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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

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OA. No.1273 of 1994

Dated New Delhi, this 24th day of October, 1994

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

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

HC Mohinder Singh(No.112/PTS)
(Under suspension)
R/o Vill.&P.O. Kanonda
Dist. Rohtak
HARYANA

... Applicant

By Advocate: Shanker Raju

VERSUS

1. Lt. Governor of National
Capital Territory of Delhi through
Commissioner of Police, D.H.Q.,
M.S.O. Building
NEW DELHI

2. Principal(Police Training School)
Police Training School
Jharoda Kalan
NEW DELHI

... Respondents

By Advocate: Shri Arun Bhardwaj

O R D E R
(Oral)

Shri J. P. Sharma, M(J)

The applicant is Head Constable in Delhi Police and he has been issued a memo of holding a Departmental Enquiry under Section 21 of Delhi Police Act vide order dated 29.4.94. The summary of allegations against the applicant are that he along with his associates viz. S/Shri Joginder, Devender and Vijender committed an act of 'Mar-pit' which amounted to offence under Section 307/34 IPC, and he was also armed with a gun and further case under 25/27/54/59 Arms Act in

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P. S. Bahadurgarh, District, Rohtak(Haryana) was registered. It is undisputed that a case against the applicant has since been filed in the competent court in district Rohtak. During the pendency of that, the applicant appeared to have been suspended and this fact is also revealed by the departmental representative present in the court.

2. The grievance of the applicant is that Departmental Enquiry initiated against him can be kept in abeyance till the disposal of the criminal case by the competent criminal court. When the matter came before the Bench on 10.6.94, an ex-parte interim relief was granted to the effect that the departmental enquiry may continue but the applicant may not be compelled to cross-examine the prosecution witnesses to be produced by the administration in the departmental enquiry.

3. On notice, the respondents contested the application and stated that the applicant belongs to a disciplined police force whose primary duty is to protect the law but he himself participated, as alleged, in a serious crime along with his associates within P.S. Bahadurgarh

of Rohtak District in Haryana. It is further stated that this act of the applicant amounts to gross misconduct and the applicant has made himself by such a conduct unbecoming of police officer and so Departmental Enquiry has been initiated. There is no bar for initiating simultaneous criminal proceedings and departmental enquiry and the respondents are within their right to initiate departmental enquiry against the applicant.

4. The applicant has not filed any rejoinder against the aforesaid reply.

5. We have heard the learned counsel for the parties at length and perused the record of the case.

6. The law has been ~~elaborately~~ elaborately laid down in case of Kusheswar Dubey Vs Bharat Coking Coal Ltd. & Ors reported in AIR 1988 SC p.2118. The Hon'ble Supreme Court has considered the other cases of Vs. Its Workmen Tata Oil Mills/AIR 1965 SC 155, Delhi Cloth and General Mills Vs Kushal Bhan AIR 1960 SC 806. In para-6 of the said judgement, the Hon'ble Supreme Court

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held 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 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."

The Hon'ble Supreme Court further laid down that it is not possible 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. While disposing of the said appeal, the Hon'ble Supreme Court observed that 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

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affirmed in appeal. In that the case the appellant physically assaulted a supervising officer and on the basis of that he was subjected to disciplinary proceedings and criminal prosecution. He filed a civil suit in the court of Munsif at Dhanbad asking for injunction against the disciplinary action pending criminal trial. The Munsif made an order staying further proceedings in the disciplinary action till disposal of the criminal case. The appeal of the Respondent No.1 against the order of the learned Munsif was dismissed in favour of the appellant of the reported case. The High Court interfered and the matter came therefore before the Hon'ble Supreme Court.

7. The learned counsel for the respondents has the applicant as emphatically and fervently argued that a member of the police force whose primary function is to abide himself by law and order and also to prevent breach of the same by others, has indulged in an act which amounts to offence of attempt to murder. Basically this act has been done by the applicant while he was not discharging his duties as a serving Delhi Police

Head Constable. The incident has taken place in his native village when, it is alleged, that he associated with some co-villagers committed an act of 'Mar-pit' and FIR was lodged against him for this crime. Primarily the criminal court has to consider the matter. The applicant has to lay before his defence in question to ^{the} courts cross-examination of the witnesses of prosecution and also at the stage of his own defence and the question to be put by the criminal court at the conclusion of the prosecution evidence under 313 of Cr.PC.

The circumstances of the case, therefore, are of such a nature that if the criminal case ends in a acquittal then the departmental enquiry is likely to conclude earlier to the decision of the criminal case and if the applicant is held guilty in the departmental enquiry, he has to suffer punishment as envisaged under the rules. If subsequently, he is acquitted from the criminal court, he may ^{lose} ~~use~~ his remedy to get reinstatement ~~in service~~ in service as by that time the order of punishment may become

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final.


8. In the circumstances of the case, therefore, particularly considering this fact that the misconduct has arisen not while the applicant was on duty in Delhi Police but at the time when he was away in native village. So this is a fit case to interfere.

9. We, therefore, allow this application, without interfering with the order of suspension against the applicant, ^{with the direction} ~~to~~ stay the departmental enquiry against the applicant till the conclusion of criminal case pending against the applicant.

10. A copy of the the order be sent to parties.

Parties to bear their own costs.


(B. K. Singh)
Member(A)


(J. P. Sharma)
Member(J)

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