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

Case No. : WP(C)/2521/2024

MD. ABDUL LATIF
SON OF MD. ABDUL HAMID,
RESIDENT OF ANIRUDDHA PATH,
NEAR BANK OF INDIA,
KAMARCHUBURI, TEZPUR,
DISTRICT- SONITPUR
AND PERMANENT RESIDENT OF KWAKTA WARD NO. 08, MOIRANG SUB-
DIVISION,
BISHNUPUR, MOIRANG, MANIPUR- 785133.

VERSUS

FOOD CORPORATION OF INDIA (FCI) AND 3 ORS
ZONAL OFFICE (NORTH EAST), GUWAHATI,
REPRESENTED BY THE EXECUTIVE DIRECTOR (NE).

2:THE GENERAL MANAGER (R)
REGIONAL OFFICE
FCI
ASSAM.

3:THE DIVISIONAL MANAGER
FCI
TEZPUR
DIST.- SONITPUR
ASSAM.

4:THE DIVISIONAL MANAGER
FCI
NORTH LAKHIMPUR
ASSAM

Advocate for the Petitioner : MS. M KUMARI, B U LASKAR,MR D NANDI

Advocate for the Respondent : SC, F C I,

**BEFORE
HONOURABLE MR. JUSTICE KARDAK ETE**

JUDGMENT

Date : 26-05-2025

Heard Ms. M. Kumari, learned counsel for the petitioner. Also heard Mr. B.K. Singh, learned Standing Counsel, FCI, for respondents.

2. By filing this writ petition, the petitioner has put to challenge the Memorandum dated 08.12.2023 issued by the Executive Director (NE) Food Corporation of India, Zonal Office (NE), Guwahati, whereby the respondent authorities have proposed to hold an enquiry against the petitioner on the allegation of charges for demanding illegal gratification of Rs.1,30,000/- (Rupees One Lakh Thirty Thousand only) and caught red handed by CBI on 08.09.2023 while accepting bribe of Rs.20,000/- from Sri Pankaj Pawan Nath in lieu of processing and clearing payment of bills amounting to Rs.1,33,398/- against hiring of Generator Set by Food Corporation of India (in short FCI) as well as for not creating any problem in clearing future bills. The petitioner has also prayed for a direction not to proceed further in the departmental enquiry pursuant to the aforesaid Memorandum dated 08.12.2023 till final outcome of the Criminal Trial in Special Case (CBI) No.01/2024 pending before Special Judge, CBI, Kamrup (M) Guwahati.

3. The brief facts of the case are that the petitioner was appointed as Assistant Grade-III(A/CS) in FCI vide order dated 24.09.2009. He was promoted to Manager (Accounts) in which post he is serving at FCI, Divisional Office,

Tezpur since 15.07.2022. On 08.09.2023, a case was registered against the petitioner under Section 7 of the Prevention of Corruption Act, 1988 pursuant to a written complaint/FIR dated 07.09.2023 filed by one Sri Pankaj Pawan Nath, alleging that the petitioner demanded illegal gratification of Rs.1,30,000/- for clearing bills and for not creating any problem for processing and paying future bills. Accordingly, a trap was laid to apprehend the petitioner red handed for accepting the illegal gratification from the complainant. The petitioner was arrested on 08.09.2023 on having been alleged to have been caught red-handed while accepting Rs.20,000/- and he was placed under suspension by an order dated 12.09.2023. On being released on bail vide order dated 08.12.2023, the suspension of the petitioner has been revoked with immediate effect without prejudice to the disciplinary proceeding that may be initiated in future.

4. The allegation leveled against the petitioner is that the petitioner has demanded a sum of Rs.1,30,000/- from the complainant for clearing his bill dated 04.09.2023 for Rs.1,33,398/- pertaining to hiring of Generator Set by FCI for the month of July, 2023. It is further alleged that the petitioner has demanded undue advantage for not raising any objection in other bills of the complainant pertaining to hiring of vehicles which are yet to be submitted by the complainant for aforesaid purpose and upon negotiation, petitioner agreed to accept Rs.90,000/- in installments from the complainant. The case was investigated by the C.B.I and accordingly chargesheet was filed vide Chargesheet No.06/2023 dated 04.11.2023. After the submission of the charge-sheet in the Court of Special Judge, CBI, a parallel departmental inquiry by the respondent department was initiated. The respondent authorities formed a vigilance squad to conduct a preliminary inquiry against the petitioner and based on the said inquiry report a charge-sheet was issued against the

petitioner.

