

CASE DETAILS

STATE BANK OF INDIA

v.

P. ZADENGA

(Civil Appeal No. 2518 of 2012)

OCTOBER 03, 2023

[HRISHIKESH ROY AND SANJAY KAROL, JJ.]

HEADNOTES

**Issue for consideration:** Whether clause 4 of the Memorandum of Settlement (MoS) dated 10th April 2002 create a bar on departmental proceedings continuing when the person subjected thereto is being tried before a criminal court for offences of the same origin; and whether acquittal in some of the connected proceedings entail a benefit in the surviving proceedings, inuring a right upon the delinquent employee of automatic discharge in disciplinary proceedings.

**Service Law – Departmental proceedings pending criminal trial arising from the same transactions, if to be stayed – Acquittal in one of the proceedings if entails an acquittal in the other:**

**Held:** Clause 4 of the MoS does not envisage a complete standstill of departmental proceedings as a result of the pendency of criminal proceedings – It may be desirable or, in certain circumstances, advisable for disciplinary proceedings to be stayed when criminal proceedings are ongoing however, stay is not "a matter of course" and is only to be given after consideration of all factors, for and against – Departmental proceedings cannot be unduly and unjustly delayed – It is only after the completion of the entire process of disciplinary proceedings that the respondent relying upon clause 4 of the MoS filed writ petition challenging the action, which was a belated attempt only to forestall its implementation – Further, completion of trial must be construed as completion "within the reasonable time frame" and the clause cannot come to the aid of the employee "more so", for "prolongation on the trial" – In the instant case, the completion of the trial concerning the crime registered in the year 1996

is nowhere nearing completion – On facts, no plea of MoS was ever taken – No specific plea of postponement of disciplinary proceedings awaiting conclusion of a criminal trial was made – Neither was it the case that the trial to which the respondent was subjected to begin within one year of the commission of the offence nor does the record speak to this effect – It is not mandatory to stay the disciplinary proceedings particularly when they were initiated after the prescribed period of one year – The restriction within clause 4 is not complete and is to be applied on facts – Furthermore, the nature of proceedings being wholly separate and distinct, acquittal in criminal proceedings does not entitle the delinquent employee for any benefit in the latter or automatic discharge in departmental proceedings and would also not tantamount to closure or culmination of proceedings in favour of the delinquent employee – Impugned judgment set aside – Respondent's dismissal from service restored. [Paras 14.2, 15, 19, 22-24, 26 and 28-30]

**Service Law – Simultaneous departmental and criminal proceedings, principles to deal with – Discussed.**

**LIST OF CITATIONS AND OTHER REFERENCES**

*State Bank of India & Ors. v. Neelam Nag* (2016) 9 SCC 491 : [2016] 5 SCR 278; *State of Rajasthan v. B.K. Meena and Ors.* (1996) 6 SCC 417 : [1996] 7 Suppl. SCR 68; *M Paul Anthony v. Bharat Gold Mines Ltd.* (1999) 3 SCC 679 : [1999] 2 SCR 257; *Karnataka Power Transmission Corpn. Ltd. v. C. Nagaraju* (2019) 10 SCC 367; *Nelson Motis v. Union of India* (1992) 4 SCC 711 : [1992] 1 Suppl. SCR 325; *State of Karnataka v. Umesh* (2022) 6 SCC 563 – relied on.

*United Commercial Bank & Ors. v. P.C. Kakkar* (2003) 4 SCC 364 : [2003] 1 SCR 1034 – referred to.

**OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2518 of 2012.

From the Judgment and Order dated 07.01.2009 of the High Court of Gauhati in WA No. 3 of 2006.

**Appearances:**

Vikas Singh, Sr. Adv., Sanjay Kapur, Surya Prakash, Arjun Bhatia, Ms. Deepeika Kalia, Keshav Khandelwal, Advs. for the Appellants.

Jitendra Bharti, Deepak Goel, Mithilesh Kumar Jaishwal, Ms. Alka Goyal, Advs. for the Respondent.

