

Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 1186/98

New Delhi this the 4th day of December, 1998

Hon'ble Shri Ratan Prakash, Member (J)
Hon'ble Shri N. Sahu, Member (A)

Shri Vinay Kumar Tyagi (D/1334).
S/o Shri Ramesh Chand Tyagi,
R/o G-2/3, Police Colony,
PS Defence Colony,
New Delhi.

.....Applicant
(By Advocate: Shri Shyam Babu)

Versus

1. Deputy Commissioner of Police,
East District,
Police Station,
Vivek Vihar,
Delhi.

2. Shri H.K. Yadav,
(Enquiry Officer),
Commissioner of Police,
C.A.W. Cell, East District,
Delhi.

....Respondents

(By Advocate: Shri Anoop Bagai)

O R D E R

By Hon'ble Shri Ratan Prakash, Member (J).

The applicant herein Shri Vinay Kumar Tyagi has approached this Tribunal under Section-19 of the Administrative Tribunals Act 1985 to set aside and quash the order dated 21.1.98 (Annexure-A) or in the alternative give a direction to the respondents to keep in abeyance, the departmental enquiry initiated by the Impugned order dated 21.1.98; during the pendency of the criminal case, till the defence of the applicant is disclosed in the criminal case.

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2. Facts in brief and as alleged by the applicant are that on a complaint being made on 16.9.97 (Annexure A-B) by two persons against the applicant to the Dy. Commissioner of Police (Vigilance) on 16.9.97 on false and fabricated allegations, with a view to implicate him in a criminal case a departmental action has been initiated by the respondents. According to the applicant the police have also registered a case against those complainants through Kalandra under Sections 83, 93 and 97 of the Delhi Police Act.

3. It is the case of the applicant that after the police case registered against them; a complaint under Sections 166, 324, 340 and 506 IPC has also been lodged by them against the applicant in the court of ACMM, Shahdara, Delhi on 25.9.97. Thereupon the applicant was placed under suspension vide order dated 10.11.97 (Annexure-D) with immediate effect pending enquiry into his conduct.

4. It is the grievance of the applicant that initiation of the departmental action against the applicant by order dated 21.1.98 on the basis of same charges/allegations which are subject matter of criminal court; is unjustified and arbitrary and that in case the respondents are allowed to continue with the departmental proceedings he would be highly prejudiced in his defence which would stand disclosed before the conclusion of enquiry of the criminal proceedings. The applicant, therefore, has sought

the aforesaid reliefs alleging violation of Rule-15 (2) and Rule-27 of the Delhi Police (P&A) Rules. 1980.

5. Respondents have opposed this application by a counter reply to which the applicant has also filed a rejoinder. It is the stand of the respondents that the departmental proceedings have been initiated after due enquiry by Vigilance/PHQ and under the orders of the Additional Commissioner of Police. It is denied that this suspension order dated 10.11.97 is illegal or that the departmental enquiry cannot be allowed to be continued before the conclusion of the criminal case alleged to be filed against the applicant in the criminal court. It has further been asserted that since no case has been registered by the police against the applicant, the applicant cannot be granted any relief as prayed for by him in the application and the applicant deserves rejection.

6. We have heard Shri Shyam Babu, learned counsel for the applicant and Shri Anoop Bagai, learned counsel for the respondents at great length and have examined the record in great detail.

7. During arguments the learned counsel for the applicant has tried to impress that if the respondents are allowed to continue with the departmental proceedings his defence would stand disclosed and that he would be greatly prejudiced in the defence of the criminal case pending consideration before the trial court. In support of

his arguments the learned counsel has relied upon State of Rajasthan Vs. Shri B.K. Meena and ors. JT 1996 (8) SC 684. Dy. Manager A.P. State Road Transport Corporation Vs. Mohd. Yousuf Miyaand & Ors. 1997 (2) SCC 699 and A. Amarendernath and another Vs. The Chairman Disciplinary Authority, Saraswati Grameena Bank, Allahabad and others 1993 (4) SLR 491. Learned counsel has also taken us through the relevant provisions of the Delhi Police Rules as also Delhi Police (P&A) Rules, 1980.

8. We have given anxious thought to the arguments addressed by both the parties. During arguments it has been stated by the learned counsel for the applicant that on the basis of the complaint filed by the private individuals against him in the criminal court; the Criminal Court has recorded the statements of only two witnesses i.e. Brij Mohan CW-I and Gunbir Singh CW-II. He further states that till now the Criminal Court has not issued summons against the applicant on the basis of the criminal complaint filed by the complainant in the criminal court.

9. It is codified law under the Code of Criminal Procedure 1973 that criminal proceedings stand initiated only after the competent Magistrate (Trial Court) takes cognizance in the matter on the complaint filed by private individuals. Since the applicant herein has failed to place before the Tribunal any order of the Criminal Court taking cognizance on the basis of the complaint made

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against the applicant and the private complaint is still pending consideration before it, it cannot be said that the criminal proceedings have come into being. Where criminal proceedings have not come into existence as per provisions of the Code of Criminal Procedure; the applicant at this stage cannot seek any direction against the respondents to set aside or quash the order dated 21.1.98 (Annexure-A) or to ask and keep in-abeyance the departmental enquiry initiated vide impugned order dated 21.1.98 under the law. He would be at full liberty to contest the departmental proceedings and raise all objections permissible under Law. It, therefore, cannot be said that in the matter under consideration; there are departmental proceedings and criminal proceedings pending consideration simultaneously.

10. In view of above facts and analysis; the authorities relied upon by the learned counsel for the applicant are of no help being distinguishable. We do not find any merit whatsoever at this stage to interfere in the departmental action being taken against the applicant by virtue of respondents' order dated 21.1.98 as at Annexure-A.

11. For all the aforesaid reasons this O.A. is dismissed at the stage of admission ~~with the~~ ~~Opposition of the parties~~. Interim direction issued on 9.6.98 accordingly stands vacated.

N. Sahu
(N. Sahu)
Member (A)

Ratan Parkash
(Ratan Parkash)
Member (J)

cc.