

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

27

O.A. No.1221/98/99

Date of Decision: ~~xxxx~~
31.08.99.

Shri Constable Jitender Kumar ...Applicant

(By Advocate Shri Shankar Raju)

Versus

Union of India & ~~Ors~~ Another ...Respondents
Shri Anil Singh, Advocate for

(By Advocate Shri Jog Singh)

CORAM:

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VC(J)

HON'BLE ~~SHRI~~/MRS. SHANTA SHASTRY, MEMBER (A)

1. TO BE REFERRED TO THE REPORTER OR NOT? ~~YES~~
2. WHETHER IT NEEDS TO BE CIRCULATED TO OTHER BENCHES OF THE TRIBUNAL? No

VR
(V. Rajagopala Reddy)
Vice-Chairman (J)

Cases referred: JT 1996 (8) SC 684,
JT 1999 (2) SC 456.

(28)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1221/98

New Delhi this the 31st day of August, 1999.

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice-Chairman(J)
Hon'ble Smt. Shanta Shastry, Member (A)

Constable Jitender Kumar
No.1734/DAP,
S/o Shri Ramakant Tiwari,
R/o D-109, Tomar Colony,
Kamalpur, Burari,
Delhi.

...Applicant

(By Advocate Shri Shankar Raju)

-Versus-

1. Union of India
through Secretary,
Ministry of Home Affairs,
North Block,
New Delhi-110001.

2. Deputy Commissioner of Police,
IIInd Bn. DAP (Delhi Police),
New Police Line,
Kingsway Camp,
Delhi-9.

...Respondents

(By Advocate Shri Anand Singhal, proxy for Mr. Jog Singh,
Advocate)

ORDER

By Reddy, J.

It is submitted by the applicant, who was a Constable in the Delhi Police was falsely implicated in FIR No.330 of 1996 under Sections 392/411/506/353/186 readwith 34 I.P.C. and under Sections 27,54 and 59 of the Arms Act. On the allegations contained in the FIR the applicant was placed under suspension and thereafter without holding departmental enquiry, by an order dated 7.1.97 the applicant was dismissed from service under Article 311 (2) (b) of the Constitution. When the said order was challenged in OA-1533/97 before this Tribunal, the Tribunal by its order dated 24.3.98, set aside the order of dismissal and directed the respondents to hold a regular departmental enquiry in

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accordance with the relevant rules. Accordingly, the department reinstated the applicant in service and regular departmental enquiry was initiated.

2. A chargesheet was filed in the criminal case before the Court and the trial in that case is pending before the Metropolitan Magistrate, New Delhi.

3. The applicant filed the present OA, alleging that holding of departmental enquiry before the conclusion of the criminal trial is not permissible. If the applicant was asked to reveal his defence in the departmental enquiry it would cause prejudice to his defence in the criminal case. The learned counsel, therefore, contends that at least the applicant should not be allowed to cross-examine the witnesses as to reveal his defence, till the trial in the criminal case was completed and judgment rendered. The learned counsel for the respondents, however relying upon **State of Rajasthan v. B.K. Meena & Others**, JT 1996 (8) SC 684 and submitted that there is absolutely no legal bar for simultaneous criminal proceedings and departmental proceedings even if allegations are identical. He also contended that the Delhi Police (Punishment & Appeal) Rules, 1980 also do not preclude the department from proceeding simultaneously.

4. The point raised is squarely covered by the ratio laid down by the Supreme Court in **B.K. Meena's** case (supra). The Court held that there is no legal bar for proceeding with both the proceedings, i.e., criminal as well as departmental simultaneously, but in cases where the charges are grave and the

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case involves complicated question of law then the Court shall determine whether to stay the proceedings or not. The Supreme Court further observed that the disciplinary proceedings should not be delayed unduly, as it is in the interest of administration and good Government that the disciplinary proceedings are concluded expeditiously, the disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. In the present case the offence was committed in 1996 and the chargesheet was filed in 1997 but the trial is yet to be commenced. It is stated that the trial is posted to 21.1.99. We are also not convinced that the criminal case involved the complicated question of law. Hence, we do not see any reason to stay the departmental enquiry. In **Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. & Anr.** (JT 1999 (2) SC 456) the Supreme Court has considered **B.K. Meena's** case (supra) and approved the ratio laid down therein. This was a case where the disciplinary enquiry has been initiated and was also culminated into the dismissal of the delinquent. The criminal court thereafter gave a judgement acquitting the applicant. In view of the acquittal by the criminal court on the same set of facts the Supreme Court set aside the order of dismissal. In the circumstances, the ratio of this case has no application to the facts of the present case.

5. Rule 15 (2) of the Delhi Police (Punishment & Appeal) Rules, 1980 in our view is not attracted in the present case. Rule 15 (2) reads as follows:

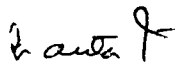
"(2) In cases in which a preliminary enquiry discloses the commission of a cognizable offence by a police officer of subordinate rank in his official relations with the public, departmental enquiry shall be ordered after obtaining prior approval of the Additional Commissioner of Police concerned as to whether a criminal case should be registered and investigated or a departmental enquiry should be held."

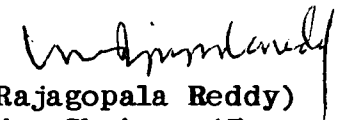
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The rule contemplates that in cases of the commission of a cognizable offence by a police officer of subordinate rank in his official relations with the public, it has to be determined, with the approval of the Additional Commissioner of Police, as to whether a criminal case should be registered or a departmental enquiry should be held in other words, only one course of action should be resorted to and not both. The offence alleged in the present case (SS 392 IPC) cannot be said to be in discharge of the official functions of the police officer. The rule, therefore, is not attracted at all. Hence, we have no hesitation in rejecting the contention. It is, therefore, open to proceed with simultaneous proceedings.

6. The trial in the case is yet to commence, though the offence is said to have been committed in 1996. In the interest of the purity of administration, it is necessary to proceed with the departmental enquiry as early as possible. The O.A. is, therefore, dismissed, in the circumstances, no costs.


(Smt. Shanta Shastry)
Member (A)


(V. Rajagopala Reddy)
Vice-Chairman(J)

'San.'