Central Administrative Tribunal
Principal Bench: New Delhi

OA No.1061/94

New Delhi this the 4th Day of October, 1994.

Sh. N.V. Krishnan, Vice-Chairman (A)
Sh. C.J. Roy, Member (J)

N.K. Gulati & Others ...Applicants

(By Advocate Sh. J.P. Verghese)

Versus

Union of India & Another ...Respondents

(Sh. M.Chandrasekharan, A.S.G. with Mrs. Avnish Ahlawat, Counsel).

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the judgement? ✗
4. Wheter it needs to be circulated to the outlying Benches? ✗

(N.V. Krishnan)
Vice-Chairman(A)
4.10.94.

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1. N.K. Gulati
Inspector
R/o D. 1/622
SHO, R.K. Puram
New Delhi

2. Krishan Kumar,
Sub Inspector
D.1530 PS R.K. Puram,
New Delhi.

3. Chand Kishore
S/o Shri Deen Dayal,
R/o WZ-3, Palam Village, New Delhi.

4. Kaka Ram Dogra,
S/o Sh. Gandharav Singh,
R/o 28/5, P.S. Tughlak Road,
New Delhi.

5. Devender Kumar,
S/o Sh. Sultan Singh,
R/o 1828, Paana Maamorpur,
Narela, Delhi.

6. Dharma Singh,
S/o Sh. Ram Sahaye,
R/o Village Mokhroti,
P.O. Muhari, P.S. Weir,
Distt. Bharat Pur, Rajasthan. ...Applicants

(By Advocate Sh. J.P. Verghese)

Versus

1. Union of India through
its Chief Secretary
Old Secretariat
Delhi.

2. The Commissioner of Police,
Police Headquarters,
IP Estate,
New Delhi. ..Respondents

(Sh.M. Chandrasekharan, Additional Solicitor General of India with Mrs. Avnish Ahlawat, Counsel)

ORDER

(Hon'ble Mr. N.V. Krishnan)

The applicants are officers of the Delhi Police. The Additional Commissioner of Police decided to initiate disciplinary proceedings against them by the order dt.

12.05.1994, (Annexure-I), based on certain incidents which took place on 09.04.1994. He appointed Sh. S. Prakash, Deputy Commissioner of Police (DE Cell) to conduct the departmental inquiry. Thereupon, the summary of allegations at Annexure-II was issued by Sh. S. Prakash, Deputy Commissioner of Police (DE Cell) on 13.05.1994. It is stated that, in respect of the alleged incident on 09.04.1994, a FIR was filed on 10.04.1994. The challan of the case has already been filed on 22.04.1994, (An.II) in respect of offences under Sections 308/147/148/149/186/353/333/504/342/218/167 and 323 IPC. The first applicant, therefore, sent a representation on 16.5.94 (Annexure IV) to the second respondent (Commissioner of Police) to keep in abeyance the D.E. Immediately thereafter, this O.A. was filed on 18.5.94 to restrain the respondents from proceeding with the departmental inquiry during the pendency of the criminal trial and that further, it be declared that these proceedings are illegal and biased as Section 15(2) of the Delhi Police Act has not been complied with. The grounds mentioned are that in case the departmental inquiry is proceeded with, it is likely to incriminate them and the defence in the criminal case would be exposed to the detriment of their interest.

2. When the matter came up for admission on 3.6.94, an ad-interim direction was given directing the respondents not to proceed with the D.E. till 16.6.94. That order was, however, vacated on 17.6.94 by a learned Single Member Vacation Bench. Thereupon, the applicants filed MA-1798/94 for a fresh interim order. That MA was heard. No order was

passed as the learned counsel for the respondents gave an undertaking that no further further proceedings would be taken in the case. That undertaking still cotinues.

3. In the meanwhile, four others filed MA-1784/94 for being made additional applicants. After hearing the parties that MA was allowed. Hence, there are six applicants in the O.A.

