SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Subrato Sengupta Vs. State Bank of India Through Its Chief General Manager and Ors

Subrato Sengupta Vs. State Bank of India Through Its Chief General Manager and Ors

SooperKanoon Citation : sooperkanoon.com/70462

Court : Jharkhand

Decided On : May-20-2016

Appellant : Subrato Sengupta

Respondent : State Bank of India Through Its Chief General Manager and Ors

Advocate for Def. : Mr. Rajesh Kumar

Advocate for Pet/Ap. : Ms. Shruti Shrestha

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No. 2439 of 2016 1. Subrato Sengupta, S/O Late Nirmal Sengupta, R/O Flat No. 4A, Vendant Apartment, Manoram Nagar, P.O. & P.S.-Hirapur, Dist.- Dhanbad, Jharkhand ... Petitioner -V e r s u s- 1. State Bank of India through its Chief General Manager, Local Head Office, P.O. & P.S.-Gandhi Maidan, Patna, Bihar.

2. General Manager (NW-II) cum Disciplinary Authority, State Bank of India, Local Head Office, P.O. & P.S.-Gandhi Maidan, Patna, Bihar.

3. Deputy General Manager & CCO, State Bank of India, Local Head Office, P.O. & P.S.-Gandhi Maidan, Patna, Bihar.

4. Sri D. N. Singh, Inquiry Authority cum Assistant General Manager (OSD), State Bank of India, Zonal Office, P.O. & P.S.-Bank More, Dhanbad, Jharkhand.

5. Sri Anchal Abhishek, Presenting Officer cum Chief General Manager (Risk Rater), State Bank of India, Local Head Office, P.O. & P.S.- Gandhi Maidan, Patna, Bihar. ... Respondents --------- CORAM: HONBLE MR. JUSTICE PRAMATH PATNAIK ---------- For the Petitioner : Ms. Shruti Shrestha, Advocate. For the Respondents : Mr. Rajesh Kumar, Advocate. ----------- C.A.V. on 18.05.2016. Pronounced on 20.05.2016 Per Pramath Patnaik,J: In the accompanied writ application, the petitioner has sought for quashing of the entire departmental proceeding initiated vide charge sheet dated 17.12.2015 on the ground that the alleged charges are analogous and similar to charges levelled against the petitioner in the pending criminal case and for issuance of mandamus directing the respondents to stay the departmental proceedings based on similar and analogous facts till the conclusion of the criminal case.

2. The facts, as disclosed in the writ application, in a nutshell is that the petitioner was posted as a Medium Enterprise Relationship Manager, (MERM) at Commercial Branch, Bokaro for the period from 12.06.2006 to 08.12.2009. On 28.07.2014, on the basis of the complaint lodged to the Superintendent of Police, Economic Offence Wing (EWO), CBI, Ranchi on the allegation of criminal conspiracy, forgery, cheating in the matter of obtaining Cash credit limit and term loans of various accounts on the basis of false and fabricated documents. Five 2 F.I.Rs., namely, R.C8S)/14, R.C9S)/14, R.C10(S)/14, R.C11S)/14, R.C12S)/14 have been registered by CBI for the offence under Sections 120 B read with Sections 420, 468 and 471, I.P.C. Finally, charge sheet was submitted in all the said five matters for the offences under Sections 120B, 419, 420, 467, 486 and 471 of the I.P.C. and Sections 12 and 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988, wherein, the petitioner has been shown as an accused. The Respondent-Bank decided to initiate a Departmental proceeding against the petitioner for imposing major penalty in terms of Rule 68 (1) of the State Bank of India Officers' Service Rules. In pursuance to such departmental proceeding, the petitioner was served with a charge dated 17.12.2015, issued by the disciplinary authority. As per the Articles of Charge, while the petitioner was

