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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.No.701/94

NEW DELHI THIS THE 6th DAY OF SEPTEMBER, 1994.

HON'BLE SHRI J.P. SHARMA, MEMBER (J)
HON'BLE SHRI B.K. SINGH, MEMBER (A)

Anil Kumar (9592/DAP)
S/o Shri Ram Bir Singh
R/o House No.131/A, Rani Garden,
Shastri Nagar, Delhi.

....Applicant

By Advocate : Shri Shyam Babu

VERSUS

1. Dy Commissioner of Police
8th Bn, Delhi Armed Police,
Malvia Nagar,
New Delhi.

2. Shri Ashok Kumar,
Inspector/Enquiry Officer
8th Bn, D.A.P.
Malvia Nagar,
New Delhi.

...Respondents

By Advocate : Shri Surat Singh

JUDGEMENT (ORAL)

Shri J.P. Sharma, Member (J)

O.A.701/94 Anil Kumar Vs Dy Commissioner of Police & another. The applicant is serving as Constable in Delhi police, a F.I.R. No.144/93 dated 23.7.93 under Section 324/506/307/34 IPC was alleged at P.S. Geeta Colony, Delhi against him along with other members of his family showing allegations that all of them with a common and similar intention quarrelled with his neighbours Shri Udaibir Singh, Sona Devi, Kamlesh Devi and Hem Lata resident of House No.126, Rani Garden, Delhi and caused injury by nife lathies etc. The applicant was also arrested on 27.7.93 and was subsequently released on bail on 24.8.93 after detention in jail. On the basis of the aforesaid FIR a chargesheet against the applicant has since been filed in the Criminal Court

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for the trial of the aforesaid offences.

2. The grievance of the applicant is that the Dy Commissioner of Police by the Order dated 4.2.94 for the same alleged act of the applicant for which FIR was lodged departmental enquiry under section 21 of Delhi Police Act, 1978 has been ordered to be initiated and summary of allegations showing almost the same offence against the applicant, enclosing the list of witnesses and documents relied upon has been served. An Enquiry Officer has also been appointed. It is, therefore, prayed in this application filed in April, 94 that the departmental enquiry initiated be quashed. On notice respondents filed their reply taking the stand that the applicant has committed a misconduct as being a Police Officer, even in private life he was expected to maintain relations in personal life but for the alleged offence as per the conduct rules he was imprisoned and has been released. Such act should not be done by the members of the disciplined force like Delhi Police. It is also averred that there is no bar for holding simultaneous proceedings for a criminal offence in the court of Law and departmental proceeding in accordance with service Rules. The law has been settled in the case of Kusheswar Dubey Vs M/s Bharat Cooking Coal Ltd & Ors reported in AIR-1988 SC 2118.

3. The applicant has also filed rejoinder reiterating the facts stated in the application. When the matter came before this Tribunal on 08.04.94 it was directed that the departmental enquiry against the applicant can proceed upto the stage of framing

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of the charge.

4. We heard the counsel Shri Shyam Babu for the applicant and Shri Surat Singh, counsel for the respondents who submitted that the summary of showing almost the same offence allegations. /and stressed his arguments with the fact that the matter ^{pending} ~~wished~~ to be adjudicated upon by the ~~Tribunal~~ ^{criminal} court is almost the same which is to be established in a departmental enquiry. In view of this if the applicant joins the departmental enquiry he shall be very much prejudiced if he discloses his defence and give undue benefit to the complainant of the criminal case. In fact, the conclusion has to be reached in the departmental enquiry in regard to the involvement of the applicant in the mar-peat with his neighbours in Rani Garden. The contention of the learned counsel for the applicant therefore, is that the applicant has not committed any alleged misconduct while on official duty so in the criminal case even after the trial before the Criminal Court case there is provision under Rule 11 & 12 of Delhi Police (Punishment and Appeal) Rules, 1980 to proceed with the departmental enquiry.


5. The learned counsel for the respondents has only referred to the fact that as member of the Police force, he was in jail and that it is expected that the police personnel should have a clean chit, in any case he could not support the fact as to how the departmental enquiry is necessitated in this case when already the criminal court is seized of the matter to adjudicate upon the involvement of the applicant in the aforesaid occurrence of mar-peat.

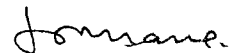
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6. The law laid down in the case of Kusheshwar Dubey (Supra) does not specify any straight-jacket formula as to in which cases the the departmental enquiry can be held simultaneously with the criminal trial. It has been laid down by the Lordship that it depends in the circumstances of each case. In the present case, we find that in the case of alleged mar-peat with the neighbours in which the applicant has also been nominated, t he applicant was not on duty at that relevant time. Thus, it is not the case where the departmental proceedings and criminal trial may go on simultaneously. This too itself does not mean that we are quashing the order of initiating departmental enquiry against the applicant. We do mean that the departmental enquiry may be kept pending while criminal trial goes on in the fitness of the circumstances after the conclusion of the criminal case, if considered, and if so advised, the department can revive the enquiry under 11 or 12 which ever is applicable in the facts of the case.

7. In view of this fact the application is partly allowed with the direction to respondents not to continue with the departmental enquiry against the applicant till decision on the criminal trial is reached and, therefore, may pass any subsequent order according to law, if so advised provided under the rule 11 or rule 12 of Delhi Police (Punishment & Appeal) Rules, 1980. Cost on parties.


(B.K. SINGH)
MEMBER (A)


(J.P. SHARMA)
MEMBER (J)