

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9204 of 2021

Ugrasen Son of Sri K.N.P. Shrivastava, Deputy Chief Mechanical Engineer/Safety Now posted as Deputy CEnHM, East Central Railway, PO-Dighi Kalan, PS-Hajipur Town, District-Vaishali at Hajipur, Pin Code-844102 (Bihar).

... .. Petitioner.

Versus

1. The Union of India through the Secretary, Railway Board, Ministry of Railway, Government of India, Rail Bhawan, New Delhi-110001.
2. The General Manager, East Central Railway, PO-Dighi Kalan, PS-Hajipur Town, District-Vaishali at Hajipur, Pin Code-844102 (Bihar).

... .. Respondents.

Appearance :

For the Petitioner/s	:	Mr. M.P. Dixit, Advocate Mr. S.K. Dixit, Advocate Mr. Sanjay Kumar Choubey, Advocate Ms. Swastika, Advocate
For the Respondent	:	Dr. Anand Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

and

HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN)

Date : 02-12-2021

Heard Mr. M.P. Dixit, learned counsel for the Petitioner and Dr. Anand Kumar, learned counsel for the respondents.

2. The petitioner, by way of filing the instant writ petition, has approached this Court for the following reliefs:

(A) For issuance of writ in the nature of Certiorari for quashing/setting aside the order dated 16.02.2021 passed by the learned Central Administrative Tribunal, Patna Bench, Patna



hereinafter CAT in Original Application No. 050/00595 of 2019 with MA/050/00065/2020 as contained in Annexure-1 of the writ application whereby and whereunder the instant Original Application has been dismissed without application of judicial mind.

(B) For issuance of writ in the nature of Certiorari for quashing/setting aside the order dated 16.05.2019 contained in Annexure-8 of the writ application.

(C) For issuance of an appropriate writ (s)/order (s)/direction (s) in the nature of Mandamus holding and declaring the order dated 27.03.2018 issued by the Disciplinary authority i.e. respondent no. 2 as contained in Annexure-6 of the writ application, a quasi-judicial order, passed in compliance to the judicial order dated 18.01.2018, 15.02.2018 and 02.05.2018 as contained in Annexure-3, 5 and 7 respectively of the writ application and requires no interference till final disposal of the criminal proceedings.

(D) For issuance of an appropriate writ (s)/order (s)/ direction (s) in the nature of Mandamus commanding the respondents to act upon on the basis of their own quasi-judicial order dated 27.03.2018 as contained in Annexure-6 of the writ application.

(E) Any other appropriate relief(s) for which the petitioner may be entitled to be granted.



3. Pleadings being complete, with consent of both the parties, this writ petition has been heard for final disposal at this stage itself.

4. The brief facts of the case, as appearing from the pleadings of the parties, are that the petitioner after qualifying the Indian Engineering Service Examination joined the Indian Railway Service as Mechanical Engineer and posted in the East Central Railway on 13.06.2005. After serving on the said post, the petitioner detected that due to erroneous agreement in favour of one Sri Anand Raj, about Rs.16 Lacs has been paid in excess against the vehicle contract and as such he put up a note for recovery of over payment in favour of Sri Anand Raj. After following due procedure, a recovery of Rs.34 Lacs was made against the said Sri Anand Raj. Being annoyed with the petitioner, due to the aforesaid reason, the said Sri Anand Raj in connivance with the CBI filed a complaint before it on 15.05.2007, alleging demand of bribe by the petitioner. Thereafter, Sri Praveen Kumar, Inspector, CBI was entrusted to enquire into the matter. On the basis of his verification report, First Information Report was lodged against the petitioner and he was taken into judicial custody. The petitioner moved before this Court in Cr. Misc. No. 27616 of 2007 and he was granted



privilege of bail. In the meantime, charge-sheet was submitted before the CBI Court on 30.07.2008 but the learned court below has declined to take cognizance for want of pre-trap and post-trap memorandum vide its order dated 09.08.2008. However, the CBI court has taken cognizance on 11.09.2008, as alleged by the petitioner on the basis of concocted and manufactured pre-trap and post-trap memorandum. Then, the petitioner challenged the order taking cognizance dated 11.09.2008 vide Cr. Misc. No. 8861 of 2009, which was dismissed with liberty to pray for discharge before the learned court below but the learned court below dismissed his discharge petition on 20.02.2013 and thereafter, the petitioner filed Cr. Misc. No. 14016 of 2013 for quashing of the First Information report. This Court stayed the further proceeding in the said CBI case lodged against the petitioner bearing Special Case No. 08 of 2007, arising out of R.C. No. 12 (A) of 2007.

