

IN THE HIGH COURT OF TRIPURA
AGARTALA

W.P.(C) No.548 of 2012

Sri Intu Marak,
son of late Samir Marak, resident of
Pattachara, P.O. Garji, South Tripura
District

..... **Petitioner**

V e r s u s

- 1. The State of Tripura,**
represented by the Secretary, Home
Department, having his office at
Secretariat Complex, P.O. Kunjaban,
P.S. New Capital Complex, Agartala,
District – West Tripura
- 2. The Director General of Police,**
Government of Tripura, P.O. Agartala,
District – West Tripura, PIN-799001,
- 3. The Superintendent of Police,**
Dhalai, P.O. Ambasa, District – Dhalai
Tripura

..... **Respondents**

BEFORE
THE HON'BLE MR.JUSTICE S. TALAPATRA

For the petitioner : Mr. C.S. Sinha, Advocate
For the respondents : Mr. A. Bhattacharji, Advocate
Date of hearing and : **31.05.2016**
delivery of judgment & order

Whether it is fit for reporting :

Yes	No
	√

JUDGMENT & ORDER (ORAL)

Heard Mr. C.S. Sinha, learned counsel appearing for
the petitioner as well as Mr. A. Bhattacharji, learned counsel
appearing for the respondents.

[2] By means of this writ petition, the petitioner who is an Inspector of Police has challenged the Memorandum under No.8941/F.78/SP(RSV)/DLI/ABS/12 dated 30.05.2012, Annexure-4 to the writ petition, contending fundamentally that the similar charges were framed against the petitioner by the Memorandum under No.4380/F/SP(RSV)/DLI/ABS/09 dated 07.03.2009, Annexure-1 to the writ petition, and by the final order under D.P. No.671/2011 dated 30.03.2011, Annexure-2 to the writ petition, the said memorandum initiating the disciplinary proceeding was withdrawn with the following further order:

"I have taken a lenient view of such misconduct and it is ordered that the D.P is dropped as the article of charges in the D.P. are similar to the criminal charges he is facing the in the Court. His suspension period w.e.f. 28.01.2009 FN to 04.06.2009 FN is treated as on duty. A fresh DP will be initiated on the charges which are not link in the criminal case."

[3] It is to be noted that the petitioner was implicated and investigated in a criminal case in furtherance of the written ejahar dated 28.01.2009 in East Agartala Police Station alleging that on 26.01.2009 her husband Budhiram Debbarma who was a driver in the Police Department and posted in Ganganagar Police Station informed her over his mobile phone that he had been assaulted by the petitioner herein, and hospitalized. The informant and her two sons when came to Ganganagar PHC, they came to know that her husband had been brutally assaulted by the said police officer. On the basis of the said ejahar, Ganganagar P.S. case No.3/2009 under Sections 302/34

of the IPC was registered as the informant's husband died. After investigation by the CID, the final police report chargesheeting the petitioner was filed under Section 304 of the IPC which ultimately was tried in ST 17(NT/KMP)/2010 by framing the charge under Section 304 of the IPC. But finally, the petitioner was acquitted from the said charge as two distinct versions appeared in the prosecution case. Thus, the trial court acquitted the petitioner from the charge framed against him. By the memorandum dated 07.03.2009, Annexure-1 to the writ petition, 3(three) charges were propose to be inquired against the petitioner on the said assault. Those were closely similar to the charges framed by the trial court i.e. the court of the Additional Sessions Judge, North Tripura, Kamalpur and accordingly, the final order dated 30.03.2011, Annexure-2 to the writ petition, has been passed dropping the departmental proceeding reserving the right to initiate fresh departmental proceeding on the charge/s not linked to the charge of the said criminal trial.

[4] By the impugned memorandum dated 30.05.2012, the following charges have been proposed against the petitioner:

ARTICLE OF CHARGE No.I

Inspr. (UB) Intu Marak of Dhalai District is charged for gross misconduct in that while he was working as C.I Ambassa, on 26.01.2009 at about 1600 hrs gave a slap to C/D 6777 Budhiram Debbarma, Driver of Ganganagar PS, following a hot altercation and when he opened the door of the vehicle, the said driver fell down on the stake of brick chips placed on

the road side and he received serious internal injury and consequently died on 27.01.2009 on the way to GB hospital, Agartala, which is unexpected conduct and unbecoming on the part of a supervising Police Officer.

