

Central Administrative Tribunal, Principal Bench

O.A. No. 676 of 1995

New Delhi this the 8th day of October, 1999

Hon'ble Shri S.R. Adige, Vice Chairman(A)
Hon'ble Shri Kuldip Singh, Member (J)

Inspector Krishan Kumar Kaushik
R/o D-1/37 Delhi Police. ... Applicant

By Advocate Mrs. Avnish Ahlawat.

Versus

1. Union of India through
Lt. Governor, Government of National
Capital Territory of Delhi,
Raj Niwas, Delhi.
2. The Commissioner of Police, Delhi
Police Headquarters,
M.S.O. Building, I.P. Estate,
New Delhi-2.
3. Additional Commissioner of Police
(Northern Range)
Police Headquarters,
M.S.O. Building,
I.P. Estate,
New Delhi-2.
4. Dy. Commissioner of Police
(North District),
Dehi Police,
Civil Lines Police Station,
Delhi. ... Respondents

By Advocate Shri Arun Bhardwaj.

Order

By Hon'ble Shri Kuldip Singh, Member (J)

The applicant, Krishan Kumar Kaushik was working as SHO, Police Station, Kashmiri Gate in the year 1993. During the period he was posted as an SHO, a case under Sections 147/148/149/302/307 IPC was registered at the Police Station, Kashmiri Gate. An FIR was registered at the Police Station on the basis of the ruqqa sent by the applicant from the place of occurrence. FIR was written and

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registered by Head Constable/Duty Officer. The crime is alleged to have been committed as there was a dispute between two rival parties over a plot of land worth lakhs of rupees and in a fight between the two groups, one person had been killed. It was stated that both the parties were quite influential and were putting departmental pressure on the applicant. The applicant is also stated to have made an application before Ilaka SDM u/s 145 Cr.P.C. SDM had passed an order regarding maintaining status quo in respect of the plot in question. However, after the passing of the said order of maintaining of status quo, the DCP North District, i.e., respondent No.4 passed an order transferring the investigation to Inspector (Special Staff), North District. Respondent No.3, Additional Commissioner of Police, Northern Range, ordered a Departmental Enquiry against the applicant on the ground that scrutiny of the case FIR 470 dated 8.8.1993 reveals that there had been interpolations and over-writing in the text of FIR and page 1 of the ruqqa had also been changed and this interpolations and over-writings in the FIR is alleged to have been done with the connivance of the applicant, so enquiry was initiated.

2. It is further stated that in the criminal case statements of witnesses including that of the complainant were recorded u/s 161 Cr.P.C. by the applicant and during the course of hearing of bail application, no dispute has ever been raised about the ruqqa or the FIR at any stage.

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3. It is further alleged that the authorities are biased against him which is quite evident from the fact that the applicant had made a representation to the Commissioner of Police, Delhi. But Additional Commissioner of Police, Northern Range ordered that the Departmental Enquiry should continue pending decision on the representation made by the applicant to the Commissioner of Police, Delhi.

4. It is further pleaded that vide order dated 18.5.94, the applicant was communicated an order of the Additional Commissioner of Police, wherein it was mentioned that the Commissioner of Police, respondent No.2 had desired that the Departmental Enquiry should be kept in abeyance. Thereafter, the applicant was transferred and his name was kept on the Agreed List against which he had also made a representation.

5. It is further pleaded that the new Police Commissioner came and revived the enquiry wherein he has no power to review it.

6. It is further pleaded that the respondent No.4 is a biased officer in the matter as he is acting as a Judge in his own cause. He has allegedly and on the basis of the records after the transfer of investigation of the case from the applicant to another Investigating Officer, got recorded the supplementary contradictory statement of the complainant and now he has been appointed Enquiry Officer by respondent No.3 and inspite of

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number of representations made by him, enquiry has not been transferred. So it is stated that the action of the respondents for starting enquiry again and not transferring the enquiry to any other officer is bad and the enquiry is liable to be stayed.

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7. The action of the respondent No.4 is mala fide as he want to help the accused in the criminal case and want to punish the applicant by hook or crook.

8. It is further stated that any contradictory statement made during the enquiry will be beneficial to the key persons in the criminal case.

9. It is further stated that the applicant himself is a witness in a case as an Investigating Officer and has to support the prosecution case in the court and if in the Departmental Enquiry, the applicant's statement is rejected, the same fate will be in the court of law where the criminal case is pending.

10. It is, therefore, prayed that the departmental proceedings against the applicant should be stayed and respondents be directed to transfer the enquiry either to the DE Cell of Delhi Police or Central Vigilance Commission and set aside the order dated 6.2.95 ^(Ann AA) passed by the Commissioner of Police.



11. The application is opposed wherein it is stated that scrutiny of FIR reveals interpolations and over-writings in the text of the FIR. Similarly a careful perusal of ruqqa reveals that the first page has been changed. This is stated to have been done allegedly by the applicant with a view to help one Parma Nand, by the applicant himself. It was also stated that the applicant had been avoiding to join the departmental proceedings again and again and had been adopting delay tactics just to avoid the service of summary of allegations.

