

**Babulal Verma Vs. Union of India (Uoi) Through Its General Manager, Western Railway and Inquiry Officer, Fa and Cao (C) li**

**Babulal Verma Vs. Union of India (Uoi) Through Its General Manager, Western Railway and Inquiry Officer, Fa and Cao (C) li**

**SooperKanoon Citation :** [sooperkanoon.com/332086](http://sooperkanoon.com/332086)

**Court :** Mumbai

**Decided On :** Jan-17-2008

**Reported in :** 2008(2)ALLMR556; 2008(3)BomCR696; 2008(3)MhLj484

**Judge :** Swatanter Kumar, C.J. and ;J.P. Devadhar, J.

**Acts :** Indian Penal Code (IPC) - Sections 120B, 304A, 338, 420, 467, 468 and 471; [Prevention of Corruption Act, 1988](#) - Sections 7, 13(1), 13(2) and 17; Motor Vehicles Act; Evidence Act; Code of Criminal Procedure (CrPC) - Sections 173; [Constitution of India](#) - Article 20, 20(2) and 226(3)

**Appeal No. :** Writ Petition No. 2210 of 2007

**Appellant :** Babulal Verma

**Respondent :** Union of India (Uoi) Through Its General Manager, Western Railway and Inquiry Officer, Fa and Cao (C

**Advocate for Def. :** Suresh Kumar, Adv.

**Advocate for Pet/Ap. :** C.M. Jha, Adv.

**Disposition :** Petition dismissed

**Judgement :**

Swatanter Kumar, C.J.

1. The petitioner was appointed and is presently working as Area Officer, Western Railway, Churchgate, Mumbai. The Central Bureau of Investigation ('C.B.I.') conducted a raid at Surat Railway Station when the petitioner was working as Area Officer at Surat Railway Station under respondent No. 1. In furtherance to the raid, the C.B.I. filed a charge-sheet on 23rd January, 2000 bearing No. RC 2 (A) 2000 GNR in the Gandhinagar Court for offences punishable under Sections 120B, 420, 467, 468 and 471 of the Indian Penal Code and under Section 13(2) read with 13(1) of the [Prevention of Corruption Act, 1988](#). The C.B.I. Investigation conducted against the petitioner disclosed, inter alia, that the refund was granted on tickets on which journey had already been performed, despite its confirmation full refund was granted deducting only Rs. 10/- as clerical charges, tickets were refunded despite bearing the remarks 'no refund', cancellation slips were prepared on plain paper which is contrary to the Railway Rule and that the refunds were issued by Surat Railway Station, while it was not so authorised and that too without verification of addresses and the persons claimed the refund, etc. The criminal trial is pending before the Court of competent jurisdiction. However, no effective proceedings have been taken in these cases, though they are pending now for a period of more than seven years.

2. Respondent No. 1 issued a charge-sheet to the petitioner on 6th December, 2002. A copy of the said charge-sheet is annexed at Exhibit-B to the petition. There is some similarity between the allegations made in the charge-sheet and the report filed by the C.B.I. under Section 173 of the Criminal Procedure Code. However, the main thrust of the article of charges served upon the petitioner departmentally is of causing financial loss to the Railways to the extent of Rs. 2,06,143/- , failing to exercise proper supervision and condoning the delay and issuing manual refund which was not permissible at Surat Station in such circumstances. The petitioner filed an application before the Enquiry Officer to stay the proceedings on the ground that the article of charges and the report filed by the C.B. I. were on similar facts and as such the departmental enquiry should be stayed. He placed reliance upon the judgment of the Supreme Court in the case of Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. And Anr. : (1999)ILLJ 1094 SC .

Vide order dated 27th December, 2006, the representation of the petitioner was rejected by the enquiry officer stating that the enquiry was at the final stage and there was no justification for staying the departmental enquiry. Dissatisfied by the order of the enquiry officer dated 27th December, 2006, the petitioner also filed a representation before the Disciplinary Authority to stay the domestic departmental enquiry till conclusion of the criminal trial on 28th December, 2006. This was also declined and vide order dated 26th February, 2007, the enquiry officer was asked to continue and conclude the departmental enquiry.

3. Aggrieved with the above order, the petitioner filed Original Application before the Central Administrative Tribunal bearing No. 128 of 2007 on 13th March, 2007. The Tribunal vide its order dated 12th June, 2007, rejected the request of the petitioner. The order of the Tribunal gave the following reasons for declining the request of the petitioner.

A bare reading of the criminal charge-sheet as well as department charge-sheet makes it clear that the CBI is concerned with the issue from a different angle altogether. The CBI is concerned with the larger issue of criminal conspiracy alleged to have been chalked out by the applicant and some other officers along with some outsiders in defrauding the Railways. Whereas the departmental inquiry is solely concerned with the conduct/misconduct of the applicant in his capacity as an Area Officer at Surat Railway Station and his role in the incident. The issues before the disciplinary inquiry is whether the applicant transgressed the powers etc.

12. This is also evident from the records of the case that no complicated questions of law and facts are involved in the case so as to dissuade the Disciplinary Authority to stop the disciplinary proceedings to be conducted by the Inquiry Officer in question. The charges in the disciplinary inquiry are plain and simple and hence the contention of the learned Counsel in this regard that the charges are complicated is rejected. Thus, there is no infirmity or illegality in simultaneously continuing the departmental proceedings in the present case.

