

5

Central Administrative Tribunal
Principal Bench, New Delhi

OA No.2421/94

New Delhi: May 19, 1995.

Hon'ble Mr A.V.Haridasan, Vice Chairman (J)
Hon'ble Mr K.Muthukumar, Member (A)

Ram Chander
Constable
R/o ARRO Lines
Safdarjung Airport
New Delhi

...Applicant

(By Advocate: Mrs Meera Chibber)

Versus

1. Govt. of NCT of Delhi
Through Commissioner of Police
Police HQs
IP Estate, New Delhi
2. Dy Commissioner of Police
7-RRO Hans Bhavan
Bahadur Shah Zafar Marg
New Delhi
3. Inspector Vijay Kumar (Admn)
Enquiry Officer
IGI Airport/NITC FRRO Branch
New Delhi

...Respondents

(By advocate:

J U D G E M E N T (ORAL)

Hon'ble Mr A.V.Haridasan, Vice Chairman (J)

In this application, the applicant who is a Head Constable in the Delhi Police, has prayed that the respondents be directed to keep the departmental enquiry proceedings against him in abeyance till disposal of the criminal case. The facts necessary for disposal of this application can be briefly stated as under:

2. On 20.1.1994, a complaint was lodged against him by the Customs Department under section 135(a) of the Customs Act before the Additional Chief Metropolitan Magistrate, New Delhi. On the
- 2

very same day, an FIR was lodged against the applicant alleging offences under section ~~126~~, 353/332 of the IPC. A copy of the FIR has been placed in the material papers marked as Annexure-B. The allegations against the applicant mentioned in the FIR read as follows:

"Incident report today on 20.1.94 when I was deputed to keep an eye on the accused Shri Ram Chander who was caught in the left Immigration Hall while he was smuggling gold biscuits. Suddenly he tried to run awa from the site. When I tried to stop him, he gave blows on my face which resulted in several injuries on my face. I went to Ram Manohar Lohia Hospital and got myself examined by the doctor. The doctor made detailed report in this respect and handing over a copy of the same in the police station at the hospital. This is for information and necessary action please. Sd/- Dulchand Hawaldar."

3. Apart from, cognizance has also been taken on the complaint filed by the customs department before the Additional Chief Metropolitan Magistrate. The applicant was served a summary of allegations dated 10.11.94 which contained following imputations:

"It is alleged against you, Const. Ram Chander No.340/P that on 20.1.1994, while detailed as office orderly to Sh. R.S.Khurana, AFRRO/Shift 'D' at Immigration, IGI Airport, New Delhi, left your duty point deliberately to help one passenger who arrived by flight No.EK-700 from Dubai at 10.15 am. The passenger kept some gold biscuits in the toilet being used by handicapped in the left arrival side. The pax connived with you in order to remove the gold biscuits illegally without paying the customs

duty. You had hidden 2.8 kgs gold in the bag in the first trip and delivered it to one Bhagirath, an accomplice of the pax outside the departure hall. You again made a second attempt to take out approx. 2.8 kgs gold in a bag from the said toilet but was seen by Smt. Sudesh, a sweepress working with Arun Enterprises at IGI Airport Terminal II. You tried to bribe her by offering about Rs. 20,000 but she refused and raised a hue and cry and reported the matter to the customs officers. Apprehending danger you tried to escape from the scene but was overpowered by the customs officials. You also hit Sh. Duli Chand, a Havaldar of Customs Departure while trying to escape in order to avoid your nabbing. Accordingly case FIR No.29/94 u/s 186/332/353 IPC dated 21.1.94 was got registered at PS IGI airport."

4. Finding that holding of the departmental proceedings simultaneously with the criminal prosecution would result in prejudice to the applicant, the applicant made a representation on 22.11.94 to the Deputy Commissioner of Police requesting that the departmental proceedings may be stopped till disposal of the criminal case. Finding no response to this and finding that the department is busy proceeding with the departmental proceedings, the applicant has filed this application praying that the respondents may be directed to keep the departmental proceedings in abeyance till disposal of the criminal case. It has been alleged in the application that if the applicant is compelled to meet the departmental charge, he may have to disclose his defence which may prejudice him in his defence in a criminal court and therefore the interest of justice demands that a direction may be given to the respondents.

