

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

SWP No. 248/2008, CMP No. 361/2008,  
CMP No. 3252/2011 and  
SWP No. 249/2008, CMP No. 3253 and CMP No. 362/2008  
Date of Order: 31.10.2011

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**Alam Din  
Shah Manzoor**

**vs.  
vs.**

**State and ors.  
State and ors.**

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CORAM:

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**MR. JUSTICE MUZAFFAR HUSSAIN ATTAR, JUDGE**

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Appearing counsel:

For petitioner(s)	Mr. M. I. Sherkhan, Advocate
For respondents:	Mr. Gagan Basotra, AAG

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Whether approved for reporting in digest /journal/media	<b>Yes</b>
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(Oral)

The facts in these two petitions are similar, therefore, these shall stand disposed of by this common judgment. The facts in brief are taken from SWP No. 248/2008.

This appears to be a case of fence eating the field. The petitioner was working as Head Constable and assigned the duty as Motor Cycles rider in the year 2006 in the main office of JKAP 4<sup>th</sup> Bn for daily official dak receiving/distributing. In view of requirement of his service, he was searched in the unit premises on 26.04.2006, but was not found and accordingly, marked absent in the Daily Diary of JKAP 4<sup>th</sup> Bn. Telephonic

information was received by the then DIG (AP) Jammu from SP South Jammu and SDPO Gandhi Nagar, Jammu that petitioner has been arrested by Naka Party, Kunjwani on 26.04.2006 alongwith another Head Constable Shah Manzoor (writ petitioner in SWP No. 249/2008) for carrying liquor in Vehicle (Tata Soft-407) bearing No. 9120-JK02L which was seized/recovered and a case was registered against the petitioner vide FIR No. 38/2006 for the allegations of having committed offence under Sections 168 RPC, 48 Excise Act and 30 of Police Act on the same date i.e. 26.4.2006. He was placed under suspension by the DIG (AP) Jammu vide AROJ Order No. 114 of 2006 dated 26.04.2006. The petitioner was arrested and subsequently granted bail, but reported for the duty after an unauthorized absence of three days. In the meantime, the petitioner was transferred to IRP 5<sup>th</sup> Bn vide order dated 13.06.2006. The DIG (AP) Jammu vide order dated 17.07.2011 directed Commandant JKAP 4<sup>th</sup> Bn Jammu to conduct departmental enquiry against both the delinquent officials. Enquiry officer reverted back the case to the authority concerned on the plea that a criminal case is pending against him before the criminal court. Thereafter, another officer was directed to conduct the departmental enquiry against the

petitioner by observing that there is no bar in conducting departmental enquiry against him during pendency of criminal case. On this, departmental enquiry was initiated against the petitioner. The enquiry officer made recommendations vide letter dated 8.10.2007 recommending therein that annual increments of the delinquent official be forfeited for a period two years and period of unauthorized absence i.e. w.e.f. 21.11.2006 to 10.09.2007 be treated as Dies-non and the period w.e.f. 11.09.2007 onwards be treated as on duty and he be reinstated into service till outcome of pending court verdict.

DIG Armed Range- Jammu did not agree with the recommendations made by the Enquiry Officer and issued final Show Cause Notice to the petitioner, wherein he was asked to explain his position as to why he be not removed from service. It is, this Show Cause Notice, which is called in question by the petitioner in the writ petition on the principal ground that criminal case, on same facts is pending adjudication before the trial court, so simultaneously departmental enquiry cannot be held. The petitioner accordingly prayed for issuance of writ of certiorari seeking quashment of Show Cause Notice dated

27.12.2007, alongwith notice dated 12.2.2008 and also for quashing the findings of enquiry officer dated 26.11.2007.

Communication dated 12.2.2008 shows that report of the Enquiry Officer along with relevant material has been communicated to the petitioner so as to enable them to reply the final show cause notice.

On notice issued, reply affidavit has been filed by the respondents.

Heard learned counsel for the parties.

Considered the matter.