posted as MERM at the Commercial Branch, Bokaro (now SME, Bokaro steel city) during the period 12.06.2006 to 08.12.2009, petitioner failed to discharge his duties with utmost integrity, honesty, devotion and diligence and acted in a manner highly prejudicial to the Bank's interest in violation of Rule 50 (4) of the State Bank of India Officers' Service Rules and these are the allegations on which the charge sheet has been submitted as is evident from Annexure-6 to the writ application. In pursuance to the aforesaid charge, the petitioner submitted his reply on 25.01.2016 denying the charges. Therefore, thereafter, the Enquiry officer and the Presenting Officer have been appointed by the Respondent-Bank and the matter was posted on 25.02.2016, in which the petitioner appeared before the Enquiry Officer and list of prosecution documents have been given to the petitioner and the proceeding has been adjourned to 03.03.2016. It is averred in the writ application that on 17.03.2016, since the petitioner could not get permission from the controlling officer, request was made to adjourn the case, but the petitioner was informed that if the petitioner does not participate in the departmental proceedings, then the proceedings shall be conducted ex parte as is evident from Annexure-11 to the writ application. Again the departmental proceeding has been adjourned to 07.04.2016. Further, it has been 3 adjourned to 26.04.2016.

3. Heard Ms. Shruti Shrestha, learned counsel for the petitioner as well as Mr. Rajesh Kumar, learned counsel for the respondent-Bank.

4. Ms. Shruti Shrestha, learned counsel for the petitioner has vehemently submitted that in the departmental proceedings, the Investigating Officer of the CBI has been called as prosecution witness and the Investigation Officer in the departmental proceeding before examination in the criminal case, would prejudice the defence of the petitioner in the criminal trial before the Special Court, CBI. In that view of the matter, it has been urged by the learned counsel for the petitioner that the departmental proceeding requires to be stayed in the interest of justice. Learned counsel for the petitioner further submits that the charges in the departmental proceedings are replica of the charges in the CBI proceedings, since, almost on similar set of replica charges, the departmental proceeding has been initiated, therefore, till conclusion of the CBI case, departmental proceedings should be stayed. In support of her submissions, learned counsel for the petitioner

has referred to the following decisions of the Honble Apex Court (i) State of Rajasthan-versus-B.K. Meena and others reported in AIR 1997 SC13 (ii) Kusheshwar Dubey-versus-M/s. Bharat Coking Coal Ltd. ad others reported in (1988) 4 SCC319 (iii) Stanzen Toyotestsu India Private Limited-versus-Girish V. and others reported in (2014) 3 SCC636 (iv) Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another reported in (1999) 3 SCC679 Learned counsel for the petitioner has also referred to the decision of the Patna High Court, dated 05.01.2016, in the case of Sudeshwar Sah-versus-The State of Bihar and Ors. passed in C.W.J.C. No. 8697 of 2015 and also on the decision dated 10.10.2014, in the case of Shiv Nandan Sah-versus-The State of Bihar & others passed in C.W.J.C. No. 437 of 2014 and its analogous cases as well as on the decision of the Kolkata High Court dated 26.08.2013, in the case of Sri Firoz Ahmed-versus-Union of India & Ors. passed in W.P. 4 15194 (W) of 2013 as also on the decision of this Court dated 09.04.2001, passed in the case of Ranjit Kumar Dey-versus-Bharat Coking Coal Ltd. and Ors. in C.W.J.C. No.1806 of 1999 (R).

5. Per contra, Mr. Rajesh Kumar, learned counsel for the respondent-Bank has vociferously submitted that the charges in the departmental proceedings are not replica of the charges in the chargesheet of the criminal proceedings, pending before the Special Judge, CBI and not similar, though departmental proceedings, has been initiated on the similar set of facts, but on perusal of the documents on records, it would be crystal clear that some of the charges against the petitioner like, the petitioner has failed to discharge his duties with utmost integrity, honesty, devotion and diligence and acted in a manner highly prejudicial to the Bank's interest in violation of Rule 50 (4) of the State Bank of India Officers' Service Rules, cannot be a subject matter of adjudication in a criminal case. Apart from that, some of the charges in the departmental proceedings are quite independent of the charge sheet filed before the Special Judge, CBI. Moreover, the learned counsel for the Respondent- Bank has also submitted that the documents relied upon in the CBI cases are numbering more than 270 and the list of witnesses in the CBI cases are more than 97, whereas in the departmental proceedings, there are only 22 documents, which have been relied upon, whereas, the Respondent-Bank intends to rely negligible number of documents and would examine limited witnesses. In support of his contentions, learned counsel for the Respondent-Bank

