

**Mukesh Kumar, Constable No. 44 Vs. State of U.P. and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/479375](http://sooperkanoon.com/479375)

**Court :** Allahabad

**Decided On :** Apr-29-2009

**Reported in :** 2009(3)AWC2777

**Judge :** Rakesh Tiwari, J.

**Appellant :** Mukesh Kumar, Constable No. 44

**Respondent :** State of U.P. and ors.

**Disposition :** Petition dismissed

**Judgement :**

**Rakesh Tiwari, J.**

1. Since the matter in issue as well as prayer made is the same, both these petitions are being heard and decided by this common judgment.
2. Heard the petitioner and the standing counsel appearing for the respondents.
3. The petitioner has sought a writ of certiorari quashing departmental disciplinary proceedings initiated against him under Rule 14 (1) of U.P. Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991 (hereinafter referred to as the 'Rules of 1991') in pursuance of charge-sheet dated 19.3.2009 issued by respondent No. 4-Presiding Officer/Circle Officer, Chata, Mathura and a writ in the nature of mandamus directing the respondents to stay further departmental

disciplinary proceedings in pursuance of the aforesaid charge-sheet.

4. The petitioner was posted as constable at Traffic Police Lines, Mathura and is presently under suspension. A charge-sheet dated 19.3.2009 vide Annexure-1 to the writ petition, has also been issued to him. Charges against him are that on 14.1.2009 on inspection, he was not found on duty at Narsingpuram Crossing where he was deputed and sent for duty and that on 16.1.2009 he demanded Rs. 500 from truck driver Truck No. HR 55E 4230 at Gokul Bairaj crossing while he was deputed on duty at Chawannipul, old Bus Stand, Mathura.

5. Case Crime No. 14/2009, under Section 384, I.P.C. and Section 7/13(1)(a) of Prevention of Corruption Act, police station Sadar Bazar, Mathura has been lodged by the truck driver of aforesaid truck against the petitioner, in which the petitioner surrendered before the District Judge, Mathura on 16.1.2009 and he has been granted bail on 20.1.2009.

6. In the aforesaid backdrop the petitioner has been placed under suspension by the S.S.P., Mathura vide order dated 17.1.2009. Charge-sheet against the petitioner in aforesaid Case Crime No. 14/2009 has also been submitted. The S.S.P., Mathura also ordered by conducting disciplinary proceedings against the petitioner and Ramesh Chandra (petitioner in the second writ petition) under the Rules of 1991 and accordingly he was issued a charge-sheet by the Circle Officer, Chata, Mathura who was appointed as Enquiry Officer in the departmental enquiry directing the petitioner to submit his reply by 4.4.2009.

7. The petitioner moved an application dated 7.4.2009 before the S.S.P., Mathura as well as Circle Officer/Enquiry Officer that during pendency of the criminal case, no departmental enquiry can be proceeded simultaneously and departmental enquiry be stayed waiting decision of the criminal case. It is alleged that no decision has been taken by the respondents on the petitioner's application.

8. Counsel for the petitioner has relied upon a Government order dated 1.7.1973 in which it has been clarified that where a person has been charge-sheeted and proceedings have been completed against him, he cannot be tried again for the same charges even though fresh evidence may have come to light, as such

subsequent departmental proceedings is contrary to law.

9. It is urged by the counsel for petitioner that criminal proceedings as well as departmental proceedings are with regard to the same incident in which the charges and evidence are also identical, therefore, it would be expedient to withhold disciplinary proceedings and wait for outcome of the criminal trial to avoid any prejudice to him. In support of his contention, counsel for the petitioner has relied upon decisions of the Apex Court in Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and Anr. : (1999) 3 SCC 679 : 1999 (2) AWC 1579 (SC) and Hindustan Petroleum Corporation Ltd. and Ors. v. Sarvesh Berry, : (2005) 10 SCC 471.

10. In Capt. M. Paul Anthony's case (supra), the Apex Court has ruled that where departmental enquiry is simultaneous continuance of with criminal proceedings, law is settled that scope of these two proceedings is different and they can be continued independently. But in the peculiar facts and circumstances of that case and keeping in view that both the proceedings were based on the same set of facts which were sought to be proved by the same witnesses, viz., police and panches and the Court had already acquitted the appellant therein by rejecting the prosecution story in the criminal proceedings, the Apex Court held that findings recorded against the appellant therein in ex parte disciplinary enquiry could not be sustained. The facts of the present case are totally different from the Capt. M. Paul Anthony's case wherein the appellant had been acquitted in the criminal proceedings and departmental proceedings had been concluded ex parte. Such is not the position in the case in hand. Here criminal proceedings as well as departmental proceedings are yet to conclude and both proceedings are not based on the same set of facts, hence the ratio laid down in Capt. M. Paul Anthony's case does not apply to the facts and circumstances of the present case.

11. As regards Hindustan Petroleum Corporation Ltd.'s case (supra) relied upon by the counsel for petitioner is concerned, in that case also the Apex Court has held that departmental proceedings as well as criminal proceedings both can proceed simultaneously. The Apex Court replying the question when should Court stay departmental proceedings initiated during pendency of criminal proceedings, held that test is whether departmental enquiry would seriously prejudice the

delinquent in his defence at the criminal trial. In the present case, the petitioner has not been able to show as to how the criminal case would be seriously prejudiced if departmental proceedings are proceeded with. The departmental proceedings having not been barred on the ground of pendency of criminal case, this decision is also of no avail to the petitioner.

12. Submission of the counsel for the petitioner that departmental enquiry can be initiated against the petitioner in view of paragraph Nos. 489 and 492 of the police regulations as charges of the criminal case and departmental proceedings are the same, has no substance. Perusal of the charge-sheet issued to the petitioner in the departmental proceedings indicates that there are other charges also against the petitioner of not being present on his place of duty on a different dates than the incident regarding extortion of illegal money from the truck driver giving rise to F.I.R. of Case Crime No. 14/2009, under 384, I.P.C. and Section 7/13(1)(a) of Prevention of Corruption Act, Police Station Sadar Bazar, Mathura. The criminal proceedings is limited to the offences punishable under Section 384, I.P.C. and Section 7/13(1)(a) of Prevention of Corruption Act whereas scope of departmental proceedings is regarding violation of applicable statutory service rules governing service conditions of the petitioner.

13. No doubt, there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case. Whether in the facts and circumstances of a particular case, there should or should not be such simultaneity of the proceedings would depend upon facts and circumstances of that case. The initiation and continuation of disciplinary proceedings is not to obstruct or interfere with the course of justice pending before the Court.

14. In the present case, scope of enquiry in both the proceedings being different based on different evidence and witnesses and since the petitioner has nowhere urged that departmental enquiry will seriously prejudice his defence in the criminal case, in the considered opinion of this Court, it is not a fit case where departmental proceedings against the petitioner should either be quashed or stayed during pendency of criminal proceedings.

15. As a result of aforesaid discussion, both these petitions fall and are dismissed.  
No order as to costs.

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