4. The order is impugned primarily on the ground that the departmental proceedings and the criminal case are based on identical and similar set of facts

and it would be desirable to stay the departmental proceedings. While relying upon Article 20(2) of the [Constitution of India](#), the petitioner also contends that it will tantamount to double jeopardy and there is prohibition that the petitioner should be asked to continue the departmental enquiry. It is stated that the evidence is the same and as such grave prejudice will be caused to the petitioner, if he is compelled to continue with the departmental enquiry. It will be useful to refer to the relevant law on the subject at this stage.

5. A Bench of this Court in the case of Anupama Naik v. The Standard Chartered Bank and Ors. Writ Petition No. 956 of 2007, decided on 21st June, 2007, after discussing the law in detail held as under.

In the case of Darshan Kumar Gupta v. Punjab National Bank CWP No. 8796 of 2001, a Division Bench of the Punjab High Court answered this question, after discussing the law, as follows:

Whether as a matter of rule, there ought to be deferment of conclusion of departmental proceedings till pronouncement of judgment by the Court of competent jurisdiction in a criminal-trial, where the delinquent claims similarity in articles of charges and the charge framed in criminal proceedings? is the question that arises for consideration before us in this writ petition.

The Petitioner was working as Assistant Manager in Saidoke Branch of the Punjab National Bank. Upon registration of FIR No. 3 of 2000 dated 4.10.2000, the petitioner was arrested by the State Vigilance Department of the State of Punjab on 4.10.2000. Vide order dated 30.10.2000, petitioner was placed under suspension as a result of his arrest in a criminal case. The respondent Bank served a charge-sheet upon him containing different articles of Charges accompanied by memorandum of allegations on 16.4.2001. Enquiry officer was appointed vide order dated 7.6.2001. In furtherance to registration of the F.I.R., the investigating agency filed the challan and a charge was framed against the petitioner by the Court of competent jurisdiction.

The contention of the petitioner is that the charge framed by the criminal Court and the Articles of charges served upon the petitioner are based upon common

premises and in the event of departmental proceedings continuing, the petitioner would suffer a serious prejudice in his defence before the criminal Court the foundation of both the charges being the same. While relying upon the judgment of the Supreme Court in the case of M. Paul Anthony v. Bharat Gold Mines Ltd. 1999 (2) RSJ 318 and Jatnu Ram v. State of Haryana 1999 (3) RSJ 134, the petitioner prays for stay of departmental proceedings till the conclusion of the criminal trial.

Vide order dated 4.7.2001 a Division Bench of this Court had granted interim exparte stay of departmental proceedings. The respondents filed an application for vacation of the stay order under Article 226(3) of the [Constitution of India](#). The reply affidavit was also filed. Written Statement was also filed along with stay application. According to the respondents, the writ petition was liable to be rejected as the petitioner had not approached the Court with clean hands. The charge-sheet dated 16.4.2001 is stated to be different and distinct from the charge framed against the petitioner under Sections 17 and 13(2) of the [Prevention of Corruption Act, 1988](#). It is specifically pleaded that the scope of the enquiry and investigation is distinct and different in the facts and circumstances of the present case. The petitioner was caught red handed while accepting the bribe. As pleaded by the respondents, the petitioner used to demand money from various customers for advancement of loans. The specific incident related to 3.10.2000 when documents of loan were got executed. Despite sanction of the loan, the cash orders were not delivered to persons, which were seized on 4.10.2000 upon arrest of the petitioner.

As this question arises more than often in various cases before the Court, we consider it appropriate to discuss the law enunciated by different judgments in regard to such matters. Thus, it would be appropriate to examine the legal aspect of the case before we proceed to discuss the merits of the contentions raised in view of the peculiar facts and circumstances of this case.

We have no hesitation in answering the proposition at the very outset of the judgment in the negative. It is neither practicable nor possible to accept the contention of the petitioner as a matter of absolute proposition of law. General principles which emerge from various pronouncements of the Hon'ble Apex Court

definitely indicate that there cannot be a strait jacket formula for deciding the controversy of the present kind. Where there is no specific bar for simultaneous progress of the departmental enquiry and the criminal trial, there the exceptions have also been carved out to the rule. There could be cases where the departmental enquiry and the criminal trial are not only based on identical facts, but are so intermingled that their simultaneous progress could cause serious prejudice to the right of defence of the delinquent. Unless the evidence to be led in support of articles of charges in disciplinary proceedings and in criminal trial are so intricate and difficult and require proper technical or legal appreciation for their final determination, no fruitful purpose can be served by stalling departmental proceedings which are much simpler in their nature and do not require strict adherence to rule of evidence.