5. It is the contention of the petitioner that he has been falsely implicated without any evidence and justification attached to it and the allegation is merely on the basis of bald and vague allegation made by the complainant as he has no role to play in clearing the contractor's bill as his only duty is to process the bills.

6. It is contended that after the submission of charge-sheet by the CBI, a departmental enquiry by the respondent has also been initiated and accordingly, the petitioner was enquired and charge-sheeted for the same by the respondent authorities on the basis of similar facts and charges which are leveled by the CBI in Charge-Sheet No.06/2023 dated 04.11.2023. The Memorandum of Charge-Sheet No. ZO NE-26.0014.0/8/2023-VIG-ZO-NE dated 08.12.2023 issued by the respondent No.1 whereby, inter alia alleged that the petitioner while working as Manager (Accounts) at Divisional Office, Tezpur has demanded illegal gratification of Rs.1,30,000/- and caught red handed while accepting bribe of Rs.20,000/- from one Sri Pankaj Pawan Nath in lieu of processing and clearing payment of bills for the month of July, 2023 amounting to Rs.1,33,398/- against hiring of DG Sets by FCI, FSD, Bindukuri as well as for not creating any problem in clearing future bills.

7. It is contended that the departmental disciplinary action is totally based on the alleged charge sheet filed by the CBI before the Special Judge, CBI. The charges inquired by the CBI and by the respondent authorities are one and the same and therefore, the departmental inquiry cannot proceed with the same sets of facts and charges which are leveled by the CBI in their charge-sheet. Both the charges are inseparable and cannot be tried separately. Moreover, the charges are to be proved by the same set of witnesses and documents and therefore, the same would adversely affect the pending criminal

trial.

8. It is contended that both the Charge-sheets clearly indicate that not only charges are similar but the list of witnesses are also same in both proceedings, such as, Witness No.1 in the Memorandum is the Witness No.1 in the CBI Charge-sheet, Witness No.2 in the Memorandum is the Witness No.8 in the CBI Charge-sheet, Witness No.3 in the Memorandum is the Witness No.9 in the CBI Charge-sheet, Witness No.4 in the Memorandum is the Witness No.10 in the CBI Charge-sheet, Witness No.5 in the Memorandum is the Witness No.11 in the CBI Charge-sheet, Witness No.6 in the Memorandum is the Witness No.3 in the CBI Charge-sheet, Witness No.7 in the Memorandum is the Witness No.6 in the CBI Charge-sheet and Witness No.8 in the Memorandum is the Witness No.21 in the CBI Charge-sheet, which clearly indicates that if both proceedings are conducted in a parallel manner, than the petitioner will be deprived from getting proper adjudication in any of the proceedings pending against him which is against the principle of natural justice.

9. Ms. M. Kumari, learned counsel for the petitioner submits that the criminal trial under the same offence is already pending which is based upon the principle of proving guilt of the accused beyond a reasonable doubt. On the other hand departmental inquiry is premised on the principle of preponderance of probabilities without strict implementation of rules of evidence. Hence, the outcome of the departmental proceedings against the petitioner will adversely affect the right and defense of petitioner in a criminal trial which is against the basic tenet of the right to a fair trial and cannot be allowed to proceed with. Moreover, the proceedings in a criminal trial and the proceedings in a departmental inquiry are based on the same identical charges which are to be proved by the same set of witnesses and documents, therefore, if the

departmental enquiry is allowed to proceed with then there are high chances of the defense of the accused being disclosed to the prosecutorial in the course of the departmental enquiry which will gravely prejudice the defense of the petitioner in the criminal trial. Thus, the departmental proceedings cannot be allowed to proceed against the petitioner. Therefore, she submits that the proposed disciplinary proceeding against the petitioner may be stayed as the criminal charge against the petitioner is grave and the continuous disciplinary proceeding is likely to prejudice his defence before the Criminal trial.

