

**Ashok Kumar Katoch Vs. Oriental Bank of Commerce and ors.**

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**Court :** Himachal Pradesh

**Decided On :** Nov-20-1995

**Reported in :** (1996)IILLJ1020HP

**Judge :** S.N. Phukan, C.J. and; Bhawani Singh, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Section 173

**Appeal No. :** C.W.P. No. 428/1995

**Appellant :** Ashok Kumar Katoch

**Respondent :** Oriental Bank of Commerce and ors.

**Advocate for Def. :** Deepak Gupta, Adv.

**Advocate for Pet/Ap. :** O.M. Parkcash, Adv.

**Judgement :**

S.N. Phukan, C.J.

1. The writ petitioner, who is an employee of the respondent Bank, was put under suspension on September 28, 1989 vide copy of the letter at Annexure PA. After more than five years, when no departmental action was taken out, the petitioner moved this court by way of a writ petition which was registered as C.W.P. No. 603 of 1993. It may be stated that two officers of the respondent-Bank, namely, Vijay Kumar Sharma and Dinesh Gupta were also put under suspension on the same

charges. These two officers also filed writ petition which was registered as C.W.P.No. 1299 of 1993.

2. In the meantime Central Bureau of Investigation, after recording formal first information report with respect to the same charges under which the present petitioner was suspended had initiated proceedings and after completion of investigations a challan was submitted under Section 173, Cr. P.C. against all the three accused persons including the petitioner in the court of Special Judge, Tees Hazari Court, Delhi which is pending.

3. Both the writ petitions, namely, C.W.P. No. 603 of 1993 and C.W.P. No. 1299 of 1993 came up for admission before this court and C.W.P. No. 1299 of 1993 was allowed to be dismissed as withdrawn whereas C.W.P.No. 603 of 1993 filed by the present petitioner was finally disposed of directing the respondent-Bank to complete the pending departmental enquiry against the petitioner within six months. A copy of the order dated September 21, 1994 is annexed as Annexure PB, The petitioner stated that he was not present when the above orders were passed but was represented by his counsel. Thereafter a petition was moved for recalling the order on the ground that the completion of the departmental enquiry during the pendency of the criminal proceedings would prejudice the defence of the petitioner in the criminal proceedings and he would suffer irreparable loss and injury. However, the review petition No. 50 of 1994 was dismissed on the ground that the order ] dated September 21, 1994 for completion of the enquiry was passed on the submission of the learned counsel for the petitioner and the petitioner cannot be allowed to withdraw from these submissions. The present writ petition was filed inter alia on the ground that the respondent Bank did not follow the observations made by a Division Bench of this court by which it was directed that the request of the petitioner would receive due consideration in accordance with law. In the -order of this court dated September 21, 1994 reference was made to the law laid down by the apex court directing the employers to wait for the criminal trial before proceeding with departmental action. The petitioner has prayed that the order dated March 13, 1995 Annexure PE, be quashed and set aside and the respondent-Bank be directed not to proceed with the departmental proceedings during the pendency of the criminal trial against the petitioner pending

in the court of; special Judge, Tees Hazari Court, Delhi. Annexure PE is a letter dated March 13, 1995 issued by the General Manager (Pers) Disciplinary Authority, addressed to the present petitioner in which it was noted that the orders were passed by this court dated September 21, 1994 and February 24, 1995. The Petitioner was informed that request of the Writ Petitioner to keep departmental proceedings in abeyance was not accepted and as such the departmental, enquiry initiated in this regard stands resumed immediately. The writ petitioner was directed to participate in the enquiry proceedings failing which he will be proceeded exparte

4. In the reply affidavit filed on behalf of the respondent-Bank it has been urged that in view of the order passed by this Court in C.W.P.No. 603 of 1993 and Civil Review No. 50 of 1994, the petitioner should have approached the apex court if he had any grievance. It has also been stated in the reply affidavit that the respondent bank was willing to proceed with the enquiry but had stayed it as criminal proceedings were pending with regard to the same occurrence and that if the petitioner wants to face departmental enquiry the bank is willing to start the same and complete the departmental enquiry as early as possible. Reference was also made to other writ petition filed by Shri V.K. Sharma co-accused which was withdrawn. According to the respondent bank as this court directed a time bound programme for completion of the departmental proceedings, it was not possible to accept the request of the writ petitioner to keep the departmental proceedings in abeyance.

Heard learned counsel for the petitioner and the learned counsel for the respondent Bank.

5. The question whether a departmental proceeding can continue in view of pending criminal case, came up before the apex court in various decisions. We may refer to a decision of the apex court in *Kusheshwar Dubey v. Bharat Coking Coal Ltd* (1988- II-LLJ-470) we quote below paragraphs 7 and 8 of the said judgment.

'7. The view expressed in the three cases of this court seems to support the position that while there could be no legal bar for simultaneous proceedings being

taken, yet, there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case. In the latter class of cases it would be open to the delinquent employee to seek such an order of stay or injunction from the court. Whether in the facts and circumstances of a particular case there should or should not be such simultaneity of the proceedings would then receive judicial consideration and the court will decide in the given circumstances of a particular case as to whether the disciplinary proceedings should be interdicted, pending criminal trial. As we have already stated that it is neither possible nor advisable to evolve a hard and fast strait-jacket formula valid for all cases and of general application without regard to the particularities of the individual situation. For the disposal of the present case, we do not think it necessary to say anything more, particularly when we do not intend to lay down any general guideline.

8. In the instant case, the criminal action and the disciplinary proceedings are grounded upon the same set of facts. We are of the view that the disciplinary proceedings should have been stayed and the High Court was not right in interfering with the trial court's order of injunction which had been affirmed in appeal.'

It is not disputed that the criminal charge and also the charge under the departmental proceeding are the same.

6. A Division Bench of this Court in C.W.P. No. 372 of 1989 (Sukh Dev Bharaj and others v. National Hydro Electric Power Corporation Ltd and others) delivered the judgment on January 10, 1990 in which it was stated that it is settled law that preponderance of probability has to be seen in a domestic enquiry whereas guilt is required to be proved beyond reasonable doubt in a criminal court. The Division Bench directed that it was not a fit case where the departmental proceedings are required to be stayed in view of pending criminal proceedings.

7. However, the above decision of this court came up before the apex court in civil Appeal No. 2026 of 1990, arising out of SLP No. 2516 of 1990, and a Bench of Hon'ble three Judges by judgment dated April 25, 1990 held that as allegations providing foundation of criminal case and the disciplinary action are one and the

same, the finding of the departmental action should be stayed till the criminal trial proceeds atleast to the stage of the statement of the accused where he discloses his defence. The above decision of the apex court was on the ratio of the decision of the apex court in Kusheshwar Dubey (supra).

8. Coming to the case in hand, as the criminal proceedings are pending and on the same charge departmental proceedings are drawn up, we hold that the departmental proceedings shall not continue till the writ petitioner is allowed to disclose his defence in his statement in the criminal proceedings. However, the suspension order will continue, in case the appointing authority so desires.

With the above observations and direction, the writ petition is disposed of.

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