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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

...
OA.No. 665 of 1994

Dated New Delhi, this the 9th day of November, 1994.

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

Constable Jaibir Singh
C/o Mrs Avnish Ahlawat, Advocate
243, Lawyers' Chamber
Delhi High Court
New Delhi.

... Applicant

By Advocate: Mrs Avnish Ahlawat

VERSUS

1. Government of National Capital
Territory of Delhi, through
Commissioner of Police, Delhi,
Police Headquarters,
M.S.O. Building,
I.P. Estate,
New Delhi-110 002.

2. Shri D. K. Bhatt,
Additional Deputy Commissioner of Police,
District New Delhi,
Delhi Police, Parliament Street,
New Delhi-110 002.

3. Inspector Bharat Singh,
Enquiry Officer, through D.C.P.,
New Delhi District, Parliament Street,
Delhi Police,
Delhi.

... Respondents

By Advocate: Sh. Vijay Pandit

O R D E R (ORAL)

Shri J. P. Sharma, M(J)

The applicant is serving as a Constable in Delhi Police. Vide order dated 27.10.92, he was dismissed from service under the provisions of Article 311(2)(b) of the Constitution of India holding that he has been involved in a criminal case along with other co-accused remaining absent from duty on 2.5.92 without any information leading to his arrest on 8.5.92 and FIR No. 221/92 dated 2.5.92 U/S

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302/34 IPC read with 122(b) of IPC was registered against him. In that order it was observed that the police is the protector of citizens and indulgence of policemen in crime will destroy the faith of people in the system. The involvement of the applicant in the criminal case amounts to serious misconduct and indiscipline. He has acted in a manner unbecoming of a Police Officer.

2. Against the above order of dismissal, the applicant ^{filed} an OA.No.3111/92 before the Principal Bench. It appears that the applicant preferred a departmental appeal before the competent authority. Before this OA come for consideration, the Assistant Commissioner of Police vide order dated 2.8.93 accepted the appeal and ordered holding of departmental proceedings against the applicant as envisaged under section 21 of Delhi Police(Punishment and Appeal)Rules,1980. The OA filed in the Principal Bench was dismissed as infructuous and there is an observation in para-3 of the said judgement that Additional Deputy Commissioner of Police has been directed to order regular departmental proceedings against the applicant and decide the case on merits. The applicant has been served with a memo of summary of allegations which is quoted below:

"It is alleged that you Const.Jasbir Singh, No.779/ND(PIS28820067) while posted at Security Pickets, New Delhi Distt., absented yourself from duty without any information and marked absent vide DD No.45 dt.2.5.92. Later on an information was received

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from DCP/South District that you (Const. Jaibir Singh No.779/ND) homicided one Radheshyam at Genda Nala Taimur Nagar on 2.5.92 and a criminal case vide FIR No.221/92 U/S 302/34 IPC P.S. S.N. Puri was registered against you and others in which you were arrested.

You were placed under suspension w.e.f. 8.5.92 vide Order No.5309-27/Estatt.(P), N. Delhi dt. 27.8.92. Later on you were dismissed from force under the provision of Article 311(2 b) of the Constitution of India vide order No.6045-6506/Estatt.(P)/ND,dt.27.10.92. You filed an appeal to Addl. C.P. (R) N. Delhi challenging the said order and your appeal was accepted. The appellate authority has ordered to reinstated you in service as suspension vide order No.7736-7835/HAP/N.D., dt. 17.9.93.

The above involvement of Const. Jaibir Singh, 779/ND (under suspension) in such a heinous crime tenamounts to serious and grave misconduct as he has acted in a manner of unbecoming of a Police Officer and he is liable for departmental action U/S 21 D.P. Act of 1978."

Along with summary of allegations, list of witnesses etc. has also been attached. Inspector Bharat Singh was appointed as Enquiry Officer and he also fixed the date for preliminary enquiry. On 22.3.94 the applicant filed the present application making certain averments as well as taking a number of grounds for the grant of reliefs. The amended reliefs annexed with OA BY MA.3273/94 has been taken on record. The applicant has prayed that the order dated 17.9.93 directing holding of the departmental enquiry against the applicant be set aside and the departmental enquiry be not proceeded with and kept in abeyance till the decision of the criminal case. The respondents have also filed reply to the OA as well as the M.A. opposing grant

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of reliefs prayed for by the applicant taking the stand that the applicant has been involved by absenting from duty on 2.5.92 in a murder case and was also arrested. It is stated that in the earlier case filed by the applicant, the Bench dismissed the same and Additional Deputy Commissioner of Police was directed to hold regular departmental enquiry against the applicant and decide the case on merits withdrawing the order of dismissal passed earlier under the provisions of Article 311(2(b)). It is stated that the applicant is involved in a heinous crime and shall be stigma to the police force. Certain annexures have also been annexed with the counter.