ARTICLE OF CHARGE No.II

Inspr. (UB) Intu Marak of Dhalai District is charged for gross misconduct in that while he was working as C.I Ambassa, on 26.01.2009 Insp. (UB) and C/D Budhram Debbarma (now deceased) at about 1600 hrs which was informed by the said driver to her wife over phone that he was tormented by the said Insp. and advised to lodge a FIR against him, if he died. Instead of taking departmental steps against he said driver, involved Insp. (UB) Intu Marak in a controversial reaction to the alleged indiscipline conduct of the said driver which is totally unbecoming on the part of a superior officer.

[5] According to Mr. C.S. Sinha, learned counsel appearing for the petitioner, comparison of the two memoranda containing the charges, as well as the list of the documents and witnesses, would show that the petitioner is sought to be proceeded on the same set of charge as proposed by the memorandum dated 07.03.2009 by the impugned memorandum dated 30.05.2012. For purpose of comparison, the charges as was proposed by the memorandum dated 07.03.2009, Annexure-1 to the writ petition, are also reproduced hereunder:

ARTICLE OF CHARGE No.I

Inspr. (UB) Intu Marak of Dhalai District is charged for gross misconduct in that while he was posted at Ambassa as C.I and in course of duty at Ganganagar PS area he was involved in an altercation with CD/6777 Budhram Debbarma of Ganganagar PS on 26.01.2009 evening leading to scuffle and eventually leading to death of the latter on 27.01.2009. This is an act of gross misconduct and unbecoming on the part of a member of disciplined force like Police.

ARTICLE OF CHARGE No.II

Inspr. (UB) Intu Marak of Dhalai District is charged for gross misconduct in that while he was posted at Ambassa as CI and in course of duty at Ganganagar PS area he was arrested in c/w Ganganagar PS case No.03/09 U/S 302 IPC and forwarded to the Ld. Court. This is an act of gross misconduct and unbecoming on the part of a member of disciplined force like police.

ARTICLE OF CHARGE No.III

Inspr. (UB) Intu Marak of Dhalai District is charged for gross misconduct in that while he was posted at Ambassa as CI and in course of duty at Ganganagar PS area he shown his denial/negligence to the duty. This is an act of gross misconduct and unbecoming on the part of a member of disciplined force like Police.

Whereas the memo of the article of the charges and connected papers were dully served upon the delinquent Insp. (UB) Intu Marak of Dhalai District vide this office memo No.4380/F/SP(RSV)/DLI/ABS/09 dated 07.03.2009 through O/C Ambassa PS Dhalai and he had dully received the memo of charges.

[6] According to Mr. Sinha, learned counsel appearing for the petitioner that there are mere changes in the words here and there but ultimately the charges as proposed by the memorandum dated 30.05.2012, Annexure-4 to the writ petition, have cognate relation and close resemblance with the charges as was proposed by the memorandum dated 07.03.2009 and according to him, it is a denovo proceeding on the same and similar charges. Such action by the disciplinary authority is impermissible in law. He has further submitted that the gravamen of the charge is assault and in the previous memorandum dated 07.03.2009, the charges emerging from the said assault were declared to be exactly similar to the charges

framed in the criminal trial and accordingly, the said charges were abandoned. For the same reason, according to Mr. Sinha, learned counsel, the charges proposed in the memorandum dated 30.05.2012 cannot be sustained.

[7] From the other side, Mr. A. Bhattacharji, learned counsel appearing for the respondents making a close study on both the charges has submitted that the submission of Mr. Sinha, learned counsel appearing for the petitioner cannot be accepted by this Court. The charges as framed by the memorandum dated 30.05.2012 are confined to the conduct, which according to the respondents, constitutes misconduct for proceeding against the petitioner. That does not have any relation with a culpable act on which the charge in the criminal trial was framed or the petitioner was investigated. The respondents have got the authority to inquire into the said misconduct by initiating a disciplinary proceeding. Mr. Bhattacharji, learned counsel has referred the celebrated decision of the apex court in **Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd and another**, reported in **1999 AIR SCW 1098**, where the apex court dealing with the similar situation held as under:

"13. As we shall presently see, there is a consensus of judicial opinion amongst the High Courts whose decisions we do not intend to refer in this case, and the various pronouncements of this Court, which shall be copiously referred to, on the basic principle that proceedings in a criminal case and the departmental proceedings can proceed simultaneously with a little exception. As we

understand, the basis for this proposition is that proceedings in a criminal case and the departmental proceedings operate in distinct and different jurisdictional areas. Whereas in the departmental proceedings, where a charge relating to misconduct is being investigated, the factors operating in the mind of the Disciplinary Authority may be many such as enforcement of discipline or to investigate the level of integrity of the delinquent or the other staff, the standard of proof required in the those proceedings is also different than that required in a criminal case. While in the departmental proceedings the standard of proof is one of preponderance of the probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubts. The little exception may be where the departmental proceedings and the criminal case are based on the same set of facts and the evidence in both the proceedings is common without there being a variance.

* * * * *

18. Then came the decision in *Nelson Motis vs. Union of India & Ors. : (1992) 4 SCC 711*, which laid down that the disciplinary proceedings can be legally continued even where the employee is acquitted in a criminal case as the nature and proof required in a criminal case are different from those in the departmental proceedings. Besides, the Court found that the acts which led to the initiation of departmental proceedings were not exactly the same which were the subject matter of the criminal case. The question was not considered in detail. The Court observed :

'So far the first point is concerned, namely whether the disciplinary proceedings could have been continued in the face of the acquittal of the appellant in the criminal case, the plea has no substance whatsoever and does not merit a detailed consideration. 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 proceedings. Besides, the Tribunal has pointed out that the acts which led to the initiation of the departmental disciplinary proceeding were not exactly the same which were the subject matter of the criminal case.'

(Emphasis supplied)

19. The entire case law was reviewed once again by this Court in *State of Rajasthan vs. B.K. Meena & Ors. : (1996) 6 SCC 417*, wherein it was laid down as under :

"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 situation, it may not be 'desirable', 'advisable' or 'appropriate' to proceed with the disciplinary enquiry when a criminal case is pending on identical charge. The staying of disciplinary proceedings, it is emphasized, 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 be enunciated in that behalf. The only ground suggested in the above decisions as constituting a valid ground for staying the disciplinary proceedings is that 'the defence of the employee in the criminal case may not be prejudiced.' This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law. In our respectful opinion, it means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, 'advisability', 'desirability' or 'propriety', as the case may be, has to be 'determined in each case taking into consideration all the facts and circumstances of the case. The ground indicated in *D.C.M. (AIR 1960 SC 806)* and *Tata Oil Mills (AIR 1965 SC 155)* is also not an invariable rule. It is only a factor which will go into the scales while judging the advisability or desirability of staying the disciplinary proceedings. One of the contending considerations is that the disciplinary enquiry cannot be - and should not be - delayed unduly. So far as criminal cases are concerned, it is well known that they drag on endlessly where high officials or persons are involved. They get bogged down on one or the other ground. They hardly ever reach a prompt conclusion. That is the reality in spite of repeated advice

and admonitions from this Court and the High Courts. If a criminal case is unduly delayed that may itself be a good ground for going ahead with the disciplinary enquiry even where the disciplinary proceedings are held over at an earlier stage. The interests of administration and good government demand that these proceedings are concluded expeditiously. It must be remembered that interests of administration demand that undesirable elements are thrown out and any charge of misdemeanour is inquired into promptly. The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. 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 emphasize 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. All the relevant factors, for and against, should be weighed and a decision taken keeping in view of the various principles laid down in the decisions referred to above."

[8] On close scrutiny of the article of charges as proposed against the petitioner by the memorandum dated

30.05.2012 vis-à-vis the article of charges as brought by the memorandum dated 07.03.2009, this Court is of the considered opinion that the set of charges as proposed by the memorandum dated 30.05.2012 cannot be stated to be based on same set of fact and evidence without any variance at all or on the same set of charge as was proposed by the memorandum dated 07.03.2009.

In view of the above, this Court does not find any merit in this writ petition and accordingly, the same is dismissed.

There shall be no order as to costs.

The order staying the proceeding, if any, is vacated.

JUDGE

Sujay