

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO.2132/94

New Delhi, the 31st March, 1995

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Hon'ble Shri J.P. Sharma, Member(J)

Hon'ble Shri B.K. Singh, Member(A)

1. Shri Khem Raj, s/o Barkat Ram,
Constable No.506/W,
District Police Lines, Tilak Nagar,
New Delhi.

2. Shri Ram Kumar, s/o Shri Hansraj Singh
Constable No.576/W,
District Police Lines, Tilak Nagar,
New Delhi.

... Applicants

By Advocate: None

Vs.

1. Commissioner of Police,
Delhi Police, Police Headquarter,
I.P. Estate, New Delhi.

2. Dy. Commissioner of Police,
West District, New Delhi.

3. Inspector Bharat Singh Yadav,
S.H.O., P.S. Hari Nagar,
New Delhi.

... Respondents

By Advocate: Shri Rajinder Pandita

ORDER

Hon'ble Shri J.P. Sharma, Member(J)

A report was lodged at P.S. Naraina on 16.4.94 by one Shri Shivdasani. The allegations are that on 14.4.94 the complainant was going alongwith his friend in his car, at about 5 P.M. he offered lift to a young tall girl in Mayapuri in his car. When this car reached near red light Naraina Ring Road fly over, two persons came on scooter No.DBU-7245 and they said that they are from special staff, West Distt. Tagore Garden and asked him to accompany to

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their staff office. They released Shri Shivedasani after snatching Rs.3,000/- and also took the girl with them. On the basis of the FIR, a challan was filed in the court of Metropolitan Magistrate, New Delhi Shri V.K. Bansal. During the pendency of that criminal trial, an impugned order dated 1.6.94 was issued to start departmental enquiry under the Delhi Police (Punishment & Appeal) Rules, 1980 and Shri Bharat Singh, S.H.O., Hari Nagar was appointed as Enquiry Officer. The summary of allegations dated 23.7.94 was served on the applicants.

2. The applicant filed this application on 12.10.94 seeking the permission to file the application jointly and prayed for the grant of the reliefs that the impugned order dated 1.6.94 be quashed alongwith summary of allegations and in the interim relief prayed that respondents may be directed to stay the departmental enquiry against the applicants.

3. A notice was issued to the respondents who filed their reply. It is stated that the person on scooter No. DELU-7245 was of Constable Khem Raj and as such Constable Khem Raj was arrested on 16.4.94 at about 4 p.m. from his house and the said scooter was recovered from him. On interrogation, Constable Khem Raj disclosed the identity of the co-accused Constable Ram Kumar posted at P.S. Anand Parbat. It is said that registration of criminal case is no bar to initiate the departmental and disciplinary enquiry against the applicants though the impugned order has been issued. The conduct of the applicants is unbecoming of the members of the Police force. The decision will be taken in the enquiry after the same is concluded. Alongwith the reply, the respondents

have also filed the circular. This circular goes to show that there is no bar to proceed with the departmental enquiry but the finding must wait at the stage of Rule 16(iv)(b) of Delhi Police(Punishment & Appeal) Rules, 1980. In another words, prosecution evidence can be completed but the defence should not be taken and the departmental enquiry should be kept pending till the verdict of the court case. The applicant has also filed the rejoinder.

4. None is present on behalf of the applicant.

We heard the learned counsel for the respondents Shri Rajinder Pandita. The contention of the learned counsel for the respondents is that the applicants have committed entirely grossly indisciplined act. While the members of the Police force they have to help the public but here in this case they have robbed the complainant of Rs.1200/- though it is also mentioned as Rs.3,000/-. In the case of Kusheshwar Dubey Vs. Bharat Cocking Coal Ltd. & ors reported in AIR 1988 S.C. 2118 a similar point was considered by the Hon'ble Supreme Court. In that case the original Civil Court granted the injunction to the authorities not to proceed with the enquiry during the pendency of the criminal case but High Court reversed the order and the Hon'ble Supreme Court maintained the order of the original Civil Court. It has been held that no straightjacket formula can be laid down in such cases as to whether the simultaneous departmental enquiry in a criminal proceedings may continue at the same time. It has been held that it depends on the circumstances of each case. Now in the present case, the alleged misconduct has not been committed in the course of discharging of the duties by the police

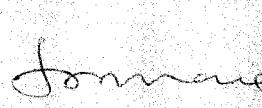
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constables but they went on scooter upto Naraina fly over and stopped the car in which the complainant alongwith one girl who had taken the lift were going to a particular destination. The applicants misrepresented certain facts and extorted certain money from the complainant that is a criminal offence. The competent criminal court is seized of the matter if both the proceedings are allowed simultaneously to go the applicants will suffer in their defence in the criminal case. The respondents even after the criminal case ends in its acquittal proceed with the departmental enquiry on this very summary of allegations as laid down in Rule 12 of the Delhi Police(Punishment & Appeal) Rules, 1980. However, if simultaneous proceedings are allowed to continue, irreparable damage can be done to the applicants in their defence in the criminal case. Thus, in the circumstances it is necessary that the departmental enquiry be stayed.

5. The application is therefore partly allowed. The disciplinary departmental enquiry against the applicants by the impugned order is stayed till the disposal of the criminal case against the applicants with liberty to the respondents to re-commence the same after the criminal case is over and even to invoke the provisions of Rule 12 of the Delhi Police(Punishment & Appeals) Rules, 1980 and thereafter pass necessary orders in the departmental enquiry after giving full opportunity to the applicants. Cost on parties.


(B.K. SINGH)
MEMBER(A)


(J.P. SHARMA)
MEMBER(J)

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