

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

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G.A./T.A. No. 352/96 /19 Decided on: 21.2.97

Suresh Kumar & Anr.

..... APPLICANT(S)
(By Shri Shankar Raju Advocate)

VERSUS

U.O.I. & Anr.

..... RESPONDENTS
(By Shri H.L.Jad Advocate)

CO RAM

THE HON'BLE SHRI S.R. ADIGE, MEMBER (A)

THE HON'BLE ~~SHRI S.R. ADIGE~~ / DR. A. VEDAVALLI, MEMBER (J)

1. To be referred to the Reporter or not? Yes
2. Whether to be circulated to other Benches of the Tribunal? No

S.R. Adige
(S.R. ADIGE)
Member (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

O.A. No.352 of 1996

New Delhi, dated this the 21st February, 1997

HON'BLE MR. S.R. ADIGE, MEMBER (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

1. Head Const. Suresh Kumar,
No.45/ND,
S/o Shri Pala Ram,
R/o 40/41 Govind Pura (old) Extension,
Delhi-110051.

2. Const. Bijender Singh,
No. 1445/ND,
S/o Shri Jai Pal Singh,
R/o Barrack of Police Station,
Mandir Marg,
New Delhi.

... APPLICANTS

(By Advocate: Shri Shankar Raju)

VERSUS

1. Union of India through
the Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.

2. The Addl. Commissioner of Police,
New Delhi Distt.,
Parliament Street,
New Delhi.

.... RESPONDENTS

(By Advocate: Shri H.L. Jad)

J U D G M E N T

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

Applicants seek a direction to keep the D.E. initiated vide Orders dated 10.1.96 in abeyance till the disposal of a criminal case against him instituted vide F.I.R. No.11/96 u/s 323/341/354/509 IPC.

2. The summary of allegations reads as follows:

" It is alleged against H.C. Suresh Kumar No.45/ND (PIS No.28780001) and Ct. Bijender Singh No.1445/ND (PIS No.28881046) that on 5.1.96 at about 10.10 p.m. H.C. Suresh Kumar No.45/ND stopped a TSR No.DL-1R-B-4165 opposite 100 Cafe House, Connaught Place, New Delhi and

gave beatings to Miss Madhumita Goswami, d/o Shri G.G. Devgoswami, R/o House No.675, Sector-28, NOIDA (U.P.) and Mrs. Nirupama Shekhar w/o Shri N. Shekhar R/o House No.205, Sector-28, NOIDA who were sitting in the said TSR. They were pulled out from hair and were given regular beatings without any reason and fault of the said ladies resulting which they received injuries. The H.C. was off duty at that time and he has no business for stopping the said TSR and making enquiry from the ladies. It is alleged against Const. Bijender Singh No.1445/ND that he alongwith Const. Babu Lal on motor cycle patrolling duty also came that opposite 100 Cafe House, 'B' Block, Connaught Place and joined with H.C. Suresh Kumar No.45/ND and allegedly also gave beating to the women and their colleagues S/Shri Shameer Tuteja, Akshay Mathur, etc. without any reason on fault of the said public person. In this connection a case vide FIR No.11/96 dated 5.1.96 u/s 341/323/354/509-IPC is registered against both of them at P.S. Connaught Place.

The above act on the part of H.C. Suresh Kumar No.45/ND and Const. Bijender Singh No.1445/ND tantamounts to grave misconduct and misuse of official position and liable for departmental action u/s 21 of Delhi Police Act, 1978."

2. It is stated that simultaneously action has been taken to prosecute them under Section 341/323/354/509 IPC and copy of FIR No.11/96 (Ann. 3) and charge sheet have been filed.

3. Applicants contend that if they are compelled to disclose their defence in the D.E. it will prejudice their case in the criminal trial.

/K

4. We have heard applicants' counsel Shri Shankar Raju and respondents' counsel Shri Jad.

5. In State of Rajasthan Vs. Shri B.K.Meena & Ors. 1996(7) SCALE 363 the Hon'ble Supreme Court, after noticing a number of leading cases including Kusheshwar Dubey Vs. M/s Bharat Coking Coal Ltd. & Ors. AIR 1988 SC 2118 and other cases ~~has been pleased to~~ ~~hold~~ held 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 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 (emphasis added). 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.One of the contending consideration is that the disciplinary enquiry cannot be - and should not be - delayed unduly. So far as criminal cases are concerned, it is well-known that they drag on endlessly..... If a criminal case is unduly delayed that may itself be a good ground for going ahead with the

disciplinary enquiry even where the disciplinary proceedings are held over at an earlier stage. The interests of administration and good govt. demand that these proceedings are concluded expeditiously.....The interest of the delinquent officer also lies in a prompt conclusion of the disciplinary proceedings.It is not also in the interest of administration that persons accused of serious misdemeanour should be continued in office indefinitely, i.e. for long periods awaiting the result of criminal proceedings.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.....There is yet another reason. 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 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."

6. Applying the ^{ratio} ~~principle~~ contained in ~~the~~ the above judgment to the facts and circumstances of the present case, we hold that this is not a fit case where the D.E. should be kept stayed till the disposal of the criminal case, as in our view the case does not involve complicated question of law and fact. In fact the case is a simple and straightfoward one in which it is alleged that the two applicants committed grave misconduct and misused their official position by unprovokedly dragging two ladies from their vehicle on the night of 5.1.96 by their hair, and beating them and their colleagues without any fault or reason, as a ^{result} ~~result~~ of which the ladies sustained injuries.

7. In the result we find no good reasons to stay the Departmental Enquiry. The prayer is rejected and the O.A. is dismissed. Interim orders are vacated. ² No costs.

A. VedaValli

(DR. A. VEDAVALLI)
Member (J)

/GK/

S.R. Adige

(S.R. ADIGE)
Member (A)