

IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKH AT SRINAGAR

Reserved on: 03.11.2025

Pronounced on: 14.11.2025

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*Whether the operative part
or full judgment is
pronounced: **Full***

WP(C) No.1876/2025

c/w

WP(C) No.3128/2023

CCP(S) No.32/2024

AKHAND PRAKASH SHAHI

...PETITIONER(S)/APPELLANT(S)

Through: - Mr. S. A. Qadri, Advocate.

Vs.

UNION OF INDIA & ANR.

...RESPONDENT(S)

*Through: - Mr. Vikas Malik, CGSC (through VC), with
Ms. Sehar Mufti Ahad, Advocate.*

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) Through the medium of present judgment, the afore-titled two writ petitions filed by the petitioner are proposed to be disposed of.

2) Vide WP(C) No.3128/2023, the petitioner has challenged the proceedings initiated against him under Rule 173 of the BSF Rules, 1969, as also the communication/order dated 07.11.2023, whereby his

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representation has been rejected. A further direction prohibiting the respondents from proceeding with the enquiry in terms of Rule 173(8) of the BSF Rules till such time the criminal case lodged against the petitioner is decided by the Court of Additional Sessions Judge (Criminal Court), Dwarika, New Delhi, has also been sought.

3) Vide WP(C) No.1876/2025, the petitioner has challenged order dated 4th July, 2025, issued by the respondents, whereby he has been placed under suspension, with a further direction commanding the respondents to reinstate the petitioner subject to outcome of criminal case.

4) The facts leading to the filing of the afore-titled two writ petitions are that an FIR bearing No.108/2022 for offence under Section 376 IPC came to be registered against the petitioner at Police Station, Dwarika (North), New Delhi. The petitioner at the relevant time was posted as Assistant Commandant, STC Airport, Humhama, Srinagar. The complaint, on the basis of which the aforesaid FIR came to be lodged, was made by a lady ASI(Min) of BSF.

5) In the complaint it was alleged that on 22nd October, 2020, she had sent a message in Puri Border Security Force

that any personnel working in the BSF, who is interested in marriage can contact her on given mobile number. It was alleged that the petitioner contacted her and expressed his eagerness to marry her. It was also alleged that the complainant and the petitioner met on 28.12.2020 at Radisson Blue Hotel, Dwarika, New Delhi. The complainant alleged that the petitioner tricked her with his smooth talks and assured her that he will marry her and not with any other girl, whereafter he made sexual relations with her from 28.12.2020 to 30.12.2020 continuously. She further alleged that the petitioner kept on talking to her over mobile phone and assured her that he will solemnize marriage with her. On 21st February, 2021, the petitioner again came to Delhi and stayed in Radisson Blue Hotel, Mahipalpur New Delhi, where he again made sexual relations with the complainant from 25th February, 2021 to 26th February, 2021. In the month of March, 2021, the petitioner again stayed in a hotel at Delhi Airport and invited her over there. The petitioner and the complainant made sexual relations over there and at that time also, the petitioner assured her that he would enter into wedlock with her. It was further alleged that the petitioner told the complainant that his brother is not agreeing for the marriage but he would

convince him and even if he has to go to court, he would enter into wedlock with her. It was further alleged in the complaint that in December, 2021, the complainant came to know that the petitioner has illegal relations with one more lady who is a resident of Meghalaya, whereafter the complainant talked to said lady who told her that she is having relations with the petitioner for the last six years and that she has also entered into wedlock with him. When confronted with these facts, the petitioner is stated to have denied his relation with the said lady. It was also alleged that the petitioner has now got engaged to another girl and in this manner the petitioner has committed sexual intercourse upon the complainant on the false promise of marriage.

6) It seems that after the registration of FIR against the petitioner, investigation of the case was set into motion and the chargesheet stands filed before the competent court. It also appears that the petitioner has been granted bail in the said case and after framing of the charges, the trial of the case is still going on.

7) The respondents, after examining the entire case and keeping in view the gravity of the offence, exercised their

powers under Rule 40A(1) of the BSF Rules and placed the

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petitioner under suspension vide order dated 24.04.2023. The said order came to be challenged by the petitioner before Delhi High Court by way of writ petition bearing WP(C) No.7343/2023. The said writ petition was disposed of vide order dated 30.05.2023, and a direction was given to the respondents to intimate the petitioner about confirmation of his suspension order. The suspension order was confirmed in terms of order dated 15.05.2023.

