



2026:CGHC:8347

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 12825 of 2025

Prakash Mishra S/o Late Shri Om Prakash Mishra Aged About 32 Years R/o Near Patwari Office, Civil Line, Baloda Bazar, P.S. City Kotwali, Tahsil-Baloda Bazar, District- Baloda Bazar-Bhatapara C.G.

... **Petitioner(s)****versus**

1 - State Of Chhattisgarh Through Its Secretary, Department Of Home/police Station And Post- Rakhi, Atal Nagar, Nawa Raipur, District Raipur C.G.

2 - Inspector General Of Police (I G P), Office Of Inspector General Of Police Shankar Nagar, Raipur Range, Raipur, District Raipur C.G.

3 - Superintendent Of Police (S P), O/o Superintendent Of Police, Baloda Bazaar, District Baloda Bazaar-Bhatapara C.G.

4 - Enquiry Officer/additional Superintendent Of Police (Additional S.P.), O/o Additional S.P. Shahid Veer Narayan Singh Ward, Patpar, Bhatapara, District Baloda Bazaar-Bhatapara C.G.

5 - Presenting Officer/inspector, Police Line, Baloda Bazaar, District Baloda Bazaar-Bhatapara C.G.

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| For Petitioner | : Mr. Abhishek Pandey, Advocate along with Ms. Varsha Sharma, Advocate |
| For State | : Mr. Gary Mukhopadhyay, Addl. Advocate General |

S.B.: Hon'ble Shri Parth Prateem Sahu, Judge

Order on Board

16/02/2026

1. With the consent of learned counsel appearing for the parties, this case is heard finally.
2. Petitioner has filed this writ petition seeking following reliefs:-

“(i) That, this Hon'ble Court may kindly be pleased to direct the respondent authorities to produce all the relevant records relating to case of the petitioner before this Hon'ble Court for its kind perusal.

(ii) That this Hon'ble Court may kindly be pleased to disposed of the writ petition with a direction to the respondent authorities to ensure that disciplinary proceedings initiated against the petitioner are stayed till examination of prosecution witness No. 2, Sub Inspector Surendra Mishra, PS-Kharora who is common witness in departmental enquiry and criminal case against the petitioner, before the trial Court and to proceed further in the departmental enquiry thereafter.

(iii) That this Hon'ble Court may further be pleased to direct respondents to give suitable compensation to the petitioner for the mental trauma and agony, harassment and hardships suffered by him as also cost of the litigation.”

3. Learned counsel for the petitioner submits that petitioner while working as Constable under the respondent Department, one criminal case was registered against him for alleged commission of offence under Sections 331 (6), 310 (2) of BNS on the complaint of one Radhe Lal Bhardwaj. Based on registration of criminal case, one departmental enquiry was also initiated against him and charge memo was issued. He contended that witness Surendra Mishra, Sub Inspector whose name is mentioned in the charge-memo issued by the respondent-department and the charge-sheet submitted by the police after investigation before the Court of competent jurisdiction in a criminal case, is common witness. If petitioner has to cross-examine the witness in the departmental enquiry, who is also the witness in the criminal case, then, defence which is to be raised by the petitioner in the criminal case would be open, which will adversely affect his right to defend the criminal case and therefore, the witness who is also the witness in the criminal case may not be permitted to examine in the departmental enquiry proceedings till that witness is examined before the trial Court in criminal case. In support of his contention, he places reliance upon the decisions of Hon'ble Supreme Court in the case of **Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. & Anr.** reported in (1999) 3 SCC 679, **Stanzen Toyotetsu India Private Limited Vs. Girish V. & Ors.** reported in (2014) 3 SCC 636, **State Bank of India & Ors. Vs. Neelam Nag & Ors.** reported in (2016) 9 SCC 491.

