

Central Administrative Tribunal
Principal Bench: New Delhi

O.A. No. 2007/98

New Delhi this the 10th day of August 1999

Hon'ble Mr. Justice V. Rajagopala Reddy, VC (J)
Hon'ble Mr. R.K. Aahooja, Member (A)

Inspector VIrender Chauhan,
No. D-1420/ S/o Shri Sukhbir Singh,
R/o WZ-13, E, Vashist Park, Pankha
Road, Delhi-46.

2. Sub-Inspector Jai Bhagwan No. D-3043,
S/o Shri Jagdish Ram,
R/o Vill & P.O.-Auchandi,
Delhi-39.
3. Head Constable Umed Singh No. 5/A,
S/o Shri Surat Singh,
Vill & P.O.-Nangal Thakran,
P.S. Narela, Delhi.
4. Constable Maharaj Singh No. 2409/A
S/o Shri Ajai Pal Singh
R/o Vill Sodupur, P.S Dadri,
Distt- Ghaziabad, U.P.
5. Constable Harvinder Singh No. 2323/A
S/o Shri Mohan Singh,
R/o Vill & P.O.- Jhalian Khurd,
P.S. Chamkapur, Sahib, Distt-Rauper,
Punjab.

...Applicants

(By Advocate: Shri Shankar Raju)

Versus

1. Union of India, through
The Secretary,
Ministry of Home Affairs,
North Block, New Delhi.
2. Special Commissioner of Police,
Security and Operations,
Police Head Quarters,
I.P. Estate, M.S.O. Building,
New Delhi

...Respondents

(By Advocate: Shri S.K. Gupta)

CRP

ORDER (Oral)

By Reddy, J. -

(JY)

With the consent of the counsel we dispose of the OA at the admission stage itself. The applicant 1 & 2 are Inspector and Sub-Inspector respectively. Applicant No. 3 is Head Constable, 4 & 5 are Constable. The case of the applicants are that they were implicated in a false case in FIR No. 1023/94 under section 304/330/348/34/119 IPC at Police Station Mangol Puri. After investigation, charge sheet was filed under the above sections. It is now stated that in the criminal court the trial was commenced, charge is however yet to be framed. Simultaneously, the departmental enquiry has been initiated against the applicants on the same charges as are alleged in the above chargesheet. The OA is filed contending that the simultaneous initiation of departmental enquiry and an enquiry in the criminal case are illegal. It is also the case of the applicants that if the applicants are compelled to disclose the defence in the departmental enquiry their defence in the criminal enquiry will be prejudiced. This Tribunal by an order dated 15.10.98 directed the respondents not to compel the applicants to cross examine the witnesses produced in the departmental enquiry. Learned counsel for the applicants submit that under Rule 15(2) of Delhi Police (Punishment & Appeal) Rules-1980, simultaneous proceedings before the disciplinary authority as well as before the criminal court are allowed. The department should decide whether to initiate and proceed with the departmental enquiry or to launch criminal prosecution

CBR

but both the enquiries cannot be held simultaneously. Learned counsel for the respondents however contends that there is no bar for the simultaneous enquiry.

Rule-15 (2) of Delhi Police (P&A) Rules reads as follows:-

"In case in which a preliminary enquiry disclose the commission of a cognizable offence by a police officer of subordinate rank in his official relation 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".

The purport of the rule appears that the Additional Commissioner of Police should decide after an enquiry either to proceed to launch criminal prosecution or to conduct departmental enquiry. But, the rule speaks of commission of a cognizable offence in discharge of the official functions vis-a-vis the public. In the present case the offences sought to be enquired into by the criminal court fall under Section 304/330/348/34/119 IPC. The applicants are alleged to have committed the death of one person who was arrested. It, therefore, cannot be said that these offences are committed by the applicants in discharging the official duties in relation to the public. The rule is, therefore, not attracted to the facts of the case. On this ground the contention of the learned counsel can be rejected. We, therefore, need not examine whether the simultaneous proceedings are permissible under the sub-rule or not. This contention is accordingly rejected.

CJ

(X)

In view of the decision of the Hon'ble Supreme Court reported in JT 1996 (8) SC 684 and JT 1999 (2) SC 456, the second contention of the learned counsel also cannot be held to be valid. In the first case i.e. B.K. Meena's case the Supreme Court has clearly held that the delinquent can be proceeded with simultaneously by the department as well as in the criminal court. It is also made clear that merely on the ground that criminal trial has been pending the department cannot be precluded from the departmental enquiry. It was however stated by the Supreme Court that the disciplinary enquiry should be stayed only in cases where a defence of the employees in the criminal trial may not be prejudiced in cases of grave nature where the charges are grave and the case must involve complicated questions of law and fact. We do not see such a contingency in this case. In the second case i.e. JT 1999(2) SC 456 the disciplinary proceedings were completed against the delinquent and the delinquent was punished. The Supreme Court set aside the penalty of dismissal imposed on the delinquent in the departmental enquiry. In this case we have not reached either the completion of the trial in the criminal court or the enquiry in the disciplinary proceedings. As it is stated that the enquiry charge is yet to be framed in the criminal court, and the case would take a long time for completion, we deem it not appropriate to stay the conduct of the disciplinary enquiry.

The O.A., therefore, fails and is accordingly dismissed.

~~R.K. Ahooja~~
(R.K. Ahooja)
Member (A)

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