

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.314/1998

New Delhi, this 17th November, 1999

Hon'ble Shri Justice V. Rajagopala Reddy, VC(J)
Hon'ble Shri S.P. Biswas, Member(A)

Sub-Inspector Brij Pal Singh No.D-3012
C-10, Police Station Shalimar Bagh
Delhi-52

.. Applicant

(By Shri Shankar Raju, Advocate)

versus

Union of India, through

1. Secretary
Ministry of Home Affairs
North Block, New Delhi
2. Dy. Commissioner of Police
North West District
PS Ashok Vihar, Delhi

.. Respondents

(By Shri Girish Kathalia, Advocate)

ORDER

Hon'ble Shri S.P. Biswas

The issue that falls for determination in this OA is the legality of the respondents' actions in continuing simultaneously the criminal proceedings as well as departmental enquiry (DE for short) on the alleged same set of facts and charges.

2. Before we examine the merits of this case in terms of law, it would be appropriate to mention the background facts of the case for the purpose of appreciation of legal issues involved. Applicant was enrolled as a direct Sub-Inspector in Delhi Police on 9.7.90 and claims to have excellent service records without any punishment. On 12.7.95, applicant was posted in Police Station/Jahangirpuri and on a false complaint, a CBI raid was conducted and an FIR No.RC-56/(A)/95-DLI dated 12.7.95 was registered against

him under section 7 of Prevention of Corruption Act. Applicant was placed under suspension thereafter. Simultaneously, applicant was also allegedly implicated on a false complaint in FIR No.389/95 under section 20/61/85-NDPS Act as well as 25/54/59 Arms Act at the same Police Station. The Addl. Commissioner of Police, despite launching prosecution against the applicant also granted permission for DE on the allegation of his alleged involvement in the criminal case. Accordingly, the disciplinary authority (DA for short) i.e.R-2 vide orders dated 26.5.96 initiated the DE against the applicant. The details are at Annexure A-1.

3. It is in the context of the aforesaid details that the applicant has sought reliefs in terms of issuance of directions to the respondents to keep the DE in abeyance and not to pass final orders in the DE till completion of criminal case pending against him.

4. Applicant seeks to challenge continuation of DE on the basis that it is in violation of respondents' circular as at A-6. The Tribunal in a similarly situated case of Constable Ramesh Chand & Ors. UOI 1997(3) SLJ CAT 118 was pleased to hold that the instructions of the respondents or that the findings of EO must await at the stage of Rule 16(4)(b) of Delhi Police (Punishment & Appeal) Rules, 1980. The EO as well as DA have acted illegally in the present case by allowing DE beyond the issue of charge-memo and have compelled the applicant to disclose his defence which he has not done in respect of the criminal charge. That apart, as per Rule 12 and 15(2) of Delhi Police (P&A) Rules, 1980, only one proceeding can be instituted on

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same set of charge and evidence. Once a criminal case has been instituted on the basis of details as aforesaid, DE on the same set of evidence and charge was required to be kept in abeyance till verdict in the criminal trial. Applicant would, therefore, argue that the enquiry in the present case could be re-initiated only after the criminal charge was over.

5. Learned counsel for the applicant in support of his contentions placed reliance on the judicial pronouncements of the apex court in the cases of Sulekh Chand and Salek Chand Vs. Commissioner of Police & Ors. (1994) 28 ATC 711 and of this Tribunal in the case of Constable Ramesh Chand (supra).

6. Respondents have submitted that there is no illegality in conducting parallel proceedings in the criminal as well as DE simultaneously.

7. Determination of the legal issue as mentioned in para 1 above, need not detain us any longer in the light of law laid down by the apex court in the cases of State of Rajasthan Vs. B.K. Meena & Ors. JT 1996(8) SC 684 as well as Capt. Paul Anthony V. Bharat Gold Mines Ltd. & Anr. JT 1999(2) SC 456.

8. In B.K.Meena's case (supra) the apex court held that staying of disciplinary proceedings (DP for short) cannot be and should not be as a matter of course. When the charges are grave and the case involves complicated questions of law and facts and the defence of the employee in the criminal case will be prejudiced, then only the DP could be stayed. Staying of the DP is a

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matter to be determined with regard to the facts and circumstances of the case and no hard and fast rules can be enunciated in that behalf. The only ground that would constitute valid one for the purpose of staying DP is that defence of the employee in the criminal case may not be prejudiced. If the criminal case is unduly delayed, that may prove to be a good ground for going ahead with the DP. Even where such proceedings are held at an earlier date all the relevant facts for and against should be weighed and a decision taken keeping in view the various principles laid down on the subject.

9. We also find that in Paul Anthony's case (supra) their Lordships held that where the DP and criminal case are based on same set of facts and evidence, continuation of the former could be interfered with. It has also been held therein that proceedings in a criminal case and the DE can be proceeded simultaneously since they operate in distinct and different jurisdiction areas. DP are meant not only to punish the guilt but also to keep the administrative machinery unsullied by getting rid of the bad elements. Staying of DP cannot be, therefore, a matter of routine exercise.

10. In DP, several factors operate in the mind of DA such as enforcement of discipline or determination of dereliction of duties or lacking integrity by delinquent or other staff. That apart, standard of proof required in the DP is also different from that of those required in a criminal case.

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11. We have heard the learned counsel for both parties and perused the records.

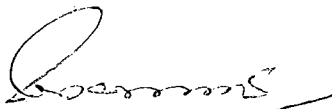
12. We find that a case was registered against the applicant on the complaint of one Shri Ashok Kumar by the CBI alleging that the applicant had demanded bribe of Rs.12,000 for hushing up a case of bank fraud. A trap was accordingly laid down and the applicant was caught red-handed by the CBI while accepting bribe of Rs.5000. After the trap, during the search of the room adjoining the office room of the applicant, one country made revolver, one sword, one dagger and one gupti were recovered. Besides these, a black suit-case containing narcotics weighing above 970 gm and 20 bottles of country made liquor were also recovered. From the charges levelled against the applicant, it is seen that the applicant is alleged to have committed offences punishable under section 7 pf P.C.Act, 1988 and 13(2) read with 13(1)(d) of P.C.Act, 1988. Though the facts and charges in both the cases are partially common, but list of witnesses as well as documents in them differ widely.

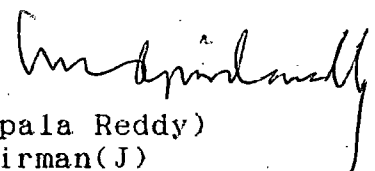
13. In the facts and circumstances, in our considered view, it would not be appropriate to stay the DP since that would give a wrong signal to the employees working in a disciplined force with the Delhi Police. Attempt to establish that the charge of mere misconduct would by itself justify continuation of departmental action to keep up the image of administration vis-a-vis public.

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14. In the circumstances, applicant's reliance on the decisions cited, as referred to in para 6 above, does not render him any help.

15. Keeping in view the position of law laid down in the cases of Paul Aunthony and B.K. Meena (supra) as well as facts and circumstances of the case, we do not consider it an appropriate case to issue any directions to the respondednts to stay the departmental proceedings. The OA is devoid of merit and is accordingly dismissed. No costs.


(S.P. Biswas)
Member(A)


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

/gtv/