The distinction between the departmental enquiry and criminal trial is distinctively accepted and is not a fine one so as to normally cause over-lapping of proceedings and evidence. Initiation of criminal proceedings per se is not a bar to concurrent and continuation of disciplinary proceedings on somewhat similar facts. In certain cases, the Supreme Court has even sustained the argument of the department that departmental proceedings could continue even after the delinquent is acquitted by a criminal Court of such charge. In light of these principles we would now refer to specific judgments to provide clarity to the point of view we propose to take in the present case. A Division Bench of this Court in a very recent judgment in the case of Shri Birbal v. Haryana State Electricity Board and Ors. CWP No. 15171 of 2002, decided on 26.09.2002 held as under:

It is settled principle of law that the departmental proceedings in all the cases cannot be stayed till the conclusion of the proceedings before the criminal court merely on the ground the articles of charges and charges before the criminal court have the similarities. It will have to be decided keeping in view the facts and circumstances of each case.

At this stage, it may be relevant to refer to the view expressed by the Hon'ble Apex Court in various cases relating to desirability of continuation of disciplinary proceedings despite criminal charge having been filed against the delinquent

official. The Hon'ble Supreme Court in the case of Delhi Cloth and General Mills Ltd. v. Kushal Bhan : (1960)ILLJ520SC held as under:

Though very often employers stay enquiries into the misconduct of the employees pending the decision of the criminal trial courts dealing with the same facts and that is fair, it cannot be said that principles of natural justice require that an employer must wait for the decision, at least of the criminal trial court, before taking action against an employee. Further reference can be made to the case of Jang Bhadur Singh v. Baij Nath Tewari reported as : 1969 CriLJ267 .

The above view was reiterated with approval and with further extended limits of desirability of continuation of disciplinary proceedings even after being absolved or otherwise by the Hon'ble Supreme Court in the case of State of Punjab and Anr. v. Dalbir Singh and Ors. : (2001)ILLJ46SC , where the court held as under:

The question that arises for consideration, therefore, is whether the levy of penalty under the provisions of Motor Vehicles Act would absolve the concerned employee from all liabilities and would debar the disciplinary authority to initiate disciplinary proceedings. In other words, the question would be whether initiation of a departmental proceedings would tantamount to violation of provision contained in Article 20(2) of the Constitution. Having examined the relevant facts involved in these appeals and having examined the judgment of the Full Bench of Punjab and Haryana High Court, we have no hesitation to come to the conclusion that the Full Bench rightly interfered with the judgment of the Division Bench of Punjab and Haryana High Court. In our view, the payment of penalty under the provisions of Motor Vehicles Act would not absolve the employee fully from all other liabilities nor would it debar the employer from initiating a departmental proceedings for the alleged misconduct of the concerned delinquent employee. Such initiation of a departmental proceedings by no stretch of imagination, can be held to be a violation of provision of Article 20 of the [Constitution of India](#). Similar view was expressed a Division Bench of this Court in R.N. Yadav, Accountant Sugar Mills, Shahabad Markanda, Haryana v. State of Haryana and Ors. 1997 (2) SCT 332.

Another Division Bench of this Court in the case of Som Prakash Wadhawan v. The Uttari Haryana Bijli Vitran Nigam and Ors. decided on 12.4.2002, where the

Court held as under:

It is a well settled rule of law that the scope, effect and consequences of the criminal and departmental proceedings are distinct and different. One necessarily may not determine the fate of the other. Once the employer has a reasonable suspicion on its employee for a serious offence like demanding and accepting illegal gratification, to prevent the department from taking recourse to conclusion of the proceedings, merely because the criminal proceedings have also been initiated against the official by the police/State Vigilance Department, would neither be just nor fair. The burden to show serious prejudice to his rights is upon the delinquent officer/official. The learned Counsel for the petitioner has not been able to show as to what prejudice the petitioner is likely to suffer if both the proceedings continue.

The rules governing a criminal trial are so stringent that a delinquent officer as an accused may get benefit of doubt and resultant acquittal, but that necessarily may not entitle him clearance in the departmental enquiry. The department would be well within its right to conduct an enquiry and pass appropriate orders in accordance with law. In the present case the evidence of the petitioner has still to start and it is not certain as to when the criminal proceedings pending before the Court of competent jurisdiction would attain finality. To keep the departmental proceedings in abeyance for such an indefinite period even otherwise would not be in consonance with the settled canons of service jurisprudence.

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 the disciplinary proceedings pending criminal proceedings, to repeat, should not be a matter of course but a considered decision. Even if stayed at one stage, the decision may require reconsideration if the criminal case gets unduly delayed.

It also must be noticed that there is no rule which on its plain reading or on the principle of 'necessary implication' can be construed as a bar for continuation of the two proceedings simultaneously. Thus, unless it is demonstratively shown that the petitioner would be exposed to grave prejudice and the proceedings are so intermingled that one cannot continue de-hors the other it may not be appropriate

for the Court to stay the continuation of departmental proceedings till conclusion of the criminal proceedings. In this regard reference can also be made to a judgment of the Calcutta High Court and a Division Bench judgment of Rajasthan High Court respectively in the cases of Basudev Mitra 1994(5) S.L.R. 401 and Laxman Lal v. State of Rajasthan 1994 (5) S.L.R. 120. (Reference State of Rajasthan v. Shri B.K. Meena and Ors. : (1997)ILLJ746SC .

In addition to the above judgments, reference to some other judgments of the Apex Court which have a direct bearing on the matter in issue would be proper. In the case of State of Rajasthan v. B.K. Meena and Ors. : (1997)ILLJ746SC , it was held 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 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 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 facts 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 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 period pending criminal proceedings. Stay of disciplinary proceedings cannot be, and should not be a matter of course.