5. On 19.12.2008, respondent no. 2 issued a major penalty charge sheet on the same set of allegations and the petitioner filed a representation before him on 06.08.2009, asking for supply of verification report about alleged demand of illegal gratification and also for phone numbers through which the demand was made and purported verification by CBI was



done but these were not supplied to him. Then the petitioner submitted a reminder on 29.10.2009, but the same was rejected on 11.01.2010. Thereafter, the petitioner filed another request letter on 25.01.2010 and this time also the same was not supplied to him. In the meantime, respondent no. 2 appointed Sri Vinod Kumar, retired CETE, Eastern Railway as Inquiry Officer on 15.05.2010. The petitioner submitted a representation on 03.09.2010 for stopping the proceeding due to non-supply of the aforesaid demanded documents but the Inquiry Officer proceeded with the enquiry on three dates. Thereafter, respondent no. 2 cancelled the nomination of the Inquiry Officer on 11.07.2011 and appointed Sri Arun Mehta as Inquiry Officer, who also held enquiry on three dates, but again on 02.12.2015, he was replaced by Sri Arun Bhangra. Sri Arun Bhangra, before conduct of any enquiry by him, was also replaced by Sri B.P. Gupta on 04.08.2016. Sri B.P. Gupta was then replaced by Sri Kameshwar Choudhary on 19.10.2016 without his haing conducted enquiry. Sri Kameshwar Choudhary held preliminary enquiry on 11.01.2017 but he too was replaced by Sri P.K. Rai, who held preliminary enquiry on 07.12.2017. The petitioner filed a fresh representation before respondent nos. 2 and 3 demanding supply of the same document i.e. verification report



and alleged mobile/phone number used by him while demanding and accepting the alleged bribe from the said Sri Anand Raj, but instead of supplying the same, the respondent no. 3 fixed the next date of enquiry on 10.01.2018.

6. Being aggrieved with the conduct and attitude of the respondents, the petitioner moved before the Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as the 'Tribunal') vide O.A No. 050/77/2018 with a prayer to stay the departmental enquiry on the ground that this Court had already stayed the criminal proceeding vide order dated 23.06.2016 passed in Cr. Misc. No. 14016 of 2013. The learned Tribunal vide order 18.01.2018 directed the petitioner to file a representation before the Disciplinary Authority to stay the departmental proceeding in the light of the order passed in Cr. Misc. No. 14016 of 2013. On 25.01.2018, the petitioner filed his detailed representation before the Disciplinary Authority. On 15.02.2018, the learned Tribunal directed the learned counsel for the Railway to take instruction on the representation dated 25.01.2018 filed by the petitioner. On 27.03.2018, the Disciplinary Authority (respondent no.2) stayed the departmental enquiry till the outcome of the criminal case. On the basis of said order dated 27.03.2018, the petitioner



withdrew O.A No. 050/77/2018. Ultimately, on 16.05.2019 respondent no. 2 (Disciplinary Authority), after lapse of more than one year, issued an order directing the Inquiry Officer to proceed with the departmental enquiry. Against the said order, the petitioner moved before the learned Tribunal a second time vide OA No. 00595 of 2019, in which stay was granted vide order dated 07.06.2019 but on 16.02.2021, OA No. 00595 of 2019 was disposed of rejecting the claim of the petitioner by the learned Tribunal. Hence, this writ petition.

7. Learned counsel for the petitioner submitted that the petitioner, being Senior Officer of the Indian Railway and posted at East Central Railway Headquarter, had raised some issues in which he took decision which adversely affected Sri Anand Raj and he in connivance with one CBI Officer falsely implicated the petitioner on the alleged demand of bribe. He further submits that this Court has also faulted the procedure of trap adopted by the CBI. The Investigating Officer was not providing relevant documents to the petitioner required for his defence in contravention of principles of natural justice. Several Investigating Officers have been changed between 2008 to 2016 without any progress in the departmental enquiry and because of this delay the petitioner was being deprived of his due



promotions.

8. Learned counsel for the petitioner further averred that the order of disciplinary authority for resumption of enquiry proceeding was not valid as being a quasi-judicial authority, he cannot modify his own order subsequently. After passing an order, he becomes *functus officio* and cannot review his own order. He lastly submitted that the Railway Authorities were not pursuing CVC cases uniformly despite the communication from the Railway Board to all General Managers.