10. Ms. M. Kumari, learned counsel, while relying on the judgment of Hon'ble Supreme court in the case of **Tata Oil Mills Co. Ltd. -vs- Its Workmen** reported in **AIR 1965 SC 155**, submits that since the criminal proceeding has already been started against the petitioner, disciplinary proceeding ought to have been stayed pending final disposal of the said criminal proceeding. Therefore, she submits that since the case giving rise to a charge against the petitioner in a departmental proceedings/enquiry is being tried in a criminal Court, the employer should stay the departmental proceedings pending the final disposal of the criminal case.

11. Further, Ms. M. Kumari, learned counsel, has placed reliance on the case of **Capt. M. Paul Anthony -vs- Bharat Gold Mines Ltd.** reported in **(1990) 3 SCC 679** wherein the Hon'ble Supreme Court has held which is reproduced herein 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 (i) and (ii) 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 then 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.”

12. On the other hand, Mr. B.K. Singh, learned standing counsel, FCI submits that the petitioner was working as Manager (Accounts) in the Divisional Office, Tezpur, w.e.f. 15.07.2022 to 08.09.2023, where he did not discharge his duties with due devotion and integrity and he has tarnished the image of the FCI by demanding and accepting illegal gratification in lieu of processing and payment of bills. Being the Manager (Accounts) in the Divisional Office, the petitioner was the officer having a very pivotal role in processing/examining the bills.

13. He submits that both the criminal and disciplinary proceedings are independent of each other and will be tried by different authorities following the

due procedure i.e, the charge-sheet filed by the CBI against the petitioner will be tried by the learned Special Judge, Guwahati as per the procedure laid down in the Code of Criminal Procedure, 1973(now BNSS, 2023) independently whereas in the departmental proceeding, the inquiry will be held as per the service rule contained in the FCI (Staff) Regulations, 1971, against the petitioner. The criminal proceedings takes its own time to reach its logical end and whereas Departmental Proceeding will take hardly 6 (six) months to come to its logical end.

14. He submits that the respondents have right to proceed against the petitioner under the service rule contained in the FCI (Staff) Regulations, 1971 inasmuch as tarnishing of the image of the FCI is also involved in view of the fact that the memorandum /charge-sheet dated 08.12.2023, has been issued by the disciplinary authority for contravening Regulations 31, 32 and 32 A of the FCI (Staff) Regulations, 1971. Thus, it is apparent that the charge-sheet dated 08.12.2023, has been issued by the disciplinary authority to the petitioner for the misconduct of demanding and accepting bribe/illegal gratification as well as for tarnishing the image of the FCI and for an act unbecoming of an employee of the FCI. The criminal case, instituted by the CBI, pertains to the offence of illegal gratification/bribe and it does not pertain to the misconduct of impairing/tarnishing the image of the FCI by the petitioner. Hence, the contention of the petitioner that the charges in the criminal proceeding and the disciplinary proceeding are one and the same is factually incorrect.

15. Mr. Singh, learned standing counsel, submits that under the aforesaid facts and circumstances there involve no complicated questions of law and fact and further that the petitioner having been submitted a detailed reply/defence statement running into 10 pages controverting the allegations levelled against

him by giving minute details of the fateful day of taking alleged bribe and therefore, allowing the Departmental proceedings cannot be said that the petitioner will be prejudice and his defence will be adversely affected in pending criminal case. There is no question of the petitioner being compelled to disclose his defence in the departmental proceedings which would prejudice him in a criminal case. Therefore, in the interest of the petitioner and in the interest of good administration that the truth or falsity of charges against him is determined promptly and in fact, it would be in the interest of the petitioner that the departmental proceeding comes to its logical end by allowing the departmental proceedings to proceed.

16. Mr. B.K. Singh, learned standing counsel, has also relied on the case **Capt. M. Paul Anthony** (Supra) to project that the Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar being conducted simultaneously, though separately.

17. Due consideration has been extended to the submissions of the learned counsel for the parties and have perused the materials available on record.

