

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A No. 2687 of 1996

New Delhi, this the 20th day of July, 1998

Hon'ble Shri T. N. Bhat, Member (J)
Hon'ble Shri S.P.Biswas, Member (A)

In the matter of:

Mool Chand
s/o Fakir Chand,
r/o V & P.O. Dhera Rampur,
Teh: Ghar Mukteshwar,
Distt. Ghaziabad, U.P.Applicant.

By Advocate: Shri Shyam Babu

Versus

1. Deputy Commissioner of Police (1st Bn)
Delhi Armed Police,
Kingsway Camp,
Delhi.
2. Sh. Rajinder Singh (Enquiry Officer)
Inspector, 1st Battalion,
Delhi Armed Police,
Kingsway Camp, Delhi.Respondents

By Advocate: Ms Jyotsana Kaushik through proxy
counsel Sh. Ajesh Luthra

O R D E R

By Hon'ble Shri T.N. Bhat, Member (J)-

The applicant herein assails the action of respondents in issuing a chargesheet to him on the same allegations as those in the criminal case that has been instituted against him. He prays for the following reliefs:

- a) Call for the record of the case and set aside or keep in abeyance the impugned order dated 2.12.1996 Annexure 'A' with further directions to the respondents

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not to proceed with departmental enquiry during the pendency of the criminal case;

- b) Grant all consequential reliefs/benefits which are admissible to the applicant;
- c) Pass such other order or further order as may be deemed fit and proper in the facts and circumstances of the case; and
- d) Award costs.

2. The main ground agitated is that if the departmental enquiry is allowed to proceed the applicant may have to disclose his defence thus prejudicing his case before the criminal court.

3. The respondents have resisted the applicant's O.A. on the ground that the allegations in the criminal case and the departmental enquiry proceedings are distinct. While in the criminal case the allegation against the applicant is that he had caused grievous hurt, in the departmental enquiry the charge is that of insubordination and assault on his superior officer.

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4. To the counter filed by the respondents the applicant has also filed a rejoinder reiterating the pleas taken in the O.A.

5. We have heard at length the arguments of the learned counsel for the parties and have perused the material on record.

6. During the course of arguments the learned counsel for the applicant cited a few judgements, but he mainly relied upon the judgement of the Apex Court in Kukeshwar Dubey's case reported in AIR 1988 SC 2118. But being aware of the later decision of the Apex Court in the State of Rajasthan vs. B.K. Meena, reported in JT 1996 (8) SC 684, the learned counsel for the applicant sought to distinguish the facts of that case from those of the instant case. He also places reliance upon the judgement reported in 1997 (2) SCC 699.

7. We have given our careful consideration to the arguments of the learned counsel for the parties and are inclined to accept the plea raised by the respondents, based upon the judgement of the Apex Court in B.K. Meena's case (supra). In that case it was held that ordinarily disciplinary proceedings should not be stalled/stayed on the mere ground that the criminal case on the same or similar charges is pending, as it is common knowledge that criminal trials take a long time to conclude. However, the learned counsel for the applicant states that in B.K. Meena's case it was held on facts that the delinquent official had already disclosed his defence in the disciplinary proceeding by making a

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detailed representation running into 90 pages and, therefore, that judgement would not be applicable to the facts of the instant case. We find that a similar contention had been raised before another Bench of this Tribunal in the case of Devinder Kumar vs. Union of India & Ors. (OA No. 1065/96). This plea was answered by that Bench in the judgement dated 24.1.1997 in the following words:

"We have given the rival contentions our careful consideration. In State of Rajasthan vs. B.K.Meena and Ors. 1996 (7) SCALE 363 even where the CAT Jaipur Bench had found the charge sheet in the criminal case and the memo of charges in the disciplinary proceedings were based upon the same facts and allegations, the Hon'ble Supreme Court quashed the Tribunal's order staying the disciplinary proceedings against the applicant till the disposal of the criminal case against him, as unsustainable both in law and facts and directed the disciplinary proceedings to go on expeditiously without waiting for the result of the criminal proceedings. It is true that in the Meena's case (Supra) the respondent had already disclosed his defence in the departmental proceedings and there was therefore no question of the same prejudicing him in the criminal case, but in view of the seriousness of the charges, the inordinately long time taken in concluding the criminal proceedings, the absence of any legal bar for the two proceedings to go on simultaneously; the imperatives of administration and good Government which require that disciplinary proceedings should be disposed of expeditiously; the distinct and different objectives of disciplinary proceedings as compared to that of criminal proceedings; the differing standards of proof, modes of enquiry and rules and the interests of those Government servants themselves who have a clear conscience, and want to clear their names as soon as possible, the Hon'ble Supreme Court in Meena's case (Supra) have held that stay of disciplinary proceedings should not be a matter of course, and all the relevant factors for and against should be weighed. Keeping in view what has been stated above, they have further enquired that before any decision is taken, and while taking a decision to stay the departmental proceedings, not only must the charges be

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grave but they must involve complicated questions of law and facts." [Emphasis supplied].

8. We have carefully gone through the judgement in B.K.Meena's case and find that the earlier judgement on the subject including the one in Kukeshwar Dubey have been discussed and explained, and it has been held that in law there is no bar to, or prohibition against, simultaneous criminal proceedings and disciplinary proceedings. It has been further held that in certain cases it may not be 'advisable', 'desirable' or 'appropriate' to proceed with the disciplinary enquiry when there is a criminal case pending on identical charges, but that staying of disciplinary enquiry should be ordered only in cases of grave nature involving complicated questions of law and fact. According to the Apex Court one of the important factors to be considered in such situations would be that the disciplinary enquiry cannot be and should not be delayed unduly.

9. In the instant case it cannot be said that the charges in the criminal case are so grave and involve such complicated questions of law and fact that if the disciplinary enquiry is continued the defence of the delinquent official in the criminal case would be prejudiced. As already mentioned, the criminal case against the applicant is in respect of an offence under Section 325 IPC which, it may be stated, is a compoundable offence. We also do not find any complicated questions of law or fact involved in that case. Moreover, the trial in the criminal case is likely to take a long time to conclude. In such circumstances it would be neither just

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nor proper to stay the disciplinary enquiry in this case. There are also no grounds whatsoever for quashing the charge-sheet.

10. Viewed as above, we find no merit in this O.A. The O.A. is accordingly dismissed, but without any order as to costs.

(Signature)
(S.P.Biswas),
Member (A)

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(T.N.Bhat)
Member (J)