9. Learned counsel for the petitioner relied upon a judgment of this Court in the case of the **Union of India Vs. Smt. Pushpa Rani** reported in **2017 (4) PLJR 739**, wherein it has been held that where the punishment had already been fixed or at least advised to the disciplinary authority, there was no occasion for the disciplinary authority to apply his independent mind. But, in the present case, the stay of departmental proceeding has been vacated on the advice of CVC.

10. Learned counsel for the petitioner further relied upon a judgment of the Hon'ble Supreme Court in the case of **SBI Vs. S.N. Goyal** reported in **(2008) 2 SCC (L & S) 678**, wherein His Lordships has dealt with the question as to



when an authority becomes *functus officio*. Learned counsel for the petitioner submitted that in the present case, the disciplinary authority performs a quasi judicial role and it cannot modify its own order. He further relied upon a judgment of the Full Bench of this Court in the case of **Nand Kumar Thakur Vs. the State of Bihar** and others reported in **2014 (4) PLJR 210 (FB)**, wherein in paragraph-58 it has been held that no Court, Tribunal or authority exercising quasi-judicial function has inherent right/power to review its own order. Power of review or revision is such which can be exercised only under the authority of law. In absence of express provision for review or revision, the order cannot be reviewed or revised, except for correction of inadvertent or accidental mistake or typographical or clerical error.

11. On the other hand, learned counsel for the respondents-Railway submitted that the main crux of defence of the petitioner before the learned Tribunal as well as before this Court is that the subsequent decision of disciplinary authority to resume the departmental inquiry was not in accordance with law, because an order of disciplinary authority is quasi-judicial in nature and he cannot withdraw or modify his own order subsequently. He further submitted that the allegation against



the petitioner was grave and it was important to conclude the departmental inquiry expeditiously. If the allegations in the enquiry were substantiated, the petitioner could be awarded any of the major penalties and hence the petitioner was deliberately trying to block proceedings in the departmental enquiry. He further submitted that the Hon'ble Supreme Court has rendered several judgments with the ratio that the departmental enquiry and criminal proceeding on similar allegations were distinct and could be continued simultaneously. There is no legal bar in proceeding with a departmental inquiry even if the criminal proceeding on similar charges had been stayed by the Courts. In reply to supplementary affidavit/extract of Rules and Instructions /detailed list of dates and events filed by the petitioner, learned counsel for the respondents Railway submitted that the provisions under Rule 25 & 25A of the Railway Servants (Discipline & Appeal) Rules, 1968 may be exercised, in course of Revision and Review, only when final order with regard to penalty has been issued by the Disciplinary Authority and affirmed by the Appellate Authority. The departmental proceeding has already been commenced against the petitioner. Enquiry proceeding is delayed due to representation dated 16.01.2018 filed by the petitioner alleging



biasness of the Inquiry Officer, which was rejected by the Reviewing Authority. He further submitted that Rule 25 & 25A of Railway Servants (Discipline & Appeal) Rules, 1968 with respect to Revision and Review may be exercised in those cases where penalty has already been imposed by the Disciplinary Authority and affirmed by the Appellate Authority. The order of stay and resumption of departmental proceeding passed by the Disciplinary Authority may not be considered as final order to attract Rule 25 & 25A of the aforesaid Rule. He lastly submitted that the orders with respect to stay and resumption of proceedings of Disciplinary Authority issued on 27.03.2018 and 16.05.2019 were administrative in nature and not quasi-judicial, which was affirmed at para-14 of order dated 16.02.2021 passed by learned Tribunal, while dismissing the OA 595/2019. Both the orders were communicated by Dy. CPO/Gaz, GM(P) Office, ECR. The format of communication itself suggests the orders were administrative in nature. Learned counsel in order to buttress his submission referred to the judgments of Hon'ble Supreme Court in the case of **State of Rajasthan Vs. B.K. Meena and others** reported in (1996) 6 SCC 417, **State Bank of India and others Vs. Neelam Nag and another** reported in (2016) 9 SCC 491 and **Stanzen Toyotetsu India (P) Ltd. Vs.**



Girish (2014) 1 SCC (L & S) 641.