4. The respondents have filed their reply contending that the criminal case is for assault as well as for preventing a Government servant from performing his duties, whereas the departmental inquiry is initiated for various irregularities and lapses committed by the applicants. In other words, the issues in the criminal trial are totally different from the issues involved in the departmental enquiry.

5. In the rejoinder filed by the applicants, it is brought out that ten material witnesses are common to both proceedings. Therefore, the contention that the two proceedings relate to different issues will not stand scrutiny.

6. Sh. J.P. Verghese, learned counsel for the applicants was heard. Mrs. Avnish Ahlawat, learned counsel for the respondents was heard in the first instance. Later on, we heard Sh. M. Chandersekharan, the learned Additional Solicitor General of India (ASG) for the respondents.

7. In order to appreciate the rival contentions, it is necessary to state the facts out of which the two parallel proceedings have been initiated. This is briefly stated in paras 1 and 2 of the Summary of Allegations (Annexure II) as follows:-

"It is alleged that on 9.4.94 at 9.15 p.m., an altercation took place in South Moti Bagh Market, between Anindya Sen, s/o Shri A.C. Sen, Food Secretary to the Government of India, and Inspr. N.K. Gulati, SHO/R.K. Puram and S.I. Kishan Kumar, I/C P.P. Nanak Pura on the question of parking of vehicles. Following this, Inspr. N.K. Gulati and S.I. Kishan Kumar, who were in the market in plain clothes, whisked away Shri Anindya Sen in a private Maruti car to Police Post Nanak Pura, with the help of the three civilians, namely, Kamal Sharma, Vinod Tokas and Jasbir Singh. At the Police Post Sh.Anindya Sen was given beating not only by the policemen but also by the three civilians named above.

Babu Lal, who was Driver of the car, in which Anindya Sen had gone to Moti Bagh Market, informed Shri Ashok Chander Sen about the incident and Shri Sen went to the Police Post alongwith his wife and son Anirudh Sen. Upon enquiries about his son, he was told by SI Kishan Kumar that no such person has been brought to the Police Post. Shri Ashok Chandra Sen disclosed to the S.I. that he was the Secretary to the Government of India, Ministry of Food and insisted that his son has been beaten and detained there and that he be restored to him. But the S.I. used abusive language against him, pushed him and gave him a lathi blow. S.I. Kishan Kumar also ordered other Constables to give him lathi blows. When Satpal, PSO to Shri Sen, tried to intervene, his fire arm was taken away and he too was beaten-up by SI Kishan Kumar, ASI Chand Kishore, HC Kaka Ram, Ct. Dharam Singh, and Ct. Devender Kumar and the three civilians, namely Kamal Sharma, Vinod Tokas and Jasbir Singh. During this incident, Shri A.C. Sen sustained contusions and lacerated injury on his forehead and other parts of his body, and his younger son, Anirudh Sen and P.S.O. Satpal were also injured while trying to save Shri A.C. Sen from being beaten-up. He went to the Safdarjung Hospital, where he could not locate his son. Thereafter, he contacted the senior officers of Delhi Police, and upon their intervention, his son was brought back to his house at 11.30 p.m. Upon the complaint of Shri A.C. Sen, a case initially u/s 342/323/34 IPC was registered, vide FIR No.210, PS R.K. Puram, and Shri A.C. Sen, his son Anirudh Sen, and P.S.O. Satpal were medically examined."

8. The first question is whether the DE and the criminal case are really parallel procedings. On an earlier occasion, Mrs. Avnish Ahlawat, learned counsel for the respondents tried to contend that the issues are entirely

different though the background is the same. Indeed, the reply of the respondents seems to make such an averment. For, after narrating the brief facts in paras 1 and 2 of the reply, - which are more or less in the same terms as in the summary of Allegations, extracted in para 7, above - the respondents begin para 3 of the reply as follows:-

"3. That, a preliminary enquiry was ordered and during the course of preliminary enquiry, the following lapses and irregularities were found while performing their duties by the Police Officials, including the applicants:-"