**JUDGMENT / ORDER OF THE SUPREME COURT****JUDGMENT****SANJAY KAROL, J.**

The instant *lis* presents two questions for consideration by this Court. They are-

- (a) Does clause 4 of the Memorandum of Settlement dated 10<sup>th</sup> April 2002 create a bar on departmental proceedings continuing when the person subjected thereto is being tried before a criminal court for offences of the same origin?
- (b) Does acquittal in some of the connected proceedings entail a benefit in the surviving proceedings? Further, inuring a right upon the delinquent employee of automatic discharge in disciplinary proceedings?

This appeal, by way of special leave, is directed against the final judgement and order dated 7<sup>th</sup> January 2009 passed in Writ Appeal No.03/2006 by which the order passed in Writ Petition (Civil) No.12 of 2005 dated 25<sup>th</sup> July 2005 allowing the appeal of the Respondent herein against the order of dismissal from bank services dated 28<sup>th</sup> March 2003 and the rejection of the departmental appeal vide order 16<sup>th</sup> August 2004, was allowed and the order of the Learned Single Judge confirmed.

**Background**

3. The facts of the instant dispute as they emanate from the record are:-

3.1 The respondent namely P. Zadenga<sup>1</sup> was employed in the State Bank

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1 Hereinafter referred to as "the delinquent employee"

of India<sup>2</sup> as Assistant (CAT) at the Dawrpui Branch, Aizawl. Three government retailers lodged a complaint with the Aizawl Police Station that their challan-deposits with the said Branch had not been entered into the cash receipt scroll. The District Civil Supply Officer, Aizawl West, also lodged a complaint that a certain retailer had taken the delivery of particular food stuff using a fake challan.

3.2 Pursuant thereto, disciplinary proceedings were initiated against the respondent with the issuance of a Memorandum dated 8<sup>th</sup> December 1999, wherein it was alleged that he had received Rs.61,908 for a deposit on 19<sup>th</sup> April, 1996 in respect of which a challan was issued, but the amount never deposited in the respective account. Two other similar occurrences dated 21<sup>st</sup> February 1995 regarding Rs.24,640 and Rs.27,412 were also alleged.

3.3 Three different FIRs stood registered against him, under which he was arrested but later released on bail. In his written show cause to this Memorandum, the Delinquent employee contended that the disciplinary proceedings should be either dropped or closed since criminal cases were pending him, arising from the same set of transactions.

3.4 The appellant-bank proceeded to appoint an inquiry officer who, in his report, submitted that three out of four charges stood established. The Delinquent Employee, again denying the charges, filed a response to that but was eventually dismissed from the services at the bank, vide the order of dismissal dated 28<sup>th</sup> March 2003. The departmental appeal filed by him, after due opportunity of hearing, was dismissed on 16<sup>th</sup> August 2004.

4. Aggrieved by the dismissal of the departmental appeal, the delinquent employee filed Writ Petition (Civil) No.12 of 2005 before the Gauhati High Court. The question before the said Court was: whether, in view of the Memorandum of Settlement dated 10<sup>th</sup> April

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2 Hereinafter, the "Appellant Bank"

2002<sup>3</sup>, the disciplinary proceedings against the delinquent employee (respondent) herein ought to have been stayed or not.

5. Having recorded that post signing of the said MoS, the Shastri Award as confirmed by the Desai Award “ceased to exist for all intents and purposes” the Court observed that clause 4 of the said document was clear and unambiguous and, therefore, it was not correct for the bank to have subjected him to disciplinary proceeding during the pendency of criminal proceedings.

6. However, it would be open for the disciplinary authority to act under the clauses of the MoS after the criminal cases against the delinquent employee having reached a conclusion, one way or the other.

7. Dissatisfied by the order of the learned Single Judge, a Writ Appeal was filed bearing No.03 of 2006. Having discussed the background of the case, the Division Bench discussed the contention on behalf of the bank regarding the applicability of the Shastri Award and observed that the continuation of the disciplinary proceedings during the pendency of criminal cases would be an infraction, given para 521(3) thereof.

8. In conclusion, the Division Bench upheld the order of the learned Single Judge and confirmed the setting aside of the disciplinary proceedings.

### **The Present Appeal**

9. We have heard Mr. Vikas Singh, learned senior counsel for the appellant bank and Mr. Jitendra Bharti for the delinquent employee.