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12. It is further pleaded that there is no prejudice against the applicant if the Departmental Enquiry is continued.

13. It is also pleaded that if the departmental enquiry is allowed to continue, it will not affect the criminal case at any stage and it was prayed that the proceedings should not be stayed.

14. We have heard the learned counsel for the parties and have gone through the records.

15. Mrs. Avnish Ahlawat, Counsel appearing for the applicant submitted that if in this case the Departmental Enquiry is continued, there are bound to be contradictions in the statements recorded before the Enquiry Officer and in the statement before the trial court where the criminal case is pending and in that event, the benefit

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would go only to the accused and State would not be able to effectively prosecute the accused persons and get them punished.

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16. Counsel for the applicant had also contended that recently the department had issued a Circular dated 31.8.99 based on the judgment of Captain M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another which says that "if the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee.....it would be desirable to stay the DE proceedings till the conclusion of the criminal proceedings".

17. The third aspect of the arguments of the learned counsel for the applicant is that the Enquiry Officer, i.e., respondent No.4 is biased against the applicant and he should not conduct the enquiry and enquiry should be conducted through DE Cell of the Delhi Police or through Chief Vigilance Commission.

18. On the contrary, the learned counsel for the respondents submitted that as per the law laid down in State of Rajasthan Vs. B.K. Meena and Others (JT 1996(8) SC 684) it has been held that there is no legal bar for both proceedings to go in simultaneously. However, in certain situation it may not be desirable to proceed with the Departmental Enquiry when a criminal case is pending on identical charge. So on the strength of

the judgment of State of Rajasthan Vs. B.K. Meena (Supra), the learned counsel for the respondents submitted that the Departmental Proceedings can continue.

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19. We have gone through the circular dated 31.8.99 issued by the Commissioner of Police and the judgment reported as Captain M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another (Supra) on the basis of which this circular has been issued. From a perusal of the judgment, we find that the Hon'ble Supreme Court after analysing various previous cases, held as follows;-

The conclusions which are deducible from various decisions of this Court are:-

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and facts, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet.

(iv) The factors mentioned (ii) and (iii) above cannot be considered in isolation to stay the Departmental

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proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest.

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20. Now we have to see whether on the basis of the judgment, the Departmental Proceedings should be stayed or not. We are of the considered opinion that the circular as well as the judgment of the Supreme Court on the basis of which this circular has been issued do not apply to the present facts of the case though the learned counsel had laid heavy stress on the words "identical" and "similar set of facts" which are to be enquired into in departmental enquiry and which are to be tried before the trial court and stated that in this case the facts are identical since the interpolation of the FIR would be subject before the departmental enquiry and the accused persons in the criminal case would be able to take benefit of the interpolation in their defence and they may be benefited if any adverse finding is given against the applicant during the Departmental Enquiry. So the learned counsel for the applicant urged that it would not be desirable, advisable or appropriate to proceed with the Departmental Enquiry. *for*

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21. However, we may mention that the learned counsel for the applicant is unable to satisfy us about the facts being identical and similar. Since the enquiry is against a different person, i.e., the applicant and the criminal case pending trial is altogether against different persons, i.e., the accused named in the challan (which has not been filed before this court).

22. We may further mention that the basis of staying the departmental enquiry pending the trial of the criminal case is that the delinquent employee may not be prejudiced before the criminal/trial court as he may not have to disclose his defence before hand before the departmental proceedings. But in this case there is no question of disclosing of defence by the applicant in the departmental proceedings since he is merely a witness in the criminal case. The circular relied upon by the applicant also postulates those situations for staying the enquiry whether there are similar set of facts and evidence in both the proceedings is common and the delinquent official is likely to suffer prejudice if he is called upon to disclose the defence before the departmental enquiry before the trial in the criminal case. So that is the basis for staying the departmental enquiry. But in this case since there is no remote chance of the applicant being convicted for the offence u/s 147/148/149/302/307 IPC by the criminal court in the trial of case FIE 470 as the delinquent official is merely a witness in that.

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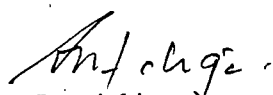
23. As regards the allegations of the applicant that the dispute was over a plot of land wherein both the rival groups were influential, those allegations are not at all relevant as regards the continuation of enquiry is concerned. So we are of the considered opinion as there is no legal bar for stay of the proceedings, we find that on that aspect the departmental proceedings should not be stayed at all.

24. As regards the allegation of the applicant that the respondent No.4 is biased against him and the applicant has lodged his protest at the very initial stage, we may mention that first of all that this case was filed in the year 1995 and respondent No.4, the Enquiry Officer is arrayed in the array of parties by designation and not in personal name.

25. By now the DCP North District, Delhi Police must have been changed and the present incumbent has to conduct the inquiry. Since it is fundamental principle of law that justice should not only be done but it should be seen to have been done, so we direct the respondent No.1 that if the DCP is the same incumbent and has not been changed, to change the Enquiry Officer within one month from the date of receipt of a copy of this order.

26. The OA is partly allowed to the extent contained in para 25 above.. No order as to costs.


(Kuldip Singh)
Member (J)


(S.R. Adige)
Vice Chairman(A)

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