Details of the lapses and irregularities are then given. Briefly they are the following:-

i) Appearing in plain clothes while on duty.

ii) Parking of the police vehicle obstructively which was objected to by Anindya Sen, who was then assaultted.

iii) To cover up this, Anindya Sen was arrested under Sections 107/151 Cr. P.C. and taken to Police Post Nanakpura in private vehicle.

iv) Making false DD entries at 11.15 p.m. making it appear that it was recorded at 9.45 p.m. and name of arrested person as stated in (iii) above was shown as Rajat Kapoor.

v) SI Kishan Kumar left Police Post without leave or permission.

vi) At the time of the incident SI Kishan Kumar was under the influence of drink.

vii) False entries made in DD regarding arrival and departure from Police Station.

viii) D.D. report 79-B dated 9.4.94 is an interpolation to mislead officers and give protection to N.K. Gulati, Inspector.

ix) Private cars used were procured benami by N.K. Gulati, Inspector and Kishan Kumar, SI.

This portion of the reply would make it appear that the D.E. is only in respect of these lapses and irregularities.

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9. However, this is contrary to facts. The Annexure-II summary of Allegations makes it clear that the primary and important allegation against the applicants are the allegations reproduced in para 7. The next para of the summary of Allegations begins as follows:-

"It is further alleges that ....."

Thereafter nine items of "further allegations" are recorded which relate to the nine items mentioned in para 8.

10. The learned A.S.G., however, did not pursue this line of argument. He contended that the D.E. has been necessitated because the above acts of omission and commission of the applicants, "constitute grave misconduct rendering them unfit for police service and which make them liable for departmental action punishable under Section 21 of the Delhi Police Act." Action to impose such punishment can be taken only by the respondents and by no other agency. Necessarily, the DE has to cover the same facts or almost the same facts, which have to be established in the criminal case. That, by itself, is not conclusive of the allegation that, as they are parellel proceedings, the D.E. would prejudice the defence of the applicants in the criminal case. He produced a written note tabulating the ingredients of the chargesheet in the criminal case and of the charges in the D.E. The distinction made is that in the criminal case the ingredients relate to certain offences, while in the DE certain acts of misconduct are alleged.

11. After this submission by the learned A.S.G. we do not find it necessary to deliberate on this issue in any great detail. The facts to be proved in the two proceedings are practically the same, though there are shades of differences and some differences are, indeed, important. For example, in the Annexure A-Summary of allegations, there is no mention of any attempt by the police officials to beat Sh. A.C. Sen to death. There is, however, such an allegation in the chargesheet and hence one of the offences referred to is Section 308 IPC. Nonetheless, the basic facts required to be proved are the same. If so proved, it will be held in the criminal case, that many offences have been committed and it will be held in the DE that acts of grave misconduct have been committed and departmental rules have been violated. That is the only difference. In other words, based on the same facts, certain penal offences are alleged as also certain misconducts and violation of departmental rules. The offence and the misconduct may not be the same. That by itself proves nothing. As the basic facts, which have to be first established are the same or practically the same, there can be no doubt that they are parallel proceedings.

12. The next question then is whether the respondents should be directed to keep in abeyance the D.E. proceedings till the criminal case is decided.

13. In so far as the law is concerned, we have heard the learned counsel on both sides. The well known decisions on the subject were referred to by both the parties. It is only necessary to remind ourselves what those decisions are. The decision of the Supreme Court in Kusheshwar Dubey Vs M/s

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Bharat Coking Coal Ltd. (AIR 1988 SC 2118) is, perhaps, the latest decision in the series. After referring to Delhi Cloth and General Mills Vs Kushal Bhan (AIR 1960 SC 806), Tata Oil Mills Vs Workmen (AIR 1965 SC 155) and Jang Bahadur Singh Vs Baij Nath (AIR 1969 SC 30) the Apex Court summarised the position arising out of these judgements in para 6 of the judgement as follows :-

"6. 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 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."

