

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O. A. No. 1477/99

HON'BLE SHRI JUSTICE V. RAJAGOPALA REDDY, VICE CHAIRMAN
HON'BLE SMT. SHANTA SHASTRY, MEMBER (A)

New Delhi, this the 27th day of October, 1999

Santosh Kumar
(332/F)
S/o Shri Badri Prasad
RZ F238/2, Gali No. 19
Sadh Nagar, Palam Colony
New Delhi 110 045

....Applicant

(By Advocate: Shri Shyam Babu)

Versus

1. Govt. of NCT Delhi through
its Chief Secretary
5, Sham Nath Marg, Delhi
2. Sh. Dharmender Kumar
Dy. Commissioner of Police/FRD
Hans Bhawan, ITO
New Delhi
3. Shri Vijay Kumar
Inspector (Enquiry Officer)
I.G.I. Airport, New Delhi

.... Respondents

(By Advocate: Shri Anun Bhardwaj)

ORDER (ORAL)

By Hon'ble Shri Justice V. Rajagopala Reddy:

Heard the counsel for the applicant and respondents.

The applicant, who is a Constable in Delhi Police, was alleged to have been apprehended while carrying 10 bottles of 'Black Level Label' Johny Walker Scotch Whisky' at IGI Airport on 19.2.1999. An FIR No. 56/99 dated 19.2.1999 was registered in this regard. It was also alleged that the applicant concealed the real facts and made a false entry in the daily diary. On these allegations departmental enquiry was initiated against the applicant. In the meanwhile a charge-sheet has been filed against the applicant under Section 61/1/14 of Excise Act. When the enquiry was to be commenced the

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applicant filed the present O.A. It is contended by the learned counsel for the applicant that the allegations against him both in the departmental enquiry and the criminal case being identical, it would jeopardise his case if he disclosed his defence in the criminal case if the enquiry was proceeded against him in the departmental enquiry. Rules 11 and 12 of the Delhi Police (Punishment and Appeal) Rules indicate that in such a situation the departmental enquiry should be kept in abeyance. Learned counsel places reliance on the circulars issued by the department dated 14.5.99 and 16.6.99 where it was decided that parallel departmental enquiry might be kept in abeyance till the criminal case has come to a conclusion. Learned counsel for the respondents, however, contends that the allegations against the applicant in the criminal case are not identical with the allegations made in the departmental enquiry. In the departmental enquiry there was a further allegation, in addition to carrying 10 bottles of whisky at IGI Airport that the applicant made false entry in the daily diary (DD). It is further contended that in view of the authoritarian pronouncements in Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. (1999(2)^{SC}/JT 456) and in B.K. Meena's case (1996(8) SC JT 684), the department will not be right in giving the circulars derogatory to the law laid down by the Supreme Court. It is further contended that there has been no mandatory direction in the circulars to stay the proceedings of the departmental enquiry pending the criminal proceedings.

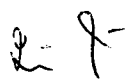
2. We have carefully considered the rival contentions. The only allegation against the applicant in the departmental enquiry was that he carried 10 bottles of whisky at IGI Airport. The charge-sheet which was filed against him in the criminal court is under Section 61/1/14 of the ~~Drake Act~~ ^{the Drake Act} 364-A IPC. Thus in both the proceedings the main allegation against the applicant was identical. The allegation that he made a false entry is only consequential. It would depend upon the truth or

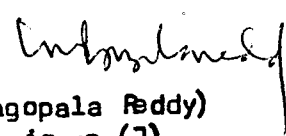
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otherwise of the main allegation against him. Hence the contention that the charges are not identical in both the proceedings is wholly unfounded. In B.K. Meena's case (supra) and Paul Antony's case (supra), the Supreme Court has laid down that there was no bar to hold the departmental enquiry pending criminal case on identical charge against the delinquent. It does not mean that the department cannot decide to keep the proceedings in abeyance. In the present case the circulars issued by the department have taken a decision to keep in abeyance the departmental proceedings till finalisation of the criminal case pending against the delinquent, may be in view of the fact that the required documents which are filed in the criminal court should be made available to the disciplinary authority for taking up the departmental proceedings. In view of the above the department issued circulars stating that it was better to keep in abeyance the departmental proceedings till the finalisation of the criminal case. In the circumstances in view of the decision taken by the department, it may not be appropriate for the respondents to continue with the departmental proceedings contrary to the department's circulars. To avoid arbitrariness it is advisable that in all cases of parallel proceedings, to keep in abeyance the departmental proceedings till the criminal proceedings have concluded. After such conclusion it is open to the department to proceed with the departmental proceedings in accordance with Rules 11 and 12 of the Delhi Police (Punishment and Appeal) Rules.

3. It is necessary to observe that^{sp} the criminal proceeding is for any reason prolonged, it is open to consider to proceed with the departmental enquiry, which in our view is also in accordance with the ruling laid down by the Supreme Court in B.K. Meena's case (supra). The O.A. is accordingly allowed. No costs.


(Smt. Shanta Shastri)
Member (A)


(V. Rajagopala Reddy)
Vice Chairman (J)