8) The petitioner challenged the suspension order dated 15.05.2023 by way of another writ petition filed before this Court bearing WP(C) No.1498/2023, which has been dismissed by this Court as withdrawn in terms of order dated 03.11.2025. It appears that in the said writ petition, an interim order came to be passed by this Court on 14.06.2023 directing the respondents to accord consideration to the representation of the petitioner that had been made by him against the suspension order.

9) The respondents considered the representation of the petitioner and rejected the same. An intimation in this regard was conveyed to the petitioner vide communication dated 11th August, 2023. The suspension of the petitioner, it seems, has been extended for a further period of 180 days from 19.01.2024 in terms of order dated 11.01.2024.

10) It appears that the suspension of the petitioner was reviewed by the respondents from time to time and it was extended as many as four times. The final review of suspension of the petitioner was made by the respondents in terms of order dated 4th July, 2025, whereby his suspension has been extended with effect from 12.07.2025 to 07.01.2026. This order is under challenge in WP(C) No.1876/2025, which is also the subject matter of present judgment.

11) It appears that a Staff Court of Enquiry has been ordered against the petitioner in terms of order dated 28.10.2023 to enquire into the allegations levelled by lady ASI against him on the charges of misconduct. Aggrieved by aforesaid order dated 28.10.2023, the petitioner filed another writ petition bearing WP(C) No.2871/2023 before this Court, which came to be disposed of in terms of order dated 22.11.2024 on the basis of the statement made by learned counsel for the petitioner that the said writ petition has been rendered infructuous.

12) It appears that the petitioner had made a representation against order dated 28.10.2023 which was under challenge in WP(C) No.2871/2023. The said representation came to be rejected by the respondents in

terms of letter dated 07.11.2023. The petitioner filed yet another writ petition bearing WP(C) No.3128/2023 challenging letter of rejection dated 07.11.2023 as also the proceedings initiated against him under Rule 173 of the BSF Rules. This writ petition is also subject matter of present judgment.

13) The petitioner has challenged the impugned order of suspension on the grounds that the same has been used as a tool of harassment and punishment against him without holding any enquiry. It has been contended that prolonged suspension of the petitioner is in violation of Article 21 of the Constitution and it cannot go beyond 90 or 180 days. It has been submitted that the allegations levelled by the complainant lady ASI against the petitioner do not constitute any offence against him, as such, on the basis of the case lodged at her instance, the petitioner could not have been placed under suspension. It has been contended that the petitioner had contacted the complainant only pursuant to the advertisement issued by her in connection with her marriage. It has been further submitted that brother of the petitioner and his wife did not allow him to enter into wedlock with the complainant and this would not constitute a false promise of marriage. It has been

contended that the marriage of the petitioner with another lady became the basis of the complaint lodged by the lady ASI and on the basis of a private complaint, the petitioner could not have been placed under suspension.

14) While challenging the order initiating enquiry in terms of Rule 173 of the BSF Rules, the petitioner has contended that the allegations made in the complaint filed by the lady ASI are absolutely false and frivolous and, in fact, it is the complainant lady who declined to enter into wedlock with the petitioner and this fact is evidenced from the WhatsApp chatting of September, 2021, whereafter she permitted the petitioner to go ahead with marriage with any girl of his choice. It has been contended that the departmental proceedings and the criminal proceedings cannot proceed simultaneously and in case the departmental proceedings are allowed to proceed, the defence of the petitioner in the criminal case would get seriously prejudiced. It has been contended that right to marry is a private and personal matter of an employee and, as such, the employer has no concern with this aspect. Thus, any complaint filed a private person with regard to personal matter of an employee cannot form a basis for initiating departmental

proceedings against him. It has been submitted that the

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criminal case filed against the petitioner is absolutely false and the same is liable to be quashed.

15) I have heard learned counsel for the parties and perused record of the case.

16) The question that arises for determination in this case is as to whether criminal proceedings initiated against the petitioner as also the departmental proceedings initiated against him can be simultaneously proceeded with. It is not in dispute that the chargesheet emanating from the complaint filed by lady ASI against the petitioner is pending trial before the criminal court. The departmental proceedings initiated against the petitioner in terms of Rule 173 of BSF Rules also owe their origin to the complaint lodged by the lady ASI against the petitioner before the police. It also appears that the complainant lady ASI has submitted a complaint against the petitioner before the authorities of the BSF levelling the same allegations against the petitioner. In this regard, the respondents have placed on record a copy of complaint dated 15.07.2022 made by the lady ASI. When the said complaint was made by the lady ASI, who also is a member of the Force, the respondents came to know about registration of FIR against

the petitioner, whereafter they decided to hold a

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departmental enquiry against him by taking resort to the provisions contained in Rule 173 of the BSF Rules. Accordingly, order dated 28.12.2023 came to be issued. The terms of reference of the Staff of Enquiry is to investigate into the allegations of rape, threatening and blackmail levelled by the lady ASI against the petitioner which amounts to misconduct against a junior member of the Force.