4. On the other hand, learned counsel for the respondents/State opposes the submission of counsel for the petitioner and would submit that there is no bar for continuing both the proceedings i.e. departmental enquiry and criminal case parallelly . It is for the

petitioner to demonstrate that the nature of allegations and the witnesses are one and same in both proceedings. Petitioner in this writ petition has not specifically pleaded the aforementioned fact and therefore, no relief as prayed for can be granted.

5. I have heard learned counsel for the parties and also perused the documents placed on record.

6. It is not in dispute that the petitioner is a suspended employee of the police department holding the post of Constable. Departmental enquiry is initiated against him, charge-memo is also issued to him on 09.05.2025 which appears to be an outcome of Crime No. 182/2025 for alleged commission of offence under Sections 331 (6) and 310 (2) of BNS. After investigation, police authorities submitted charge-sheet/final report for the alleged commission of offence under Section 331 (6), 310 (2), 62 (2) of BNS and Sections 25 & 27 of the Arms Act.

7. From perusal of the documents enclosed along with the writ petition i.e. the charge-memo issued by the respondent – department and the charge-sheet filed by the police after investigation, it appears that departmental enquiry initiated against petitioner is based on the criminal case registered against him. One witness in both the proceedings is common. That common witness is to be examined before the authorities in the departmental enquiry proceedings as also before the Court of competent jurisdiction in criminal case. If the petitioner is forced to cross-examine that witness in the departmental enquiry proceedings, before he is examined before the Court in the criminal case, it may make it open the defence of petitioner before the

witnesses and it may adversely affect the defence of the petitioner in criminal case.

8. In the case of **Capt. M. Paul Anthony (Supra)**, the Hon'ble Supreme Court in paragraph 22 had laid down certain guidelines and held that in the event if the issue involves complicated question of law and facts, if the evidences are similar, if not identical, it would be desirable to stay the disciplinary proceedings. For ready reference paragraph No. 22 of the said judgment is reproduced here-in-under:-

“22. The conclusions which are deducible from various decisions of this Court referred to above are:

(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."

9. A similar stand has again been taken by the Hon'ble Supreme Court in the case of **Stanzen Toyotetsu** (Supra) . The aforesaid view of the Supreme Court has further been reiterated again in the case of **Neelam Nag** (Supra). In all these cases, the principle of law so far as stay of the departmental enquiry, in the event of the nature of allegations and the witnesses remained the same have not been diluted. Courts have very emphatically held that for stay of the departmental enquiry, there can be no straight jacket formula which can be spelt out, it would all depend upon the facts of each case.

10. Hon'ble Supreme Court in the case of **Avinash Sadashiv Bhosle (Died) through Lrs. Vs. Union of India** reported in **(2012) 13 SCC 142** has observed that both the proceedings i.e. the departmental enquiry proceedings and the criminal case can proceed together except where both the proceedings are based on the same set of facts and evidence in both the proceedings are common.

11. The aforementioned principles laid down by the Hon'ble Supreme Court was further reiterated in the case of **Neelam Nag** (Supra). In case of **Shashi Bhushan Prasad Vs. Inspector General of C.I.S.F.** reported in Civil Appeal No. 7310/2009 decided on 01.08.2019, Hon'ble Supreme Court has again reiterated the same principle as discussed above.

12. In the case at hand, the petitioner who is a Constable in the Police Department is facing a departmental enquiry based on criminal case registered against him for alleged commission of offence under Sections 331 (6) and 310 (2) of BNS. One witness in both the proceedings is one and the same and if the petitioner is permitted to cross-examine that witness in the departmental enquiry proceedings, the defence which is setup by the petitioner for the criminal case would be open and therefore, in the opinion of this Court, there are sufficient grounds to allow the prayer of the petitioner in this case.

13. For the foregoing discussion, it is directed that the departmental proceedings may go on, however, the respondent authorities shall not examine the witness namely Surendra Mishra, Sub Inspector, PS-Kharora, who is also witness in the criminal case till he is examined in the criminal case.

14. Writ petition is accordingly allowed to that extent.

Certified copy as per rules.

Sd/-
(Parth Prateem Sahu)
Judge