10. Inviting attention to several decisions rendered by this Court, it is argued on behalf of the appellant-bank that (i) initiation of departmental proceedings binding criminal trial would not amount to an automatic stay unless, of course, a complicated question of law is involved in the matter; (ii) acquittal in a criminal trial in relation to the very same impugned action would not preclude the employer to initiate departmental proceedings;

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<sup>3</sup> Hereinafter referred to as “MoS”: between the Management of 52 ‘A’ Class Banks as represented by the Indian Banks’ Association and their workmen as represented by the All India Bank Employees’ Association, National Confederation of Bank Employees, Indian National Bank Employees’ Federation.

and (iii) mere non-compliance of the provisions of bipartite agreement, in attending facts, would not result in the disciplinary action to be *void ab initio*.

11. On the other hand, it is argued on behalf of the delinquent employee that the disciplinary proceedings, the subject matter of the instant *lis*, were in gross violation of the bipartite agreement, which has been held to have the force of law. In any case, Respondent stand acquitted in two out of three criminal trials. Also, the action initiated by the employer was belated and an afterthought only to harass the delinquent employee.

12. Before proceeding to the merits of the issue at hand, it would be appropriate to reproduce clause 4 of the MoS dated 10<sup>th</sup> April 2002, which is the bone of contention in this dispute, for the delinquent employee contends an apparent embargo on proceedings with disciplinary enquiry when criminal cases arising from the same transactions are pending, and the appellant-bank submitting to the contrary of there being no such restriction. Clause 4 reads as under: -

"If after steps have been taken to prosecute an employee or get him prosecuted, for an offence, he is not put on trial within a year of the commission of the offence, the management may then deal with him as if he had committed an act of "gross misconduct" or of "minor misconduct", as defined below; provided that if the authority which was to start prosecution proceedings refuses to do so or comes to the conclusion that there is no case for prosecution it shall be open to the management to proceed against the employee under the provisions set out below in Clauses 11 and 12 infra relating to discharge, but he shall out below in Clauses 11 and 12 infra relating to discharge, but he shall be deemed to have been on duty during the period of suspension, if any, and shall be entitled to the full wages and allowances and to all other privileges for such period. In the event of the management deciding, after enquiry, not to continue him in service, he shall be liable only for termination with three months' pay and allowances in lieu of notice as provided in Clause 3 above. If within the pendency of the proceedings thus instituted is put on trial, such proceedings shall be stayed pending the completion of the trial, after which the provisions mentioned in Clause 3 above shall apply."

(Emphasis Supplied)

13. In respect of the interpretation of clause 4, we find this Court to have observed in **State Bank of India & Ors. v. Neelam Nag<sup>4</sup>** as follows:-

**“21.** In the plain language of Clause 4, in our opinion, it is not a stipulation to prohibit the institution and continuation of disciplinary proceedings, much less indefinitely, merely because of the pendency of a criminal case against the delinquent employee. On the other hand, it is an enabling provision permitting the institution or continuation of disciplinary proceedings, if the employee is not put on trial by the prosecution within one year from the commission of the offence or the prosecution fails to proceed against him for want of any material.

**22.** As can be culled out from the last sentence of Clause 4, which applies to a case where the criminal case has in fact proceeded, as in this case, for trial. The term “completion of the trial” thereat, must be construed as completion of the trial within a reasonable time-frame. This clause cannot come to the aid of the delinquent employee—who has been named as an accused in a criminal case and more so is party to prolongation of the trial.”

14. Against this backdrop, it is also imperative that we look into the position of law regarding two proceedings of similar origin continuing simultaneously.

14.1 This Court in **State of Rajasthan v. B.K. Meena and Ors.<sup>5</sup>** referred to some decisions on the aspect of stay on disciplinary proceedings and observed :-

**“14.** It would be evident from the above decisions that each of them starts with the indisputable proposition that 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, it is emphasised, 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

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4 (2016) 9 SCC 491

5 (1996) 6 SCC 417

be enunciated in that behalf...The interest of the delinquent officer also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges, his honour should be vindicated at the earliest possible moment and if he is guilty, he should be dealt with promptly according to law. It is not also in the interest of administration that persons accused of serious misdemeanour should be continued in office indefinitely, i.e., for long periods awaiting the result of criminal proceedings. It is not in the interest of administration. It only serves the interest of the guilty and dishonest. While it is not possible to enumerate the various factors, for and against the stay of disciplinary proceedings, we found it necessary to emphasise 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. ...."