has referred to the decision of this Court dated 09.04.2001, passed in the case of Ranjit Kumar Dey-versus-Bharat Coking Coal Ltd. and Ors. and the decision dated 27.11.2013, in the case of Indu Bhushan Singh-versus-Jharkhand Gramin Bank, through its Chairman, Ranchi & Another passed in W.P. (S) No.1748 of 2012, as well as the decision of this Court dated 19.03.2016 in the case of Om Prakash Singh-versus-State Bank of India and others passed in W.P. (S) No. 6147 of 2011 as also on the decision dated 05.05.2014 in the case of Manik Ratan Banerjee-versus-State Bank of 5 India and ors. passed in LPA No. 308 of 2013 as well as on the judgment of the Hon'ble Apex Court in the Case of Stanzen Toyotestsu India Private Limited-versus-Girish V. and others reported in (2014) 3 SCC636 6. On perusal of the aforesaid decisions, in my considered opinion, there cannot be a straight jacket formula to deal with such a situation. No doubt, the Honble Supreme Court in the case of Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another reported in (1999) 3 SCC679has succinctly laid down that in a situation where the departmental proceedings on identical and similar set of facts and the charges in criminal case are of grave nature, then the departmental proceeding can wait till the conclusion of the criminal case. However, in the subsequent decision rendered in the case of Hindustan Petroleum Corporation Limited & Ors.-versus-Sarvesh Berry reported in (2005) 10 SCC471 the Honble Apex Court has held that in cases of Section 13 (1) (e) of the Prevention of Corruption Act, 1980, there would be no question of disclosure of defence in the departmental proceedings. The said decisions rendered by the Honble Apex Court came to be considered by a three Judge Bench of the Honble Apex Court in the case of Noida Entrepreneurs Association-versus-Noida and others reported in (2007) 10 SCC385 where their Lordships have noticed and recorded the conceptual difference between a departmental proceedings and the criminal proceedings as highlighted by the Honble Supreme Court in several cases. Thereafter, the law laid down in Capt. M. Paul Anthony (Supra) has also been discussed in paragraph 14. Almost in all the decisions the view of the Honble Supreme Court is that there is no straightjacket formula as to in which case the departmental proceedings are to be stayed. However, in NOIDA Entrepreneurs Association & Others (Supra), what ultimately has been held is quoted hereinbelow: -

16. The standard of proof required in departmental proceedings is not the same as required to prove a criminal charge and even if there is an acquittal in the criminal proceedings the same does not bar departmental proceedings. That being so, the order of the 6 State Government deciding not to continue the departmental proceedings is clearly untenable and is quashed. The departmental proceedings shall continue Dealing with same issue, Honble Apex Court in its recent decision in the case of Stanzen Toyotestsu India Private Limited- versus-Girish V. and others reported in (2014) 3 SCC636 at paragraph 16 of the judgment has been pleased to inter alia hold as under: -

16. Suffice it to say that while there is no legal bar to the holding of the disciplinary proceedings and the criminal trial simultaneously, stay of disciplinary proceedings may be an advisable course in cases wher the criminal charge against the employee is grave and continuance of the disciplinary proceedings is likely to prejudice their defence before the criminal court. Gravity of the charge is, however, not by itself enough to determine the question unless the charge involves complicated question of law and fact. The court examining the question must also keep in mind that criminal trials get prolonged indefinitely especially where the number of accused arraigned for trial is large as is the case at hand and so are the number of witnesses cited by the prosecution. The Court, therefore, has to draw a balance between the need for a fair trial to the accused on the one hand and the competing demand for an expeditious conclusion of the ongoing disciplinary proceedings on the other. An early conclusion of the disciplinary proceedings has itself been seen by this Court to be in the interest of the employees.

7. After hearing the learned counsel for the respective parties and having bestowed my anxious consideration to the documents on record in the case in hand in view of the large number of witnesses, sought to be adduced and the documents which have been relied upon by the CBI in the criminal case, and charges in both the proceedings being not similar, in my considered view, there would be no requirement of staying the departmental proceedings in the present case.

8. Viewed thus, the writ petition, sans merit, is dismissed. (Pramath Patnaik, J.) APK N.A.F.R.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com