5. The respondents in their reply have contended that the summary of allegations against the applicant being totally different from the allegations against him in the FIR as also the complaint made by the Customs Department, there is no merit in the contention of the applicant that holding of the disciplinary proceedings simultaneously with the criminal prosecution would jeopardise his defence.

6. Since the issue involved is quite simple and it is necessary to dispose of this matter expeditiously, with the consent of the counsels on both sides, we are proceeding to dispose of this application at the admission stage itself as the pleadings are also complete.

7. The stand taken by the respondents that the summary of allegations are totally different from the allegations in the FIR and in the complaint and therefore holding of the departmental proceedings simultaneously with the prosecution ^{would} did not jeopardise the defence of the applicant before ^{the} a criminal court does not appear to be based on facts. A careful scrutiny of the FIR, complaint and also the summary of allegations clearly establishes that the summary of allegations relates to exactly the same incident as the allegations ~~are~~ contained in the complaint as also in the FIR. Learned counsel for the respondents at this juncture pointed out that apart from the allegations made in the police charge and in the complaint by the customs department, the summary of allegations contained another allegation that he left duty point deliberately. This being not a matter concerned with the criminal case, there will not be any difficulty for the applicant if the disciplinary proceedings are proceeded against that allegation alone. We find that leaving of the duty spot, according to the summary of allegations, is for the purpose of assisting a passenger in smuggling gold and therefore we are convinced that this part alone cannot be disassociated from the rest and that it will not be possible to adduce evidence in this regard alone separately.

8. We are aware of the fact that the Supreme Court has in various rulings observed that there cannot be a hard and fast rule as to whether it is permissible to hold a disciplinary proceedings simultaneously with a prosecution, but in AIR 1988 SC 2118 Kusheshwar V. Bharat Coking Coal Ltd, the Supreme Court made the following observations:

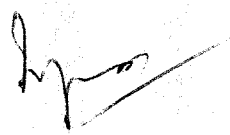
"The view expressed in the three cases of this Court seem to support the position that while there could be no legal bar for simultaneous proceedings being taken, yet there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case. In the latter class of cases it would be open to the delinquent employee to seek such an order of stay or injunction from the Court. 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 will 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 adviseable to evolve a hard and fast straight-jacket formula valid for all cases and of general application without regard to the particularities of the individual situation. For the disposal of the present case, we do not think it necessary to say anything more, particularly when we do not intend to lay down any general guideline."

9. After saying so and referring to the facts of the case, their Lordship stated as follows:

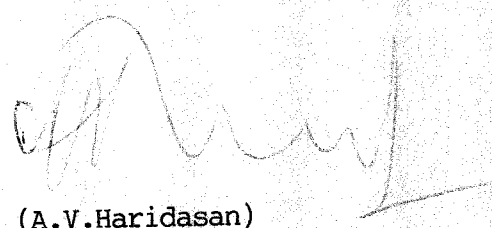
In the instant case, the criminal action and the disciplinary proceedings are grounded upon the same set of facts. We are of the view that the disciplinary proceedings should have been stayed and the High Court was not right in interfering with the trial court's order of injunction which had been affirmed in appeal."

10. The dictum laid down in the aforesaid rulings applies on all fours to the facts of this case. The summary of allegations are virtually the same as the allegations in the FIR and in the criminal complaint. Subjecting the applicant to the disciplinary proceedings simultaneously with prosecution is likely to prejudice the defence of the applicant before a criminal court.

11. Under the circumstances, we are of the considered view that the interest of justice demands that a direction be given to the respondents to keep the disciplinary proceedings in abeyance till the disposal of the criminal case. We do so, The application is disposed of with that direction. No costs. OA is allowed accordingly.



(K.Muthukumar)
Member (A)



(A.V. Haridasan)
Vice Chairman (J)

aa.