17) So far as the charge framed by the criminal court against the petitioner is concerned, the same relates to sexual intercourse with the lady ASI by the petitioner on the false promise of marriage. If these allegations levelled against the petitioner are proved, the same would amount to offence of rape and it would also amount to misconduct as the person against whom the petitioner is alleged to have committed the offence of rape is also a member of the Force. Therefore, the consequences of the alleged act of the petitioner have contours of criminality as well as the contours of misconduct. Thus, the contention of the petitioner that his alleged act is a personal matter having nothing to do with his service, cannot be accepted.

18) That takes us to the issue whether criminal proceedings and the disciplinary proceedings in respect of

the same allegations can go on simultaneously. In this regard, the Supreme Court has, in the case of **State of Rajasthan vs. B. K. Meena and another**, (1996) 6 SCC 417, after analyzing its previous judgments on the subject, laid down the legal position as to in what circumstances both the criminal proceedings and the departmental proceedings can proceed and in what circumstances the departmental proceedings have to await the decision of the criminal proceedings. Paras (14) and (15) of the said judgment are relevant to the context and the same are reproduced as under:

“14. It would be evident from the above decisions that each of them starts with the indisputable proposition that there is no legal bar for both proceedings to go on simultaneously and then say that in certain situations, it may not be ‘desirable’, ‘advisable’ or ‘appropriate’ to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. The staying of disciplinary proceedings, it is emphasised, is a matter to be determined having regard to the facts and circumstances of a given case and that no hard and fast rules can be enunciated in that behalf. The only ground suggested in the above decisions as constituting a valid ground for staying the disciplinary proceedings is that “the defence of the employee in the criminal case may not be prejudiced”. This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law. In our respectful opinion, it means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, ‘advisability’, ‘desirability’ or ‘propriety’, as the case may be, has to be determined in each case taking into consideration

all the facts and circumstances of the case. The ground indicated in D.C.M. and Tata Oil Mills is also not an invariable rule. It is only a factor which will go into the scales while judging the advisability or desirability of staying the disciplinary proceedings. One of the contending considerations is that the disciplinary enquiry cannot be — and should not be — delayed unduly. So far as criminal cases are concerned, it is well known that they drag on endlessly where high officials or persons holding high public offices are involved. They get bogged down on one or the other ground. They hardly ever reach a prompt conclusion. That is the reality in spite of repeated advice and admonitions from this Court and the High Courts. If a criminal case is unduly delayed that may itself be a good ground for going ahead with the disciplinary enquiry even where the disciplinary proceedings are held over at an earlier stage. The interests of administration and good government demand that these proceedings are concluded expeditiously. It must be remembered that interests of administration demand that undesirable elements are thrown out and any charge of misdemeanour 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 misdemeanour should be continued in office indefinitely, i.e., for long periods awaiting the result of criminal proceedings. It is not in the interest of administration. It only serves the interest of the guilty and dishonest. While it is not possible to enumerate the various factors, for and against the stay of disciplinary proceedings, we found it necessary to emphasise some of the important considerations in view of the fact that very often the disciplinary proceedings are being stayed for long periods pending criminal proceedings. Stay of disciplinary proceedings cannot be, and should not be, a matter of course. All the relevant factors, for and against, should be weighed and a decision taken

keeping in view the various principles laid down in the decisions referred to above.

15. We are quite aware of the fact that not all the disciplinary proceedings are based upon true charges; some of them may be unfounded. It may also be that in some cases, charges are levelled with oblique motives. But these possibilities do not detract from the desirability of early conclusion of these proceedings. Indeed, in such cases, it is all the more in the interest of the charged officer that the proceedings are expeditiously concluded. Delay in such cases really works against him."

19) Again, in **Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and another**, (1999) 3 SCC 679, the Supreme Court has, after noticing the ratio laid down by it in **B. K. Meena's** case (supra), drawn the following conclusions:

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

20) From the foregoing analysis of legal position on the subject, it is clear that the departmental proceedings and the proceedings in a criminal case can proceed simultaneously and there is no legal or statutory bar for proceeding with both these proceedings simultaneously. However, if departmental proceedings and 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, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case. The question whether the charge in a criminal case is grave and whether complicated questions of fact and law are involved would depend upon the facts and circumstances of each case. It has also to be kept in mind that departmental proceedings should not be unduly delayed. The purpose of staying the departmental proceedings till the criminal proceedings are concluded is to avoid prejudice to the delinquent employee during the criminal proceedings because if the departmental proceedings are proceeded

ahead, the delinquent employee would be compelled to disclose his defence, which may cause prejudice to his case before the criminal court.