In the case of Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and Anr. 1999 (2) RSJ 318, the Hon'ble Apex Court held as under:

These decisions indicate that though it would not be wrong in conducting two parallel proceedings, one by way of disciplinary action and the other in the criminal court, still it would be desirable to stay the domestic inquiry if the incident giving rise to a charge framed against the employees in a domestic inquiry is being tried in a criminal court. In the case of Corporation of the City of Nagpur, Civil Lines, Nagpur and Anr. v. Ramchandra and Ors. 1981 (2) S.L.R. 274, it was held as under:

Normally where the accused is acquitted honourably and completely exonerated of the charges it would not be expedient to continue a departmental inquiry on the very same charges or grounds or evidence, but the fact remains, however, that merely because the accused is acquitted, the power of the authority concerned to continue the departmental inquiry is not taken away nor is its discretion in any way fettered. In the case of Jang Bahadur Singh v. Baij Nath Tiwari : 1969 CriLJ267 , the Hon'ble Supreme Court held as under:

The issue in the disciplinary proceedings is whether the employee is guilty of the charges on which it is proposed to take action against him. The same issue may arise for decision in a civil or criminal proceeding pending in a court. But the pendency of the court proceedings does not bar the taking of disciplinary action. The civil or criminal court has no such power. The initiation and continuation of disciplinary proceedings in good faith is not calculated to obstruct or interfere with the course of justice in the pending court proceeding. Upon analysing the application of principles enunciated by the Hon'ble Apex Court, a Division Bench of

this Court in the case of Sarita Kumari and Ors. v. The Punjab State Electricity Board, Patiala and Ors. 1995 (1) P.L.R. 495 spelled out the conditions which need to be satisfied before the Court could grant stay of departmental proceedings because of pendency of criminal trial of the delinquent official. The Court held as under:

It is true that Court may not be able to evolve any hard and fast rule or formula on the basis of which stay of departmental proceedings can or cannot be granted in cases of simultaneous invocation of remedies by an employer. Equally true is the position of law that emerges from various other pronouncements including the judgments referred to supra that there can be no legal bar for simultaneous proceedings being taken against delinquent employee i.e. disciplinary as well as criminal action. Thus, we feel that it may be appropriate to satisfy certain basic conditions or criteria which the Courts may consider while dealing with the cases specially of the present nature. These are intended to be general guiding factors and are not exhaustive. Thus, the Courts may have to consider the existence of the following conditions in their right perspective to determine and decide whether the stay may or may not be granted in a given case:

- (i) The criminal action and the disciplinary proceedings are grounded upon the same set of facts;
- (ii) Identical and or similar questions arise for determination before the criminal Court of competent jurisdiction and the disciplinary/enquiring authority;
- (iii) The complexity of the merits of the case, that is to say, the case is of grave nature and involves questions of fact or law which are not simple and normally should be decided by a Court of law alone; and
- (iv) Whether it will be unfair to the delinquent employee to permit continuation of simultaneous proceedings because it would prejudicially affect the case of the said employee, or the delinquent employee would face serious prejudice in his criminal trial because of continuation of disciplinary proceedings.

In the case of Depot Manager, Andhra Pradesh State Road Transport Corporation v. Mohd. Yousuf Miya etc. : (1997)11LLJ902SC in a case where criminal proceedings under Section 304A and 338 IPC were pending against the delinquent, the departmental enquiry on the basis that the delinquent official failed to anticipate accident and prevention thereof, were permitted to continue despite criminal proceedings. Similar view was also taken by the Calcutta High Court in the case of Bhaskar Mondal v. UCO Bank and Ors. 2002(4) SLR 601 after discussing judgments of the Apex Court at some length.

In a recent judgment the Hon'ble Apex Court has also taken the view that even (if) the proceedings before the civil Court and/or the criminal Court are based on the same cause of action, the proceedings before both should be permitted to continue simultaneously as it is not necessary that findings arrived at by the civil Court shall be binding over the criminal Court. They would also not supersede the findings recorded by the others. This view was taken in the case of K.G. Premshanker v. Inspector of Police and Anr. : 2002 CriLJ4343 and it was held that the view expressed by the Apex Court in the case of V.M. Shah v. State of Maharashtra and Anr. : AIR 1996 SC339 is not the correct view. It is indicative of the fact that continuation of proceedings founded on common cause necessarily need not lead to an inevitable result of staying one during the pendency of the other. This view can be appropriately applied to the proceedings before the criminal and departmental proceedings on the principle of ratio decidendi. Therefore, it may not be appropriate to hold as a principle of law that the departmental proceedings ought to be stayed if on somewhat similar facts or cause criminal proceedings were initiated before the competent Court of jurisdiction against the delinquent officer. It is a settled principle of law that the ambit, scope and consequences of these two proceedings are entirely distinct and different. On the analysis of the afore-stated principle it could fairly be stated that stay of departmental proceedings on the ground of pendency of criminal proceedings would not be a rule but an exception which could be applied only upon satisfaction of the afore-noticed conditions precedent.

