

GOVERNMENT OF RAJASTHAN
Department of Personnel (A-3)

No.F.2(157)/Karmik/Ka-3/97

Jaipur, Dated:

13.0 AUG 2017

All Additional Chief Secretaries, Principal Secretaries, Secretaries to Government

All Heads of Departments (including District Collectors)

All Special Secretaries, Deputy Secretaries to Govt.

C I R C U L A R

Subject: Criminal proceedings and departmental enquiry –whether both can be initiated and continued on same set of charges and allegations.

On the subject mentioned above, attention is invited towards department Circulars dated Aug 08, 2001 and Aug 09, 2001.

Vide Circular dated Aug 08, 2001, clarification has been issued that departmental and criminal proceedings can go on simultaneously. The departmental proceedings should be stayed only in case the charges are grave, the matter involves complex questions of law of fact and the continuation of the departmental proceedings will seriously prejudice the defence of the delinquent in the trial court.

Circular dated Aug 09, 2001, dwells on the question as to whether charges pertaining to criminal offenses by employees can be identical in criminal proceedings and departmental enquiry.

It has been observed that in many cases, chargesheets under relevant disciplinary rules are not being issued despite clear *prima facie* evidence of misconduct on the ground that the matter is under investigation or against whom a chargesheet is filed in a court. The matter has engaged the attention of Government of India also and DoPT, Government of India has issued OM. numbered FNO 11012 /6/2007 – Estt (A-III) dated 21st July, 2016 in this regard.

Taking a cue from the above mentioned OM, in supersession of earlier orders dated Aug 08, 2001 and Aug 09, 2001, the following issues are hereby clarified, in this regard:-

- (i) Issue of charge sheet and continuation of departmental proceedings against an officer against whom an investigating agency is conducting investigation or against whom a charge sheet has been filed in a court.
- (ii) Effect of acquittal in a criminal case on departmental inquiry.

Issue of charge sheet and continuation of departmental proceedings against an officer against whom an investigating agency is conducting investigation or against whom a charge sheet has been filed in a court

It has been reaffirmed in a catena of cases that there is no legal bar in law for initiation of simultaneous criminal and departmental proceedings on the same set of allegations. The Hon'ble Supreme Court in *State of Rajasthan vs BK Meena & Ors. (1996) 6 Supreme Court Cases 417* has emphasised the need for initiating departmental proceedings in such cases in these words –

"It must be remembered that interests of administration demand that the undesirable elements are thrown out and any charge of misdemeanor is enquired 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 misdemeanor should be continued in office indefinitely, i.e., for long periods awaiting the result of criminal proceedings."

In *Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. &Anr., (1999) 3 SCC 679*, the Supreme Court has observed that departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately. The following broad principles for application in the facts and circumstances of the given case have been laid down in this judgement regarding the continuation of departmental proceedings while judicial proceedings are being pursued in the court -

"(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, administration may get rid of him at the earliest."

Here even though not the subject matter of this Circular yet because of its importance, it is considered apposite to mention that sometimes from the same facts and circumstances from which a criminal charge is constituted, additional or different charges and allegations of misconduct which are punishable under the RCS (CCA) Rules, may also be made out. Examples of this have been given in the Circular dated Aug 09, 2011 and these should be included in the departmental charge sheet.

Effect of acquittal in a criminal case on departmental inquiry

The question as to what is to be done in the case of acquittal in a criminal case has been answered by the Hon'ble Supreme Court in R.P. Kapur vs. Union of India & Anr. AIR 1964 SC 787 (a five Judge bench judgement) as follows: If the trial of the criminal charge results in conviction, disciplinary proceedings are bound to follow against the public servant so convicted. Even in case of acquittal proceedings may follow where the acquittal is other than honourable.

The issue was explained in the following words by the Hon'ble Supreme Court in Ajit Kumar Nag v G M, (PJ), Indian Oil Corporation Ltd., (2005) 7 SCC 764:

"Acquittal by a criminal court would not debar an employer from exercising power in accordance with Rules and Regulations in force. The two proceedings criminal and departmental are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal

trial is to inflict appropriate punishment on offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with service Rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond reasonable doubt', he cannot be convicted by a court of law. In departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of 'preponderance of probability'. Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation."

The judgement of the Hon'ble Supreme Court in G.M. Tank vs State of Gujarat (2006) 5 SCC 446 has reaffirmed the principles laid down in R.P. Kapur (supra). In G.M. Tank case, Court observed that there was not an iota of evidence against the appellant to hold that he was guilty. As the criminal case and the departmental proceedings were based on identical set of facts and evidence, the Court set aside the penalty imposed in the departmental inquiry also.

Ratio in the G.M. Tank judgement should not be misconstrued to mean that no departmental proceedings are permissible in all cases of acquittal or that in such cases the penalty already imposed would have to be set aside. What the Hon'ble Court has held that is no departmental inquiry would be permissible when the evidence clearly establishes that no charge against the Government servant may be made out.

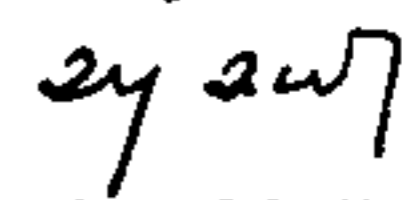
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In view of the law laid down in various judgements, including the ones quoted above, in cases of serious charges of misconduct, particularly involving moral

turpitude, the Departments should keep the following points in view to take prompt action:

- (i) All incriminating documents should be seized promptly to avoid their tempering or destruction of evidence.
- (ii) Particular care needs to be taken for retention of copies of such documents while handing over the same to an investigating agency. These documents may be attested after comparison with the originals.
- (iii) In case the documents have been filed in a court, certified copies of documents may be obtained.
- (iv) Documents and other evidence must be examined to see whether any misconduct, including favour, harassment, negligence or violation of rules/instructions has been committed. If there is a prima facie evidence of misconduct, charge sheet under the appropriate rule must be issued. As there may be certain charges as explained in the Circular dated 9th August, 2001 which do not constitute any crime but do constitute misconduct, they must also be included in the charge sheet.
- (v) Court judgements should be promptly acted upon:
 - (a) in cases of conviction action is to be taken under Rule 19 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958;
 - (b) in cases of acquittal also, if the Court has not acquitted the accused honourably, charge sheet may be issued;
 - (c) an acquittal on technical grounds or where a benefit of doubt has been given to the accused will have no effect on a penalty imposed under Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958, as while in a criminal trial the charge has to be proved beyond reasonable doubt, in the departmental inquiry the standard of evidence is preponderance of probability.

13. All are requested to bring the above guidelines to the notice of all concerned officials for their benefit.


(Sanjay Malhotra)
Principal Secretary