21) It has also to be borne in mind that purpose of the departmental proceedings and the criminal proceedings is entirely distinct from each other. While criminal prosecution is launched for an offence punishable under law whereas the departmental enquiry is initiated with a view to ensure discipline in the service and efficiency of public service. The Supreme Court has, in the case of **Depot Manager, A.P. State Road Transport Corporation vs. Mohd. Yousuf Miya and others**, (1997) 2 SCC 699, drawn the distinction between the departmental proceedings and criminal proceedings in the following manner:

“8. We are in respectful agreement with the above view. The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So, crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the

delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public (sic duty), as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Evidence Act. Converse is the case of departmental enquiry. The enquiry in a departmental proceeding relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. The enquiry in the departmental proceedings relates to the conduct of the delinquent officer and proof in that behalf is not as high as in an offence in criminal charge. It is seen that invariably the departmental enquiry has to be conducted expeditiously so as to effectuate efficiency in public administration and the criminal trial will take its own course. The nature of evidence in criminal trial is entirely different from the departmental proceedings. In the former, prosecution is to prove its case beyond reasonable doubt on the touchstone of human conduct. The standard of proof in the departmental proceedings is not the same as of the criminal trial. The evidence also is different from the standard point of the Evidence Act. The evidence required in the departmental enquiry is not regulated by the Evidence Act. Under these circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances. In this case, we have seen that the charge is failure to anticipate the accident and prevention thereof. It has nothing to do with the culpability of the offence under Sections 304-A and 338, IPC. Under these circumstances, the High Court was not right in staying the proceedings.”

22) With the aforesaid legal position in mind, let us now advert to the facts of the present case. There is no doubt to the fact that substratum of the criminal case and the departmental enquiry initiated against the petitioner is the complaint lodged by the lady ASI against him. It is also a fact that charge levelled against the petitioner is of a grave nature. But merely because of these factors, it cannot be stated that the departmental proceedings are required to be kept in abeyance till the decision of the criminal case unless it is shown that criminal case against the petitioner, besides being of a grave nature, involves complicated question of law and fact and that continuance of departmental proceedings against the petitioner would prejudice his defence. The allegation of the lady ASI against the petitioner is simple that she was lured by the petitioner into sexual intercourse on the basis of false promise of marriage. The determination of veracity of this allegation by the criminal court or during the departmental proceedings does not involve decision of a complicated question of fact or law. Besides this, defence of the petitioner before the criminal court is not going to be prejudiced in case the departmental proceedings are allowed to go ahead because the petitioner has already disclosed his defence not only in the petitions

filed by him before this Court but also in his representations filed by him before the respondents. Even in his bail application filed before the criminal court, the petitioner has disclosed his defence. Therefore, no prejudice would be caused to the petitioner in case both the criminal case as well as departmental proceedings are allowed to proceed simultaneously.

23) That takes us to the legality and validity of the suspension order passed against the petitioner. The sole ground on which the petitioner has assailed the legality and validity of the said order is that there has been delay in completion of departmental proceedings against him, which has resulted in his prolonged suspension amounting to infliction of punishment upon him.

24) In the above context, it is to be noted that it was at the instance of the petitioner that the departmental proceedings came to a grinding halt. The petitioner filed WP(C) No.3128/2023 challenging the departmental proceedings and the same were stayed by this Court on 04.12.2023. The departmental proceedings were initiated against the petitioner in terms of order dated 28.10.2023.

So, within one and a half months of the initiation of departmental proceedings by the respondents against the

petitioner, the same were stayed by this Court in terms of interim order dated 04.12.2023 on a petition filed by the petitioner. Thus, the petitioner cannot take advantage of his own actions by claiming that the respondents have perpetuated his agony by not completing the departmental proceedings. The ground urged by the petitioner is without any substance and, therefore, deserves to be rejected.

25) For the foregoing reasons, I do not find any merit in these petitions. The same are dismissed accordingly. Interim direction(s), if any, shall stand vacated with immediate effect.

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In view of the decision in the main writ petition(s), the order out of which instant contempt petition has arisen, has merged in the final judgment. Therefore, nothing further survives for consideration in this contempt petition. The same is, accordingly, disposed of.

(SANJAY DHAR)
JUDGE

Srinagar

14.11.2025

“Bhat Altaf”

Whether the **Judgment** is speaking: **Yes**

Whether the **judgment** is reportable: **Yes**