18. The petitioner has challenged the Memorandum of Charge-sheet dated 08.12.2023 issued by the Executive Director (NE) Food Corporation of India, Zonal Office (NE), Guwahati, whereby a Memorandum of article of charges has been issued initiating departmental proceedings against the petitioner. The petitioner has prayed for a direction to the respondents not to proceed further in Departmental Proceeding pursuant to the aforesaid memorandum dated 08.12.2023 till the outcome of the Criminal Trial in the Special Case CBI No.1/2024 pending before the Special Judge, CBI, Kamrup (M), Guwahati.

19. The allegation leveled against the petitioner is that the petitioner has

demanded a sum of Rs.1,30,000/- from the complainant for clearing bills dated 04.09.2023 of Rs.1,33,398/- pertaining to hiring of Generator Set by FCI for the month of July, 2023. It was further alleged that the petitioner has demanded undue advantage for not raising any objection in other bills of the complainant pertaining to hiring of vehicles which are yet to be submitted and has demanded of Rs.1,30,000/- for the aforesaid purpose and upon negotiation, the petitioner agreed to accept Rs.90,000/- in installments from the complainant.

20. The main contention of the petitioner is that the departmental and criminal proceedings are on same set of facts and evidence and both the proceedings are common. Therefore, if the departmental enquiry is allowed to proceed, then there are high chances of the defense of the accused being disclosed to the prosecution in the course of the departmental enquiry which will gravely prejudice the defense of the accused in the criminal trial.

21. On consideration of the matter, it appears that the petitioner has already submitted his written statement of defense reputing the allegations leveled against him. Thus, it would be difficult to say that allowing the Departmental proceedings would prejudice and his defence would be adversely affected in pending criminal case and it cannot be said that petitioner would be compelled to disclose his defence in the departmental proceedings which would prejudice him in a criminal case.

22. It is settled position of law that the approach and objective in the criminal proceedings and disciplinary proceedings are altogether distinct and different. 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 under the Prevention of Corruption

Act and/or any other law are established and if established, what sentence should be imposed upon him. The Standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. Staying of disciplinary proceedings pending criminal proceedings, should not be a matter of course but a considered decision.

23. The Hon'ble Supreme Court in catena of decisions has held that the crime is an act of commission in violation of law or omission of public duty whereas, the departmental enquiry is to maintain discipline in the service and efficiency of public service. It would therefore, be expedient that the departmental proceedings are conducted and completed as expeditiously as possible. 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 question of fact and 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. Converse is the case of departmental enquiry. The enquiry in departmental proceedings relates to conduct of a breach of duty of the delinquent officer. The strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position.

24. In the present case, the charge is serious in nature which is of allegation of accepting illegal gratification and relates to the very discharge of the duties and functions, although the allegation in both the criminal proceedings and departmental proceedings are somewhat similar.

25. It is noticed that the criminal case was registered against the petitioner as he was alleged to have caught red-handed while accepting bribe of Rs. 20,000/- whereas in the departmental proceedings, the charges against the petitioners

are not only of taking bribe but are also of misconduct and causing loss to the reputation of the FCI.

26. As noted herein above, the law is well settled that the departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately, as has been held by the Hon'ble Supreme Court in the matter of **Capt. M. Paul Anthony** (Supra) and there is no rule that the departmental enquiry has to be stayed in every case where a criminal trial in regard to the same misconduct is pending. In the present case, the petitioner has been alleged to have caught red handed taking bribe and the question in the disciplinary proceedings is whether the petitioners are guilty of such misconduct as would merit his removal from service or a lesser punishment. The learned counsel for the petitioner has miserably failed to show that the departmental proceedings and the criminal case are based on identical and same set of facts and the charge in the criminal case against the delinquent employee and is of a grave nature which involves complicated questions of law and fact, except bald submissions without any material to support, which would be desirable to stay the departmental proceedings till the conclusion of the criminal case. Thus, I am of the considered view that the petitioner has not been able to make out a case for stay of the departmental proceedings pursuant to the memorandum dated 08.12.2023.

27. For the foregoing reasons and conclusion, this court is of the view that the petitioner has failed to make out a case for stay of the departmental proceedings initiated against the petitioner pursuant to the Memorandum dated 08.12.2023 issued by the Executive Director (NE) Food Corporation of India, Zonal Office (NE), Guwahati. Thus, not inclined.

28. In the result, writ petition stands dismissed being devoid of merit. No order as to cost (s).

JUDGE

Comparing Assistant