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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 1187 of 1995

M.A. No. 1934 of 1998

New Delhi this the 19th day of March, 1999

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE-CHAIRMAN (J)
HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

Sub-Inspector Jai Narain
S/o Late Shri Chunni Lal
R/o Quarter No.1, Police Colony,
Ashok Vihar,
Delhi.....Applicant

By Advocate Shri Shanker Raju.

Versus

1. Union of India/Lt. Governor of NCTD
through Commissioner of Police,
Police Head Quarter,
I.P. Estate,
New Delhi.

2. Deputy Commissioner of Police,
Crime & Railways,
Police Head Quarter,
I.P. Estate,
New Delhi.

Respondents

By Advocate Shri Rajinder Pandita.

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

Applicant is aggrieved over the impugned order initiating departmental enquiry against the applicant. In the summary of allegations it is stated that, he arranged the service of one Smt. Reeta Sharma in the office of NTSF using his influence and later on made a plan to have her in his house on the pretext to get her service confirmed and when the said Smt. Sharma and her father reached his house he met them and with a mala fide intention suggested that Smt. Sharma could go to her office from there on the next day and he would perform night duty at Dev Nagar. After dropping the father, Veerit Sharma at ISBT, he went to his residence, knocked the door which was opened by Smt. Reeta Sharma and

later on he brutally assaulted her outraged her modesty and forcibly raped her at the point of revolver. A case FIR No. 162/95 under Section 376/342/506 of the IPC dated 3.4.95 was registered. It was also further alleged that the applicant had taken her signatures forcibly on the plain papers and then returned her clothes which he had removed while assaulting. He had obtained her signature on plain papers to get undue benefit in his favour with ulterior and mala fide intention. The applicant has prayed that the departmental enquiry initiated by the respondents should be kept pending till the final disposal of the criminal case. When the matter came up for admission on 10.7.95 it was stated by the learned counsel for the applicant that the criminal case was fixed for 13.9.95 and in the departmental enquiry, the case was fixed on the next date and, therefore, the prosecution witnesses in the departmental proceedings had been examined and they had to be cross-examined by the applicant. In the light of this submission, an ex-parte interim order was passed by the Tribunal on 10.7.95 directing that the domestic enquiry may proceed but final orders thereon shall not be passed till further orders. Subsequently, when the matter came up for further interim direction on 25.8.95, the respondents were directed by way of further interim direction not to frame any charge if not framed till that date. Later on this was modified by the order dated 21.9.95 stating that the respondents may frame charge and go upto the stage of examination-in-chief of the witnesses without insisting on cross-examination by the applicant.

2. The respondents have filed a Miscellaneous Application No. 1934 of 1998 praying for a vacation of the interim order passed on 21.9.1995. After notice the respondent in the MA (applicant in the OA) also filed a reply to the MA.

3. We have heard both the OA as well as MA on merits as the hearing was expedited.

4. The main ground taken by the applicant in the OA is that if simultaneous departmental proceedings are held before the conclusion of the criminal trial, the applicant would be forced to disclose his defence common to the criminal trial by way of cross-examination of prosecution witnesses and submission of defence statement and witnesses. It is averred that this will greatly prejudice in the matter of defence to be taken in the criminal trial. It is also contended by the applicant that if once it is decided to prosecute the police officer, it will not be advisable and legal to deal with him departmentally on the same allegations. It is submitted that while making the registration of the case, the department had only one option under Rule 15(2) of the Delhi Police (Punishment & Appeal) Rules, 1980 and once the trial ends in conviction or acquittal, as the case may be, the department will have the prerogative to deal with police officer departmentally. Therefore, it is submitted that the rules clearly bars simultaneous proceedings.

5. The respondents on the other hand have submitted that there is no legal bar whatsoever for initiating simultaneous proceedings against the applicant. They rely on

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the judgment of the Hon'ble Supreme Court in **Kusheshwar Dubey Vs. M/s Bharat Cooking Coal Limited and Other**, AIR 1988 SC 2118 and also other judgments of the Tribunal. He submitted that departmental enquiry has been ordered on the charge of gross misconduct of the applicant which was unbecoming of a police officer under the provisions of the Delhi Police (Punishment & Appeal) Rules, 1980. It is also submitted that the three prosecution witnesses had been examined but they were not cross-examined by the delinquent officer till now in the departmental proceedings in view of the interim order passed by the Tribunal. The petitioners in MA 1934/98 (respondents in the OA) seek the vacation of the interim order passed earlier and they rely on the judgment of the Hon'ble Supreme Court in **State of Rajasthan Vs. B.K. Meena & Others**, JT 1996(8) SC 684 and have submitted that there is absolutely no legal bar for simultaneous criminal proceedings and departmental proceedings on the same set of facts. It is submitted that there can be no hard and fast rules on the question as to whether during the pendency of the criminal proceedings the departmental proceedings should be stayed or not and there should be no apprehension of the outcome of the one affecting the other because the ingredients of the misconduct or delinquency in criminal prosecution and departmental proceedings as well as the quantum of proof required in both cases are not identical.