3. The applicant has also filed rejoinder reiterating the facts stated in the OA .

4. We heard Mrs. Avnish Ahlawat, counsel for the applicant on the earlier sitting of the Bench but the arguments remained incomplete as she wanted to place before us the various authorities on which she relied upon. To-day she fervently referred to a number of decisions of the Principal Bench; one in the case of Constable Kanwar Pal Vs Delhi Administration decided on 7.6.93 by the PB in OA.842/93 wherein allegations against the applicant were in regard to commission of certain offence U/S 379/356/34 IPC and the Tribunal stayed the departmental enquiry till the decision of the criminal case. The learned counsel for the applicant also referred to a case, OA.2312/88 in the case of S.I. S.S. Sharma Vs Delhi Administration decided on 27.7.94 by the PB where the applicant was alleged to have committed offence U/S104 of the Custom Act,1962 and the

summary of allegations were that the applicant had obtained leave fraudulently while he was arrested with certain articles which amounted to offence under the Custom Act. The learned counsel also referred to a decision in OA.1061/94 in the case of N. K. Gulati and 5 Ors Vs UOI &Ors wherein allegations against these police officers were that all of them had committed a gross misconduct with respect to certain incident in a market place. In this, the Bench has come to the conclusion that the proceedings of the departmental enquiry was ordered to be stayed until the relevant criminal case be decided by the criminal court. The Tribunal did not consider the point whether the proceedings are void in view of violation of Section 15(2) of the Delhi Police Act. (However, it should be Delhi Police(Punishment and Appeal)Rules,1980.). We have carefully gone through the decision of the Tribunal in this judgement and the Tribunal has referred to four decided cases of the Hon'ble Supreme Court. viz., (i) Kusheshwar Dubey Vs M/S Bharat Coking Coal Limited (AIR 1988 SC 2118), (ii) Delhi Cloth and General Mills Vs Kushal Bhan (AIR 1960 SC 806), (iii) Tata Oil Mills Vs Workmen (AIR 1965 SC 155) and Jung Bahadur Singh Vs Baij Nath (AIR 1969 SC 30). The Bench has also quoted paragraph-6 of the judgement which is also quoted below of the case of Kusheshwar Dubey(supra):

"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

Contd...6

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 advisable 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."

5. The learned counsel for the applicant has also with force argued that in case the departmental proceedings are not stayed the applicant is likely to be prejudiced in defending his criminal case of murder trial and he would have to disclose his defence much earlier in the departmental enquiry which can be taken advantage of by the prosecution in the criminal case.

6. We have considered all these arguments and simultaneously the ratio of the judgements cited before us. The authority in the case of Kusheshwar Dubey(supra) clearly lays down that no straight-jacket formula can be laid down as to whether simultaneous departmental proceeding and criminal trial for the same misconduct or offence should continue or not. The matter is left individuality to each particular case. Thus the case cited

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by the learned counsel for the applicant cannot be taken as an authority in the particular circumstances of this case. -the circumstances in the present case are enumerated as follows:

- (a) The applicant absented from duty undisputedly on 2.5.92;
- (b) The applicant was arrested in a criminal case U/S 302/34 IPC on 8.5.92;
- (c) The applicant remained under judicial custody till he was bailed out by an order of the Session Court.;
- (d) That the applicant was dismissed from service under the provision of Article 311(2)(b) on account of aforesaid misconduct being involved in a criminal case referred to above; and
- (e) That the applicant filed the OA.No.3111/92 before the Principal Bench assailing the order of his dismissal from service without holding a departmental disciplinary proceeding and that OA was dismissed on 6.10.93 as infructuous.

7. In the aforesaid OA.3111/92 decided on 6.10.93, in paragraph-3 it is clearly stated that by the order dated 2.8.93 produced before the Bench, the Additional Deputy Commissioner of Police was directed to order regular departmental proceedings against the applicant and decide the case on merits.

8. The above facts have been taken into account while considering the relief prayed for quashing the order of holding departmental enquiry and keeping the departmental disciplinary proceeding in abeyance till the decision of criminal case.

16

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9. We have no ^{two} ~~two~~ opinions that a person should not be allowed to disclose his defence in criminal trial before the prosecution evidence is examined and closed. The only apprehension harboured by the applicant is that in departmental proceedings he will disclose his defence. Defence in criminal case means the stand the particular accused will take to shatter the testimony of his involvement in the offence. There are various defences open including of alibi. On the basis of these, the cross-examination is put to the prosecution witness. The safeguard can be made with adequate precaution that a person who is tried subsequently for a criminal trial which has not yet commenced should not be prejudiced because of stand taken in departmental enquiry. The Commissioner of Police has directed the disciplinary enquiry when the applicant has challenged his termination order passed on the ground that his continuance in the police force would be a disgrace to the whole of the police force. It does not mean that the applicant is a culprit but at the same time he is an accused. He has been bailed out and has been in the custody in P.S. Sriniwaspuri and this fact cannot be denied. The applicant absented himself from duty on 2.5.92 and he was arrested by the police also. Applying the ratio of Kusheshwar Dubey, we find that this a case where the Tribunal has considered the matter in OA.3111/92. The Tribunal did not give any decision on the point but in the judgement it is observed that the OA has become infructuous only because a regular departmental enquiry has been ordered to be initiated against the applicant. The applicant was aware that the OA having been become infructuous with the above observations in the body of the judgement. The Tribunal cannot sit over this observation.

10. In view of the above facts and circumstances of the case, we find that this is a fit case where no interreference is required. However, we can make a safeguard for the applicant that any defence taken in the departmental enquiry shall have no force of law to be used in the criminal trial by the prosecution as has already been stated above in the earlier part of this order.

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The application, therefore, is dismissed as devoid of merit. Interim order granted by the Tribunal for staying the departmental enquiry on 4.4.94 is vacated. Cost on parties.

(B. K. Singh)

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(J. P. Sharma)