Having answered the legal proposition as afore- noticed, now we proceed to discuss the merits of the present case on facts. In the present case the petitioner

is facing criminal proceedings under Sections 7 and 13(2) of the [Prevention of Corruption Act, 1988](#) for demanding and accepting the bribe. The said proceedings are stated to be pending before the Court of competent jurisdiction. The department has served a charge-sheet upon the delinquent official. The charges framed against the petitioner are of very general nature. The emphasis of the charge-sheet is that petitioner's activities have tarnished the image of the Bank by demanding and accepting bribe from the applicants/borrowers for sanctioning and disbursing loans in their favour. The charge refers to other transactions as well which are neither the basis nor even mentioned in the challan filed against the petitioner and the charge framed by the Court of competent jurisdiction. The criminal charge relates to demanding bribe from one Shri Amrik Singh. In the statement of imputations supporting the charge-sheet, cases of Pawan Kumar and Baljinder Singh have also been mentioned from whom the petitioner demanded bribe of Rs. 7500/- and Rs. 3500/-.

It is evident from the above narrated facts that scope of the departmental proceedings is entirely different and distinct from that of the criminal proceedings in the present case. We are unable to see any prejudice to the right of defence of the petitioner before the criminal Court in the criminal proceedings as a result of continuation of the departmental proceedings. Both these proceedings are not based upon same set of facts. Similar questions do not arise for determination. There is no complexity in the merits of the respective cases, which are essentially intermingled. We are also unable to subscribe to the view that it would in any way be unfair not to permit departmental proceedings to continue during the pendency of criminal proceedings before the Court of competent jurisdiction. It appears to us that it will not be fair to stall the departmental proceedings during the pendency of the criminal proceedings as they will take considerable time in their conclusion particularly finally. The Bank cannot be compelled to pay to the delinquent officer for all this period despite the fact that as alleged, the petitioner has tarnished the image of the Bank and is prima facie blameworthy of serious misconduct. On the contrary, an appropriate direction should be issued to the Bank to conclude the departmental proceedings as expeditiously as possible and in any case not later than one year from the date of pronouncement of the judgment.

In the case of ASI Sham Lal v. State of Haryana 2004 1 SLR 796, the Court also held as under:

Expeditious conclusion of departmental proceedings is in the interest of the employer as well as the employee. Pendency of these proceedings is more prejudicial to the service career of the delinquent employee. Unless seriously substantial and complicated questions of fact and law, based on identical facts, arise in the departmental and criminal proceedings, which require to be determined by the court of competent jurisdiction, it will not be appropriate to stay the departmental proceedings during pendency of the criminal trial as a matter of rule. In the present case as well, only charge has been framed against the accused and the departmental proceedings have been stayed by order of the court since November 2000. We are unable to appreciate who is the gainer in this state of affairs?

Certain enough, petitioner is a loser as he has been placed under suspension and presumably faces financial hardship. The petitioner is exposed to this stress now for last more than four years. Nothing has progressed on any front. We are informed that charge has been framed in the proceedings before the criminal court on 27.5.2003. The delayed conclusion of departmental proceedings can cause serious prejudice to the petitioner and, thus, its expeditious conclusion would mean the ends of justice. We are of the considered views that it will serve a greater purpose and benefit all concerned if the departmental proceedings themselves are concluded as expeditiously as possible so as to lift the sword of the threatened order of disciplinary proceedings hanging on the petitioner for a considerable period now. Thus, we direct that the departmental proceedings should be concluded within one year from the date a certified copy of this order is brought to the notice of the concerned authorities. We hope, the petitioner shall fully cooperate in the departmental inquiry.

However, we are unable to appreciate what prejudice is likely to be caused to the petitioner as a result of continuation of departmental proceedings. Learned Counsel for the petitioner has not been able to show what are the complicated questions of fact and law which require record based investigation or mode of

proof before conclusion of the proceedings. In terms of law, mode of proof, onus, appreciation of evidence and effect of its conclusion are bound to be different and distinct in both these proceedings.

From the facts of the case it is clear that the evidence in the present case is neither so complex nor requires expertise to appreciate and decide the departmental proceedings. The scope of the departmental proceedings apparently is of a large dimension than the pending criminal proceedings against the petitioner. The scope of evidentiary value in the criminal proceedings or the departmental enquiry is distinct and different. We hardly see any reason to stay the departmental proceedings in the present case. We are of the opinion that no prejudice would be suffered or caused to the petitioner as he has already disclosed his defence in the present writ petition to the knowledge of the State itself. The case of the petitioner is of a false implication and that no proper procedure for trapping a public servant has been adhered to.

Still, another Bench of that Court in the case of Kulwant Singh v. State of Haryana and Ors. Writ Petition No. 20502 of 2002 decided on 16th October, 2003, further added the following view:

In view of the judgments mentioned above, the departmental proceedings and the trial for criminal offence do not stand on a same footing. In the criminal case, the prosecution is required to prove the charges against the accused beyond reasonable doubt whereas in departmental enquiry, the action can be taken on the basis of evidence which may not be strictly in accordance with the provisions of the Evidence Act but complies with the principles of natural justice. The acquittal in the criminal case is relevant for the limited purpose of sentence as held in K.G. Premshankar's case (supra). Therefore principle of stay of departmental proceedings during the pendency of criminal trial is that in appropriate cases of grave nature or cases involving questions of fact or law, departmental proceedings can be stayed so that the defence of the employee in the criminal case may not be prejudiced. The question whether an employee was ever prejudiced is a question to be decided in the facts of each case.

