

30  
21

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

O.A. NO. 2505/94

New Delhi this the 3rd day of January, 1996.

Hon'ble Shri N.V. Krishnan, Acting Chairman.

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Shri Som Nath,  
S/o Shri Krishan Lal,  
Diesel Fitter under Shop  
Superintendent/PS/PRS,  
Northern Railway,  
IRCA Building,  
New Delhi.

... Applicant.

By Advocate Shri B.S. Mainee.

Versus

1. The General Manager,  
Northern Railway,  
Baroda House,  
New Delhi.
2. The D. Project Manager/Elect/PRs,  
Northern Railway, IRCA Bldg.,  
State Entry Road,  
New Delhi.
3. The Shop Superintendent/PS/PRS,  
Northern Railway, IRCA Bldg.,  
State Entry Road,  
New Delhi.

... Respondents.

None appeared though served.

ORDER (ORAL)

Hon'ble Shri N.V. Krishnan, Acting Chairman.

The grievance of the applicant is as follows:

"1.2 That the applicant is aggrieved by the impugned order vide which the respondents have initiated the disciplinary proceedings on the charge of stealing EVR of DG Set installed at Delhi-Shahdara Reservation Centre on 18.7.1994 and simultaneously has already filed an F.I.R. in Crime No. 26/94 u/s 3 of the Railway Property (Unauthorised Possession) Act on the same charge of stealing Electronic Voltage regulators of D.G. set, i.e. the respondents are illegally

seeking to hold disciplinary proceedings against the applicant although the matter is already pending in the criminal court".

2. Notice was issued to the respondents. None appeared and no reply has been filed. We had also issued Dasti notice to the respondents by our direction on 24.10.95. Though served, no reply has been filed and none is present on behalf of the respondents.

3. The applicant seeks the directions to the respondents to quash the initiation of disciplinary proceedings by the impugned order.

4. We have heard the learned counsel. We are of the view that in view of the charges framed against the applicant and the statement of imputations, no case has been made out to quash the impugned order. What the applicant requires is only sufficient protection so that the defence which he will have to set up in the criminal case is not prejudiced.

5. We have heard the similar case, O.A. No. 1564/94, Shri Dayanand Tyagi Vs. Delhi Administration & Ors., today in which an order has been passed giving directions to the respondents in the matter of conducting the DE during the pendency of the criminal trial. In the present case also, it will be sufficient if similar directions are issued.

6. In the circumstance, we are of the view that the applicant will not be prejudiced if the prosecution witnesses are permitted to be examined by the disciplinary authority or by the Inquiry Officer in the presence of the applicant.

The applicant may also, if he so likes, cross-examine the witness if it is not likely to prejudice his case. However, it is open to him to submit to the disciplinary authority or to the Inquiry Officer that he does not like to cross examine the witness as it will prejudice his future trial and if such a submission is made, the disciplinary authority or the Inquiry Officer, as the case may be, shall not compel him to resort to cross examination. The right of cross examination in such case will be exercised by the applicant when the DE is resumed after the decision in the trial is made known. We are also of the view that the respondents should be protected to this extent because one does not know when the criminal trial will be over. It is possible that, at a later stage, the prosecution witnesses may not be available or they may not recollect what they know about the case. The respondents, therefore, are entitled to have atleast the statement of the PWs recorded in the presence of the applicant for whatever it is worth so that they can make such use of it as is permissible under law, when ultimately the DE is resumed.

7. The O.A. is disposed of with the above orders and directions.

*Lakshmi Swaminathan*  
(Smt. Lakshmi Swaminathan)  
Member(J)

*N.V. Krishnan*  
(N.V. Krishnan)  
Acting Chairman

'SRD'