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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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OA NO. 1426 & 1427/94

New Delhi this the 1st day of December, 1994.

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

Hon'ble Mr. S.R. Adige, Member(A)

1. Shri Munishwar Dayal
son of Sh. Kali Charan
Resident of village and
PO NANJULA, Dist. Meerut (UP)

2. Shri Kartar Singh
Son of Sh. Jiwan Singh
R/o village & PO
Rithala, Delhi-85

(through Sh. G.D. Gupta, advocate)

.... Applicants

Versus

1. Government of National Capital
Territory of Delhi
through the Chief Secretary
5, Sham Nath Marg
Delhi-54.

2. The Commissioner of Police
Police Headquarters
MSO Building, I.P. Estate
New Delhi-2.

3. The Addl. Commissioner of Police(South Range)
Police Headquarters
MSO Building, IP Estate
New Delhi-02.

4. The Dy. Commissioner of Police,
South West District,
Vasant Vihar, New Delhi.

5. The Asstt. Commission of Police (HQs)
South West District, New Delhi.

(through Shri Vajay Pandita, advocate)

.... Respondents

OA No. 1426/94

1. Sh. Prakash Chand
R/o RZ-35, Gali No. 3, Harijan Colony, Bindapur,
P.O. Uttam Nagar, P.S. Janakpuri, New Delhi.

2. Sh. Nawab Singh
R/o Village Kajrauthi, P.O. Sadabad, Distt. Meerut (UP)

.... 2/A..

3. Shri Ranbir Singh,
R/o village Langot Gadhi,
P.O. Ranjeet Garhi, Distt. Aligarh (U.P.)
4. Shri Ishwar Singh,
R/o M-3/2, Model Town,
Police Colony,
Delhi - 110 009.

Applicants

Versus

1. Government of National Capital Territory
of Delhi Through the Chief Secretary,
5, Sham Nath Marg,
Delhi - 110 054.
2. The Commissioner of Police,
Police Headquarters, M.S.O. Building,
I.P.Estate,
New Delhi - 110 002.
3. The Additional Commissioner of Police,
(South Range),
Police Headquarters, M.S.O. Building, I.P.Estate,
New Delhi - 110 002.
4. The Deputy Commissioner of Police,
South West District,
Vasant Vihar,
New Delhi.
5. The Assistant Commissioner of Police,
(Headquarters),
South West District,
New Delhi.

Respondents

JUDGEMENT (Oral)

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

Both these original applications involve the same issue in the eyes of law and are taken together. DA 1426/94 is treated as a leading case.

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The grievance of the applicants is that the Deputy Commissioner of Police by the order dated 26.8.1993 under Section 21 of the Delhi Police Act, 1978 ordered for initiation of disciplinary departmental enquiry against the applicants on certain alleged misconduct detailed in the said order. In pursuance to that, the applicants had been served with a summary of allegations. It appears that simultaneously, a criminal case was lodged at Police Station, Inderpuri by F.I.R. No.138 dated 20th Sept. 1988 by the Crime Branch at 11 a.m. for an occurrence between the night of 16.4.88 and upto 11 a.m. of 17th April, 1988. This FIR was lodged by the Inspector, Crime Branch under Section 304/324/34 IPC. The grievance of the applicants is that since the matter is already before the Criminal Court and the trial has already commenced, the charge is ordered to be framed by Sessions Court, Delhi. The applicants Shri Prakash Chand, Head constable,; Const. Ishwar Singh, Const. Rambir Singh along with one Nawab Singh in this case have been charged under the provisions of 304/342/302/201 IPC while the applicants Munishwar Dayal and Kartar Singh have been separately charged under Section 201/34 IPC, for offences of culpable homicide not amounting to murder.

2. The relief claimed by the applicants is that the order dated 26th Aug. 1993 be quashed and further direction be given to respondents not to hold departmental enquiry against the applicants on the allegations/charges which are subject matter of criminal prosecution. The applicants have also prayed for grant of interim relief that the operation of the order dated 26th Aug. 1993 be suspended with direction to the respondents not to hold departmental enquiry against the applicants on the charges/allegations which are subject matter of a criminal court trial during pendency of the OA.

3. The prayer for interim relief was considered on 19.7.95 in both the OAs and the departmental proceeding was kept in abeyance for a period of 14 days and that interim order continues today.

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4. A notice was issued to the respondents and they have filed their reply separately in both QAs opposing grant of relief prayed for, citing the facts of the case. It is stated that the act committed by the applicants amounts to misconduct and therefore the Deputy Commission of Police by the impugned order dated 26th Aug. 1993 directed for initiation of departmental enquiry against the applicants.

