan Petroleum Corporation Ltd. Vs. Sarvesh Berry* reported in (2005) 10 SCC 471 it has been categorically held by the Hon'ble Supreme Court in para-8 thereof that crime is an act of commission in violation of law or omission of public duty whereas departmental enquiry is to maintain discipline in service and efficiency of service and it not desirable to lay down any guideline or rules in which departmental proceedings may or may not be stayed pending trial in criminal case and each case requires to be considered in the backdrop of its own facts and circumstances.

27. In the present case, this Court has already reached to conclusion on facts by analyzing and comparing the chargesheet in Departmental Enquiry and FIR in Criminal case that no prejudice is going to be caused to the petitioner by examining common witnesses even if they are examined in Departmental enquiry prior to they being examined in Criminal Case. The employer is always at liberty to enquire into the conduct of its Officers and the authorities of the Police Department can always enquire into conduct of their Officers Incharge of the Police Stations and Posts and entrusted with investigation of offences who are alleged to have indulged in elusive and dubious practices.

28. Consequently, this petition deserves to be and is hereby **dismissed**. However, it is observed that nothing contained in this order shall prejudice the petitioner in raising all defences available to him either in departmental enquiry or in the criminal trial.

(VIVEK JAIN)
JUDGE

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