(Emphasis supplied)

14.2 Further, this Court in **M Paul Anthony v. Bharat Gold Mines Ltd.**<sup>6</sup> elucidated the following principles in dealing with departmental and criminal proceedings simultaneously:-

- a. No bar exists on both proceedings continuing simultaneously, though in an appropriate, separate forum.
- b. If said proceedings are on identical/similar facts and if the charges levied against the delinquent employee are of a serious nature, then it would be desirable if the departmental proceedings are stayed till the conclusion of the other.
- c. The nature of the charge or the involvement of complex questions of law and fact depends on the facts and circumstances of each case, i.e., the offence, nature of the case launched, evidence and material collected.
- d. Sole consideration of the above-mentioned factors cannot be the reason to stay the departmental proceedings.

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6 (1999) 3 SCC 679

e. It must be remembered that departmental proceedings cannot be unduly and unjustly delayed.

f. If the criminal proceedings are delayed, the other, having been stayed on account thereof, may be resumed to conclude the same at the earliest. This may result in two possibilities: either the vindication of the position of the delinquent employee or he being found guilty, enabling the department concern to show him out the door.

14.3 The view taken in **M. Paul Anthony** (supra) was referred to by this Court in **Karnataka Power Transmission Corp. Ltd. v. C. Nagaraju**<sup>7</sup>.

15. As is evident from the judicial pronouncements referred to above, it may be desirable or, in certain circumstances, advisable for disciplinary proceedings to be stayed when criminal proceedings are ongoing; however, stay is not “a matter of course” and is only to be given after consideration of all factors, for and against.

16. Keeping in view **Neelam Nag** (supra), the following essentialities may be culled out for the operation of clause 4 –

a. At least one year ought to have passed since attempts to get the delinquent employee prosecuted;

b. If, after the passage of such time, no prosecution is initiated, then the department may proceed in accordance with its procedure for disciplinary action;

c. If the prosecution commences later in point of time to the disciplinary proceedings, the latter shall be stayed, but not indefinitely. Such proceedings are to be stayed only for a reasonable period of time, which is a matter of determination per the circumstances of each case.

17. The next aspect we must consider is whether an acquittal in one of the proceedings entails an acquittal in the other.

17.1 In **Nelson Motis v. Union of India**<sup>8</sup> it was observed that the question whether departmental proceedings could have continued

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7 (2019) 10 SCC 367

8 (1992) 4 SCC 711

in the face of acquittal in criminal proceedings had no force as “the nature and scope of a criminal case are very different from those of a departmental disciplinary proceeding and an order of acquittal, therefore, cannot conclude the departmental proceeding.”

17.2 In **C. Nagaraju** (supra) it was observed:

**“9. Acquittal by a criminal court would not debar an employer from exercising the power to conduct departmental proceedings in accordance with the rules and regulations. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives.** [Ajit Kumar Nag v. Indian Oil Corp. Ltd., (2005) 7 SCC 764 ]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 PC Act are established, and if established, what sentence should be imposed upon him. The standard of proof, the mode of inquiry and the rules governing inquiry and trial in both the cases are significantly distinct and different. [State of Rajasthan v. B.K. Meena, (1996) 6 SCC 417]

(Emphasis supplied)

17.3 This observation was quoted with profit in the **State of Karnataka v. Umesh.<sup>9</sup>**

18. It is a matter of record that concerning the incident(s) in question, the FIR was registered sometime in 1996, and disciplinary proceedings were initiated on 8<sup>th</sup> December 1999. With the completion thereof in the year 2002 and pursuant to further completion of formalities mandatorily required to be complied with, including the principles of natural justice, the delinquent employee was dismissed from service with the passing of the order dated 28<sup>th</sup> March 2003.

19. An appeal preferred by the delinquent employee was also dismissed in 2004. It is only after the completion of the entire process of disciplinary

proceedings that the delinquent employee, in February 2005, seeking reliance upon clause 4 of the MoS, filed a writ petition challenging the action, which, to our mind, was a belated attempt, only to forestall its implementation.