12. Now, I come to the judgment cited by learned counsel for the petitioner in the case **Union of India Vs. Smt. Pushpa Rani** (supra) which is not applicable in the facts of the present case as the CVC vide its Circular No.814/2018 dated 31.07.2018 has issued guidelines that simultaneous proceedings can run together. The said circular is based upon the judgment of the Hon'ble Supreme Court and the guidelines of Department of Personnel & Training and acting upon the direction of CVC the Disciplinary Authority vacated the stay of departmental proceedings against the petitioner. The reliance placed by learned counsel for the petitioner on the judgment in the case of **S.B.I. Vs. S. N. Goyal** (supra) is not applicable as in the departmental enquiry the Disciplinary Authority has not passed the final order. The order dated 27.03.2018 & 16.05.2019 were administrative in nature and not quasi judicial. It is true that once an authority exercising quasi-judicial power takes a final decision, it cannot review its decision unless the relevant statute or rules permit for such review. But, the question as to at what stage an authority becomes *functus Officio* in regard to an order made by him. The next decision being **Nand Kumar Thakur** (supra) cited by learned counsel for the petitioner is also not



applicable in the present case because the Disciplinary Authority had not passed the final order. It was an interim order, which is administrative in nature.

13. In the present case, the criminal trial was stayed by this Court and admitted for hearing vide order dated 23.06.2016 passed in Cr. Misc. No.14016 of 2013 and further proceedings in Special Case No.08 of 2007 were stayed.

14. I may rely on the judgment of the Hon'ble Supreme Court in the case of **A.P. SRTC Vs. Mohd. Yousuf Miya (1997)** reported in **2 SCC 699 : 1997 SCC (L & S) 548**, wherein their Lordships have held that the purpose underlying departmental proceedings is distinct and different from 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. In the case of **Karnataka SRTC v. M.G. Vittal Rao** reported



in **(2012) 1 SCC 442 : (2012) 1 SCC (L & S) 171** their Lordships have succinctly summed up the principles that are applicable in such situations, in the following words:

“(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 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.”

15. I may also refer to the decision in the case of



Capt. M. Paul Anthony v. Bharat Gold Mines Ltd., reported in **(1999) 3 SCC 679 : 1999 SCC (L & S) 810**, where the Hon'ble Supreme Court has reviewed the case law on the subject to identify the following broad principles for application in the facts and circumstances of a given case, the relevant extracts wherefrom are quoted herein below:

- “(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.”

16. In the case of **M. Paul Anthony** (supra) the Hon’ble Supreme 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.



17. In the instant case, the Disciplinary Authority by staying the proceeding had not decided the final outcome or accomplished the purpose of the departmental enquiry. A departmental enquiry is initiated with the service of charge memo and concludes with the award of punishment or exoneration/dropping of charge. The Disciplinary Authority is required to take decisions at different stages of a departmental inquiry and many a times he has to revise his earlier decisions, in view of changing circumstances. Such decisions may relate to appointment of inquiry officer or presenting officer or remitting an inquiry back to the inquiry officer for *de-novo* inquiry. The decisions of Disciplinary Authority taken at different stages of departmental enquiry do not make him *functus officio* for that stage. If that were so, all decisions of changing the IOs or Presenting Officer or *de-novo* enquiry would be illegal. In the instant case, six inquiry officers have already been changed by the Disciplinary Authority. Only a decision of the final award of punishment or exoneration/dropping of charge by the Disciplinary Authority can make him *functus officio*. The decision to stay or resume the departmental proceeding cannot be called an exercise of quasi-judicial power and hence, such orders do not make the Disciplinary Authority *functus officio* for



that stage. 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 be prejudiced but even such ground would be available only in cases involving complex question of fact and law. 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. 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 offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service Rules. It is an admitted fact that in the present case, the charge in the departmental proceedings is different from the charge in the criminal proceedings. 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 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 is also pertinent to mention here that acquittal in criminal proceedings on the same set of charges, per se, does not entitle the delinquent to claim immunity from disciplinary proceedings.

18. On careful and objective evaluation of the facts and circumstances of the case, the enquiry proceedings, the evidence available on record and the discussions made in the foregoing paragraphs, I am of the considered opinion that the order dated 16.05.2019 passed by the Disciplinary Authority directing the Inquiry Officer to proceed with the enquiry is in accordance with law and the learned Tribunal has rightly rejected the prayer of the petitioner.

19. Accordingly, this writ petition stands dismissed.

(Anjani Kumar Sharan, J.)

Vikash Jain, J. I agree.

(Vikash Jain, J.)

Trivedi/-

AFR/NAFR	AFR
CAV DATE	07.10.2021
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Transmission Date	NA