Therefore, in view of principles of law discussed above particularly by Hon'ble Supreme Court in Capt. M Paul Anthony's case (supra), a Division Bench of this Court in Darshan Kumar Gupta and H.C. Inderjit as also in Prem Chand's case (supra), the departmental proceedings against the petitioner in the present case are not required to be stayed.

In view of the principles of law laid down by the Supreme Court in Capt. M Paul Anthony's case (supra) above, the departmental proceedings against the petitioner in the present case are not required to be stayed.

In the criminal case, the petitioner has been charged of tampering with the matriculation certificate wherein the date of birth is alleged to have been changed from 15.9.1961 to 15.9.1964 whereas in the departmental proceedings the allegation is that he has committed fraud by showing less age and got himself enrolled in the police department with fraud. It is also alleged that he has removed pages from the village chowkidar's death and birth register with intention to conceal his date of birth.

None of the principles discussed above are applicable to the facts of the present case which may warrant stay of the departmental proceedings pending criminal trial against him. Not only the allegations are distinct but the evidence shall also be separate. The facts are not complicated nor the petitioner shall be prejudiced by disclosing his defence in departmental proceedings....

10. Now, we may also refer to the judgments relied upon by the learned Counsel appearing for the parties before us. Arguing with some emphasis, the learned Counsel appearing for the petitioner relied upon the observations made in the case of Capt M Paul Anthony to argue that the criminal proceedings need to be stayed wherever the employee is being tried by a criminal Court for an offence based on same facts. In that case relatable to the peculiar facts of the case, Police and panch witnesses were to be examined in respect of rape committed at the house of an employee. The Court said: 'It would be unjust, unfair and rather oppressive to allow the finding recorded at the ex parte departmental proceedings....' In the peculiar facts of the case, and the fact that after facing a trial for 14 years, the person was acquitted by the criminal Court, the Court held that

criminal proceedings could not be instituted against the petitioner.

In the present case, even the charges have not been framed against the petitioner before the Court; and there has been some progress at least in the departmental inquiry which is being avoided by the petitioner on one pretext or the other and primarily, on account of that, the departmental proceedings must be abandoned.

11. Reliance was also placed on a recent judgment of the Supreme Court in the case of NOIDA Entrepreneurs Association v. NOIDA and Ors. : AIR 2007 SC1161 , where the Supreme Court stated that order of the State Government initiated the departmental proceedings against the delinquent pending inquiry by C.B.I., which was passed on the basis of the report of the Commission appointed by it on some points and that the administrative decision that the departmental inquiry was not required was set aside by the Supreme Court as untenable and liable to be quashed. In this very case, the Court clearly stated the principle that it was not possible to lay down any guideline as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in a criminal case against the delinquent officer. Each case would have to be decided on its own facts. The Court held as under:

Each case requires to be considered in the backdrop of its own facts and circumstances. 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 questions of fact and law. We may also notice that in the case of Suresh Chand v. Delhi Transport Corporation Writ Petition (Civil) No. 13122 of 2006 decided on 22nd November, 2006, a Single Bench of Delhi High Court held as under:

9. The petitioner relied upon 2006(3) LLN 158 M.V. Bijlani v. Union of India and Ors. 2006 SCC 1121, G.M. Tank v. State of Gujarat and Ors., Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and Anr. 1999 LLR 499. I find that all these above judgements, relied upon by the petitioner, are all altogether on different footing and facts. The principles of law in respect of a domestic enquiry and criminal proceedings are well settled.

10. In JM Tank's case (supra), the employee was honourably acquitted in criminal trial after recording of entire evidence. The evidence produced before the criminal trial and before the enquiry officer was similar. Under these circumstances, the Supreme Court has observed that findings given by the enquiry officer contrary to the one given by the criminal court in such cases, was unjust, unfair and oppressive. However, in the present case a perusal of order of the MM would show that the evidence of the prosecution was closed by the MM because no one appeared on behalf of the prosecution and the acquittal was recorded because of non production of evidence. The trial had concluded long after the incident while the enquiry was held immediately after the incident and concluded in short time. The entire evidence was recorded by the enquiry officer, while no evidence was produced before the criminal trial. The findings of the criminal court were given on the basis of not recording evidence, which will not affect the result of enquiry.

11. In 2006(3) LLN 158 M.V. Bijlani v. UOI (supra), there was no charge against the delinquent about misappropriation of 4 KS of telegraphic cable wire. The charge was for non maintenance of ACE registers. The disciplinary authority proceeded against the mis-utilization of the amount of cable wires after receipt of the report from CBI (Anti Corruption Bureau). The Supreme Court observed that the appellant should have been charged for misutilization of the store he had handled if he was to be departmentally proceeded against on that basis. The Enquiry Officer proceeded as if in departmental enquiry, the appellant was charged with misappropriation of the property. The Supreme Court held that the evidence recorded by the enquiry officer and inference drawn by him were not commensurate with the charges and, therefore, allowed the appeal. The Supreme Court observed as under:

It is true that the jurisdiction of the Court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e. beyond all reasonable doubts, we cannot lose sight of the fact that the enquiry officer performs a quasi judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the

charges on the basis of material on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with. A Division Bench of High Court of Jammu and Kashmir in *Dr. Naseema Firdous and Ors. v. State of J & K and Ors.* (2001) 1 LR 280, observed as under:

The courts should be careful, cautious and circumspect in staying departmental proceedings on the ground of pendency of criminal proceedings and/or trial. The purpose of the departmental enquiry and of criminal prosecution is completely different and distinct. The delinquent employees should not be allowed to stall, delay or obstruct the departmental proceedings unless they can establish that simultaneous continuation of both the proceedings would cause great detriment to them in the criminal trial. Pendency of proceedings in a criminal court should not be allowed to be used as a shield to get rid of departmental proceedings. The process of the court should not be allowed to be abused by the delinquent employee to get the departmental proceedings stayed on flimsy grounds which are not relevant for considering the desirability or advisability of staying the departmental proceedings. The departmental proceedings should not be stayed as a matter of course.<sup>14</sup> Thus, it is imperative for the Court to evolve legal solution in relation to the factual matrix of a given case and it is neither permissible nor prudentially correct to set a straight jacket formula, which will universally answer the question in the negative or affirmative. The law has to be applied to the facts of a given case. The principle of *ratio decidendi* also requires that the point decided in a case should be followed and applied to another case, provided the factual matrix has the ingredients of similarity. The departmental proceedings can be stayed where the articles of charge in criminal trial and basis of departmental inquiry are identical, the evidence is similar, it is so complex and a technical matter that the Court would be in a better position to determine the controversy, and the findings of the Court so recorded are bound to have adverse effect.

15. There is no accepted percept of law to support the contention that in every case, where a departmental inquiry and criminal charge are based on similar facts,

the progress of the departmental inquiry essentially must be stayed till the conclusion of the criminal trial. This could lead to results which are not the intent of the theme of law. There can be cases where it may be appropriate to stay the departmental proceedings; but in such cases, the ingredients noticed in various judgments must be satisfied. Pendency of criminal proceedings initiated on somewhat similar facts by itself would not be a sufficient ground for staying the departmental proceedings. They are independent proceedings, which fall under different jurisdiction of various fora or courts. Unless the charges are so intermingled, and the evidence in support thereof is complex and technical, it may not be appropriate for the bank to continue the proceedings in the face of regular trial before the criminal Court. Loss of confidence may not be the cause which will squarely fall, in view of the well settled principles of law, in such category. Prejudice to an employee is one of the factors which the Court would consider by heeding to such a request. Prejudice is not to be inferred. It is something which should be apparent on the record, and the delinquent should be able to demonstrate that prejudice likely to be suffered by him is to such an extent that judicial intervention would be essential. Whenever an employee is involved in corruption or any other case constituting criminal offence, commencement of the departmental proceedings is inevitable. If the submission of the petitioner is to be accepted, in all such cases, departmental proceedings should be stayed awaiting conclusion of criminal trial, which would mean that for years together, finality of criminal trial would not be there, unless and until final court's pronouncement of judgment upon guilt of the accused or otherwise. That does not appear to be the intent of the service jurisprudence or criminal law, in light of the above stated judicial dictum.

16. In the present case, the Bank had issued, firstly, notice to show case as to why the services of the petitioner be not terminated for loss of confidence. However, later on, the Bank took a decision to serve regular charge-sheet upon the petitioner. In the Memorandum of Misconduct, it is stated that besides the act of fraud and dishonesty, the acts of the petitioner were subversive of discipline, misbehaviour or in disregard to the customers. This charge-sheet was served upon the petitioner on 23rd August, 2006, whereupon the petitioner asked for time to file reply as well as for certain documents vide his letter dated 7th June, 2006.

The only plea taken in the reply was denial of charges and for stay of departmental proceedings. Vide letter dated 27th September, 2006, departmental proceedings were commenced which have been adjourned primarily on the plea of the petitioner that the departmental proceedings are liable to be stayed; and particularly, on one occasion, when the Inquiry Officer was not present. Adjournments were also taken by the petitioner thereafter. The petitioner was placed under suspension, and continues to be so till date. It will be neither just nor fair to stay the departmental proceedings merely because an FIR has been registered and charge- sheet has been filed in the Court of competent jurisdiction. Though the FIR was registered on 6th May, 2005, but till date, even charge has not been framed against the petitioner. Despite friendly relation of the petitioner with the complainant, the latter has still persisted with the action in law, which itself indicates that the plea of loss of confidence placed by the bank is not entirely baseless. The evidence in criminal case and onus of proof as well as the evidentiary value of the statement of witnesses and the methodology of trial would be totally different and distinct from that of the departmental inquiry. This is not a case like the ones relied upon by the petitioner wherein the employee was dismissed for having been convicted by a Court of competent jurisdiction and later was acquitted; and thus, was entitled to reinstatement. In the present case, criminal proceedings still have to commence and it is not necessary that acquittal, even if granted to the petitioner, would automatically result in dropping of the departmental inquiry, inasmuch as the scope of the departmental inquiry is much wider and simpler in its form, scope and onus. As observed by the Supreme Court in Capt. M. Paul Anthony (supra), the Bank can always come to the conclusion as follows:

- (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.