5. We have heard the learned counsels for both parties. The applicant's counsel has not filed any rejoinder. The pleadings are taken as complete. Since this is a short matter and both counsels of the parties agreed, both the QAs are disposed of at the admission stage.

6. The contention of the learned counsel for the applicant is that the allegations against the applicants are almost the same which are subject matter of decision in the Criminal Court. In the Criminal Court, charge has already been framed and trial has commenced. In case the departmental disciplinary enquiry is held before the conclusion of the criminal case, the witnesses which are common to both will depose against the applicants from the side of the administration and naturally would have cross-examined on the truth of their credibility. This will be a sole ground to exposing the case of the applicants much before the criminal trial commences for examination of prosecution witnesses. This will be prejudicial to their interests and the stand to be taken in the criminal trial.

7. The learned counsel for the respondents however placed reliance on the decision of Hon'ble Supreme Court in the case of Kusheshwar Dubey Vs. M/s Bharat Coking Coal Ltd & Ors 1988 4 SCC 319. In the aforesaid decision, the Hon'ble Supreme Court has also considered the other cases and finally held that there can be no legal bar for simultaneous proceedings being taken together.

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8. In fact, the Hon'ble Supreme Court has left at the discretion of the Judicial Reviewing Body to find out whether in a particular circumstance and facts of the case, simultaneous disciplinary and criminal proceedings be allowed or not. It is observed that no straight jacket formula can be laid down for all the cases. In the case of Kusheshwar Dubey, there was also departmental proceeding and criminal trial. The original court stayed the proceeding of departmental enquiry but the appellate court reversed the order and directed that departmental enquiry may proceed. The Hon'ble Supreme Court however upheld the decision of the lower court. In the present case, the allegations against the applicants are that they are members of the Police Force and they had taken away certain persons on the pretext of getting certain work done and closetted them in the chamber behind Inderpuri Police Station during 16.9.88/17.9.88 night, which resulted in the death of one Ram Sarup. Simultaneously a criminal case was registered on the investigation of CBI. Under Rule 15(2) of Delhi Police (Punishment & Appeal) Act, 1980, a decision has to be arrived at whether to proceed departmentally for the misconduct and if that misconduct amounts to an offence in criminal law, whether criminal prosecution has been launched against such persons. The respondents did not take any action soon thereafter, and it was only after the criminal court has framed the charge in May 1989 the Deputy Commissioner of Police issued order for initiating departmental enquiry against the applicants, who are already standing trial in the sessions court on the same allegations. We have gone through the summary of allegations and the charge framed against the applicants in the criminal trial. The charge reflects every aspect of the allegations levelled against the applicants in the departmental enquiry.

9. We, therefore, considering all the aspects of the case, find that the respondents have been lukewarm in initiating departmental proceedings for a period of 4 years rather than soon after the alleged misconduct. When the proceedings in the criminal case have commenced

and are beyond the stage of charge, the justification of issuing impugned order dated 26.8.93 cannot be fair. The applicants are under suspension and are likely to remain so till the conclusion of criminal trial against them. The right of the respondents is not taken away for initiating departmental enquiry and passing necessary order in case of conviction by the criminal court as well as in case of acquittal by the criminal court subject to provisions of Rule 12 of Delhi Police (Punishment & Appeal) Rule 1980. In case departmental enquiry proceedings are allowed to continue and conclude and go adverse to the interests of the applicants, then their subsequent acquittal by the criminal court does not compensate them for the injury they are likely to suffer, in case adverse order is likely to be of severe nature in the departmental enquiry.

10. We are, therefore, of the view that this a fit case where simultaneous proceedings cannot be allowed to be drawn particularly when initiated 4 years after the alleged misconduct.

11. Both the applications are, therefore, disposed of with the following directions:-

- (a) The departmental proceedings shall remain in abeyance and pending till conclusion of the criminal trial before the Sessions Court against the applicants who are under trial accused, and shall not commence till the case is disposed of finally at the Sessions level.
- (b) The respondents shall be free to pass any order as a result of the decision of the Sessions Court either of acquittal or of conviction, according to relevant provisions in the Delhi Police (Punishment & Appeal) Rule 1980.

(B)

(c) Any observations made in this order will not affect either of the parties regarding charges framed and summary of allegations alleged against any of the applicants. Interim order passed earlier may continue till the time the criminal case is disposed of by the Sessions Court.

12. Both parties are directed to bear their own costs.

Copy be placed in both files.

M. Adige
(S.R. ADIGE)
MEMBER (A)

J. P. Sharma
(J.P. SHARMA)
MEMBER (J)