6. We have heard the learned counsel for the parties and have perused the record.

7. It is an admitted position that the departmental proceedings had been initiated and three prosecution witnesses had been examined. In *Kusheshwar Dubey (Supra)*, the Apex Court held after reviewing the relevant decisions observed as follows:-

.....Whether in the facts and circumstances of a particular case there should or should not be such simultaneity of the proceedings would then receive judicial consideration and the court would decide in the given circumstances of a particular case as to whether the disciplinary proceedings should be interdicted, pending criminal trial. As we have already stated that it is neither possible nor advisable to evolve a hard and fast, strait-jacket formula valid for all cases and of general application without regard to the particularities of the individual situation."

8. But in a more recent judgment of the Hon'ble Supreme Court in *B.K. Meena's (Supra)* their Lordships after referring to *Kusheshwar Dubey's* case and certain other decisions referred to therein, observed as follows:-

.....It would be evident from the above decisions that each of them starts with the indisputable proposition that there is no legal bar for both proceedings to go on simultaneously and then say that in certain situations, it may not be 'desirable', 'advisable' or 'appropriate' to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. The staying of disciplinary proceedings, it is emphasised, is a matter to be determined having regard to the facts and circumstances of a given case and that no hard and fast rules can be enunciated in that behalf. The only ground suggested in the above decisions as constituting a valid ground for staying the disciplinary proceedings is that the defence of the employee in the criminal case may not be prejudiced. This ground has, however, been hedged in by providing further that this may be done in cases of grave

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nature involving questions of fact and law. In our respectful opinion, it means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, 'advisability', 'desirability' or 'propriety', as the case may be, has to be determined in each case taking into consideration all the facts and circumstances of the case. The ground indicated in D.C.M. and Tata Oil Mills is not also an invariable rule. It is only a factor which will go into the scales while judging the advisability or desirability of staying the disciplinary proceedings. One of the contending consideration is that the disciplinary enquiry cannot be - and should not be - delayed unduly. So far as the criminal cases are concerned, it is well-known that they drag on endlessly where high officials or persons holding high public offices are involved".

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"The interests of administration and good government demand that these departmental proceedings are concluded expeditiously. It must be remembered that interests of administration demand that undesirable elements are thrown out and any charge of misdemeanour is enquired into promptly. The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. The interest of the delinquent officer also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges, his honour should be vindicated at the earliest possible moment and if he is guilty, he should be dealt with promptly according to law. It is not also in the interest of the administration that persons accused of serious misdemeanour should be continued in office indefinitely, i.e., for long periods awaiting the result of criminal proceedings."

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"Stay of disciplinary proceedings cannot be, and should not be, a matter of course. All the relevant factors, for and against, should be weighed and a decision taken keeping in view the various principles laid down in the decisions referred to above".

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"The approach and the objective in the criminal proceedings - and - the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him under the Prevention of Corruption Act (and the Indian Penal Code, if

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any) are established and, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. Staying of disciplinary proceedings pending criminal proceedings, to repeat, should not be a matter of course but a considered decision. Even if stayed at one stage, the decision may require reconsideration if the criminal case gets unduly delayed".

9. The respondents submits that in a criminal case the proof required for conviction is to be beyond all reasonable doubts whereas in departmental proceedings proof based on preponderance of probability is sufficient for holding charge to have been proved. In view of this, it will not be in the interest of administration to keep the departmental enquiry pending till the decision of the criminal case. We are inclined to agree with the above. We are also of the view that in the present case, only facts as are to be established are material and no complicated questions of law appear to be involved.

10. In regard to the reliance of Rule 15(2) of the Delhi Police (Punishment & Appeal) Rules, 1980, we are of the considered view that this provision does not specifically bar the initiation of departmental proceedings simultaneously with the registration of a criminal case. In this view of the matter, we are inclined to agree with the observations of this Tribunal in OA 990/97 that in the Delhi Police (Punishment & Appeal) Rules, 1980 there is no authority for the view that the departmental proceedings should be stayed pending the criminal trial.

11. In the conspectus of the above discussion, we do not find any merit in the application and, therefore, the

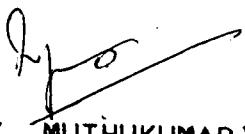
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application is dismissed.

12. The interim order passed on 21.9.1995 is also vacated.

There shall be no order as to costs.


(K. MUTHUKUMAR)

MEMBER (A)


(V. RAJAGOPALA REDDY)

VICE CHAIRMAN (J)

Rakesh