17. Thus, we are of the considered view that it is not essential for this Court to stay the departmental proceedings till the conclusion of the criminal trial in the facts and circumstances of the present case.

6. In a recent decision, in the case of *Indian Overseas Bank, Anna Salai and Anr. v. P. Ganesan and Ors.* 2007 (13) SCALE 446, the Supreme Court has observed that a departmental proceeding pending a criminal proceeding did not warrant an automatic stay. The Supreme Court after analysing the law on the subject has observed as under:

15. Legal position operating in the field is no longer *res integra*. A departmental proceeding pending a criminal proceeding does not warrant an automatic stay. The superior courts before exercising its discretionary jurisdiction in this regard must take into consideration the fact as to whether the charges as also the evidence in both the proceedings are common and as to whether any complicated question of law is involved in the matter.

16. In Delhi Cloth and General Mills Ltd. v. Kushal Bhan : (1960)ILLJ520SC this Court while holding that the employer should not wait for the decision of the criminal court before taking any disciplinary action against the employee and such an action on the part of the employer does not violate the principle of natural justice, observed:' We may, however, add that if the case is of a grave nature or involves questions of fact or law, which are not simple, it would be advisable for the employer to wait the decision of the trial court, so that the defence of the employee in the criminal case may not be prejudiced.

The same principle was reiterated in Tata Oil Mills Co. Ltd. v. The workmen : (1964)ILLJ113SC .

17. In State of Rajasthan v. B.K. Meena and Ors. : (1997)ILLJ746SC , this Court held:' 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 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 employees 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.'

20. The High Court, unfortunately although noticed some of the binding precedents of the Court failed to apply the law in its proper perspective. The High Court was not correct in its view in concluding that the stay of the departmental proceedings should be granted in the peculiar facts and circumstances of the case without analyzing and applying the principle of law evolved in the aforementioned decisions. It, therefore, misdirected itself in law. What was necessary to be noticed by the High Court was not only existence of identical facts and the evidence in the matter, it was also required to take into consideration the question as to whether

the charges levelled against the delinquent officers, both in the criminal case as also the disciplinary proceedings, were same. Furthermore it was obligatory on the part of the High Court to arrive at a finding that the non-stayed of the disciplinary proceedings shall not only prejudice the delinquent officers but the matter also the matter involves a complicated question of law.

21. The standard of proof in a disciplinary proceedings and that in a criminal trial is different. If there are additional charges against the delinquent officers including the charges of damaging the property belonging to the Bank which was not the subject matter of allegations in a criminal case, the departmental proceedings should not have been stayed.

7. In view of the above enunciated principle, the dictum that emerges is that there is no uniform principle that wherever a departmental enquiry and the criminal trial is based on somewhat similar facts, the departmental enquiry should essentially be stayed till conclusion of the criminal trial. Mere similarity of facts per se is not a ground for staying any of the two proceedings. Their scope, ambit and consequences in fact and law are distinct and different. In the present case, the petitioner was served with a charge -sheet on 6th December, 2002, in relation to the article of charges relating to the period of 1999. Despite objection to the departmental proceedings it has reached at a mature stage and is about to conclude. It will be unfair to stay the departmental enquiry particularly when prosecution evidence in the criminal case has not even started. Even for the sake of argument it is accepted that in the criminal trial the petitioner may be acquitted, that itself would not absolve the petitioner of his liability in the departmental proceedings. The extent of proof of criminal charge would be beyond any reasonable doubt while in the departmental proceedings a person can be found guilty even on reasonable probability. It will be travesty of justice, if the respondents are not permitted to complete the departmental enquiry and await the final decision of the criminal trial which may take years. If the petitioner is not guilty of the article of charges, the departmental enquiry will be dropped. But, if he is found to be guilty, then the respondents must have the right to proceed in accordance with law. Stay of departmental proceedings would not serve ends of justice and, in fact, would be prejudicial both to the employer and employee. No

right of the petitioner would be offended much less any constitutional protection if departmental proceedings continue. The charges of financial misappropriation and wrongful refunds of the tickets to large number of persons are charges of serious kind. The evidence in the departmental enquiry thus neither is complex not complicated. It raises no complex questions of law. No expert evidence is required to be led and apparently there are no legal niceties of complex nature which require resolution particularly in the departmental proceedings. The case of the department is simple as is apparent from the article of charges and they must be given an opportunity to complete the departmental enquiry expeditiously so that even the petitioner also does not suffer agony of sword of departmental proceedings hanging on his head for a long time. The employee is also entitled to know the fate of the departmental proceedings at the earliest. Most of the contentions raised by the petitioner in the present writ petition have been rendered ineffective inasmuch as the departmental proceedings have reached nearly to final stages. In these circumstances and the fact that the article of charges is based upon simple facts and no complicated determination is called for in the departmental enquiry, in our opinion, it is not necessary to stay the further proceedings in the departmental enquiry.

8. For these reasons, we find no merit in this petition. The same is dismissed, leaving the parties to bear their own costs.

9. Before parting with this file, however, we direct the respondents to ensure that the departmental proceedings are concluded within six months from the date of pronouncement of this judgment. We expect the petitioner will fully co-operate in the departmental proceedings.