20. Repetitive as it may sound, we reiterate the principle of law enunciated in **Neelam Nag** (*supra*) that the completion of trial must be construed as completion “within the reasonable time frame” and that the clause cannot come to the aid of the employee “more so”, for “prolongation on the trial”. In the instant case, the completion of the trial concerning the crime registered in the year 1996 is nowhere nearing completion.

21. As a principle of law, we have already observed that a departmental proceeding pending criminal trial would not warrant an automatic stay unless, of course, a complicated question of law is involved. Also, acquittal in a criminal case *ipso facto* would not be tantamount to closure or culmination of proceedings in favour of a delinquent employee.

22. Having perused the delinquent employee’s response to the initiation of inquiry proceedings, most significantly, we notice that no plea of MoS was ever taken. No specific plea of postponement of disciplinary proceedings awaiting conclusion of a criminal trial was made.

23. It is seen that the officer neither pleaded nor indicated the prejudice caused to him as a consequence of the initiation of criminal proceedings or simultaneous continuation of both proceedings.

24. Applying all of the above-noted principles to the facts of the case, we find that neither was it the case of the delinquent employee that the trial to which he was subjected to begin within one year of the commission of the offence nor does the record speak to this effect. It is in the inquiry report<sup>10</sup>, dated 3<sup>rd</sup> December 2001, that an objection to the disciplinary proceedings being conducted while a criminal case was being tried is registered, but even there, no date stands specified.

25. Further, it is not the case of the delinquent employee that the principles of natural justice were not complied with in the disciplinary proceedings of the bank.

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10 Annexure P-4 Pg.109 of the Paperbook

26. Both these aspects, taken along with the fact that it is not mandatory to stay the disciplinary proceedings, particularly when they have been initiated after the prescribed period of one year, we cannot bring ourselves to agree with the courts below. The restriction within clause 4 is not complete and is to be applied on facts. In such a situation, the Division Bench's reliance on **United Commercial Bank & Ors. v. P.C. Kakkar**,<sup>11</sup> is entirely misconceived. Contrary to the conclusion arrived at by the High Court in Writ Appeal, **Kakkar** (supra) furthers the position of the appellant-bank as it states, "acquittal in the criminal case is not determinative of the commission of misconduct or otherwise, and it is open to authorities to proceed with the disciplinary proceedings, notwithstanding acquittal in the criminal case."

27. Surprisingly, having referred to **Kakkar** (supra), which takes the above-mentioned position, the High Court, in the very next paragraph, takes a diametrically opposite view without any reasoning to that. We may, in fact, refer to **Kakkar** (supra) to reiterate what is expected of persons employed in a bank while also observing that the conduct of the delinquent employee herein flies in the face of these principles. This Court noted : -

**"14. A bank officer is required to exercise higher standards of honesty and integrity.** He deals with the money of the depositors and the customers. Every officer/employee of the bank is required to take all possible steps to protect the interests of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the bank... **The very discipline of an organization more particularly a bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct.**"

(Emphasis Supplied)

28. Given the foregoing discussion and in the light of judicial pronouncements discussed supra, the appeal succeeds. We set aside the judgment and order dated 7<sup>th</sup> January 2009 passed in Writ Appeal

No.03/2006, and consequentially, the order passed in Writ Petition (Civil) No.12 of 2005 dated 25<sup>th</sup> July 2005.

29. The questions presented in this appeal are answered as under :

29.1 Clause 4 of the MoS dated 10<sup>th</sup> April 2002 does not envisage a complete standstill of departmental proceedings as a result of the pendency of criminal proceedings. The position of law is that the stay of the latter is desirable, but the same is to be affected only for a reasonable period of time.

29.2 The nature of proceedings being wholly separate and distinct, acquittal in criminal proceedings does not entitle the delinquent employee for any benefit in the latter or automatic discharge in departmental proceedings.

30. Consequently, Mr. P. Zadenga's dismissal from service as per the Memorandum dated 28<sup>th</sup> March 2003 (D.P.S.No.2003/02) is restored.

31. Interlocutory Applications, if any, stand disposed of.

32. Parties to bear their own costs.

Headnotes prepared by:  
Divya Pandey

Appeal allowed.