Learned counsel for the petitioner submitted that in the face of the pendency of criminal case against the petitioner and when charges and witnesses are same before the criminal court, departmental enquiry cannot be proceed until criminal court returns its findings. Learned counsel for the petitioner relied upon a judgment titled, State Bank of India and ors-appellants vs. R. B. Sharma-respondent, reported in AIR 2004, Supreme Court, 4144.

Mr. Basotra, learned AAG appearing for the respondents submitted that there is no bar for conducting departmental enquiry and criminal case simultaneously and requested for dismissal of the writ petition on this ground.

An employee, more particularly a member of disciplined force has the statutory obligations to protect the law and enforce the same. The allegations in this case are that protectors of law have turned out to be a breakers of law. The allegations against the petitioner were that he was involved in transportation of liquor in the police vehicle instead of discharging his duty, which were assigned to him.

Initiation of criminal proceedings become statutory responsibility of the Police Station after having received information that criminal act has been committed. If prosecution succeeds in proving the allegations which were made against the accused before the court of competent jurisdiction, the accused is to be awarded punishment in accordance with law, which will include to sentence him.

Criminal prosecution is being launched in the interest of public at large. The criminal courts arrive at final conclusion and convict and sentence an accused only when allegations are proved beyond all shadow of doubt.

The purpose of initiation of criminal proceedings is to have crime free society and that the purpose to initiate departmental proceedings is to clean the services from undesirable persons. The departmental enquiry is initiated

against an employee to maintain discipline in service and proceedings in the departmental enquiry are to be conducted in accordance with the statutory rules occupying the field. In criminal proceedings guilt/charges against the delinquent official has to be proved beyond all shadow of doubt whereas, charges against the delinquent officials in the departmental enquiry can be proved on the preponderance of probabilities. The criminal proceedings and departmental enquiry are entirely different. May be that in certain cases, the charges as also evidence before any criminal court and the department proceedings are similar and identical, but as the purpose and object to be achieved in both the proceedings is entirely different, so it cannot be allowed to destroy the other.

The Criminal proceedings take long time for conclusion when departmental proceedings are initiated and concluded within a reasonable dispatch. B. R. Sharma's case has not ruled that departmental enquiry in all circumstances cannot be proceed, in case a criminal case is going on. Paragraphs 7 & 12 of the judgment (supra) are reproduced as under:

*"7. It is fairly well settled position in law that on basic principles proceedings in criminal case and departmental proceedings can go on simultaneously, except where departmental proceedings and criminal case are based on the same set of facts and the evidence in both the proceedings is common.*

*12. A bare perusal of the impugned order of the High Court shows that after noticing the regal submissions, learned single judge came to an abrupt conclusion that the petitioners in the case before it ( the employee) has been able to show substantially that the entire matter in the departmental proceedings and before criminal courts is the same. No details have been indicated to justify this conclusion. Though elaborate reasoning may not be necessary to be indicated, certainly, the skeletal description of how there is substantial similarity has to be indicated. That has not been done. The employee who appeared in person submitted that sever5al materials are available which would go to show that the matter is substantially the same. On the contrary, learned senior counsel appearing for the employer Bank submitted that they are founded on different premises and, therefore, unreasoned conclusion of learned single Judge cannot be maintained. He additionally pointed out that the respondent-employee is responsible for delaying the criminal case and be cannot be permitted to take advantage of the long pendency of the criminal case”*

In the case in hand, beside allegations of criminal act, there are also charges against the petitioner of remaining unauthorizedly absence from duty, for which an enquiry was conducted against him. The case of B. R. Sharma (supra) does not in any manner support the case of petitioner.

For the above stated reasons, both the petitions are dismissed along with connected CMPs. The petitioners shall file reply to the final Show Cause Notice within a period of four weeks from today. Thereafter, the respondents shall consider the reply and take final decision in the matter in accordance with rules.

**(Muzaffar Hussain Attar)**  
**Judge**

JAMMU  
31.10.2011  
Karam\*