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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.1666/2002

Monday, this the 27th day of January, 2003

Hon'ble Shri Govindan S. Tampi, Member (A)
Hon'ble Shri Shanker Raju, Member (J)

Mohd. Israil
Head Const. No.713/50
(PIS No.28750643)
Presently posted at
Hauz Khas Lines
New Delhi

...Applicant

(By Advocate: None)

Versus

1. Commissioner of Police
Police Head Quarters
IP Estate, New Delhi
2. Dy. Comm. of Police (South)
Hauz Khas Police Station
New Delhi
3. D.P. Singh (EO)
Inspector/DE Cell
Police Bhawan
Asif Ali Road, Delhi

..Respondents

(By Advocate: Mrs. Sumedha Sharma)

O R D E R (ORAL)

Shri Govindan S. Tampi:

Prayer in this OA is for keeping in abeyance the DE proceedings till the decision in the simultaneously ordered criminal proceedings are over.

2. None for the applicant. Mrs. Sumedha Sharma represented the respondents.

3. A case was registered against the applicant, a Head Constable, vide FIR 85/2001 in P.S. Kalkaji under Sections 420/409 IPC of 1.2.2001, following which DE proceedings were initiated on 23.7.2001 on the same set of facts and circumstances. As the facts and

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circumstances in both the criminal charge and DE proceedings are the same, it was avoidable. It was likely that he would be forced to disclose his defence in DE proceedings which would prejudice his case in criminal proceedings. The applicant's request vide his applications dated 17.10.2001 and 20.10.2001 to keep in abeyance the DE proceedings, specially in view of SO No.125 dated 24.7.2001, had been rejected by a non-speaking order dated 5.4.2002. Respondents are pressurising the applicant to participate in the DE proceedings so that his defence in the court would be jeopardised. His stand is buttressed by the order of the Hon'ble Apex Court in the case of Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. & Another [1999 (2) JT 456]. This is also in tune with Rules 11, 12 and 15 (2) of the Delhi Police (Punishment & Appeal) Rules. Applicant, therefore, pleads that his OA be allowed and the DE proceedings kept in abeyance.

4. In rebuttal filed on behalf of the respondents duly reiterated by Mrs. Sumedha Sharma, learned counsel, it is pointed out that the applicant is being proceeded against in respect of a serious misconduct with criminal implications, relating to defalcation of Govt. property. DE proceedings initiated against him, side by side with criminal case were justified, as both are different proceedings. DE proceedings have been taken in view of the decisions of the Disciplinary Authority and the applicant's apprehension that his defence in the criminal case would be weakened or prejudiced by his participating in DE proceedings are misplaced.

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5. On careful consideration of the matter, brought on record, we are convinced that the applicant has a case. His request is only for holding in abeyance the DE proceedings till the completion of the criminal case, as he fears that his defence in DE would prejudice the defence he might adopt in the criminal proceedings. And he is justified. The rationale of the decision of the Hon'ble Apex Court in Capt. M. Paul Anthony's case (supra) and the contents of the SO No.125 dated 24.7.2001 are in support of the applicant. As such, we feel that the ~~interest~~ of the respondents would not be hurt by holding in abeyance the DE proceedings till the criminal case is over. If the criminal proceedings tend to take inadvertently long time to finalise, respondents can consider going ahead with DE proceedings. In our considered view that stage has not been reached.

6. In the result, OA succeeds and is accordingly allowed. The respondents are directed to keep in abeyance the DE proceedings till the expiry of one year from now, the initiation of DE proceedings, within which time criminal proceedings would be over, if all the parties cooperate. DE proceedings can be reopened thereafter, if circumstances so warrant. ~~W/o~~. No costs.

S. Raju
 (Shanker Raju)
 Member (J)

(Govindan S. Tampi)
 Member (A)

/sunil/