14. The facts of that case were that the appellant, Kusheshwar Dubey, being an employee of the Balihari Colliery, assaulted a supervising officer S.K. Mandal. He was subjected to both disciplinary proceeding and criminal prosecution. He, therefore, filed a civil action in the court of Munsif at Dhanbad for injunction against the disciplinary action, pending trial, which was granted on 06.12.1986. The appeal of the respondents was dismissed by the appellate court. However, the High Court reversed that decision on the ground that there is no bar for an employer to proceed with the departmental proceedings with regard to the same allegation for which a criminal case is pending. It is on these facts that the Apex Court made the

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observations in para 6 of the judgement, extracted above. Thereafter, the order of the High Court was quashed and it was held as follows:-

"7. In the instant case, the criminal action and the disciplinary proceedings are grounded upon the same set of facts. We are of the view that the 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 affirmed in appeal."(emphasis ours).

15. In the earlier decisions of the Supreme Court the following principles have been laid down:-

(i) It cannot be said that principles of natural justice require that an employer must wait for the decision of the criminal trial before taking departmental action against an employer. (AIR 1960 Sc 806, Delhi Cloth & General Mills case)

(ii) Such disciplinary proceedings cannot be quashed on the only ground that they were initiated and continued while a criminal case was also pending on the same facts. (AIR 1965 SC 155, Tata Oil Mills case).

(iii) Disciplinary action can be taken only by the disciplinary authorities and not by any court. Therefore, the authorities competent to take such action are well within their rights to initiate such proceedings even though, on the same allegations, a criminal case might have been instituted against the employee and is pending. (AIR 1969 SC 30, Jang Bahadur case)

(iv) Taking such disciplinary proceedings during the pendency of a criminal action will not amount contempt of court. (AIR 1969 SC 30, Jang Bahadur case)

(v) Nevertheless, the question whether the disciplinary proceedings should be stayed pending the conclusion of the criminal proceedings will depend on the circumstance of each case. No straight jacket formula valid for all cases and of general application can be evolved as that would create greater hardship and deserving individual situations can not be given individual attention and thereby injustice is likely to ensue.(AIR 1988 SC-2118-Kusheshwar Dubey's case).

16. We have also to note the decision in Tukaram Vs R.N. Shukla, 1968(3) SCR 422. On the allegation of complicity in the smuggling of gold, proceedings were initiated against the appellant to impose penalty u/s 112 of the sea. Customs Act, 1962. On the same facts, admittedly, a FIR had been lodged charging the appellant and others u/s 120-B of the Indian Penal Code read with Sec.135 of the Sea. Customs Act, 131-B of the Defence of India Rules and Section 8 of the Foreign Exchange Regulation Act. The trial of the appellant before a Magistrate was imminent. He, therefore, filed a writ petition before th Bombay High Court for a prohibition restraining the continuance of the penalty proceedings as this would amount to contempt of the Magistrate's court. Both the writ petition and the subsequent Letters Patent Appeal were dismissed. The Supreme Court also dismissed the appeal filed by the appellant.

17. One of the grounds raised therein was that the penalty proceedings under the Sea. Customs Act are in violation of Article 20(3) of the Constitution. That was dismissed as follows :-

"The appellant then claims that the proceedings under ss.111 and 112 are in violation of Art.20(3) of the Constitution. He says that unless the proceedings are stayed he will be compelled to enter the witness-box to rebut the evidence of John D'Sa and will be forced in cross-examination to give answers incriminating himself. Article 20(3) affirms that 'no persons accused of any offence shall be compelled to be a witness against himself.' The first information report has been lodged and formal accusation has been made in it against the appellant charging him with offences in connection with the smuggling of gold. The appellant is, therefore a person accused of an offence. But it is not possible at this stage to say that he is compelled to be a witness against himself. There is no compulsion on him to enter the witness-box. He may, if he chooses, not appear as a witness in the proceedings under ss.111 and 112. The necessity to enter the witness-box for substantiating his defence is not such a compulsion as would

attract the protection of Art.20(3). Even in a criminal trial, any person accused of an offence is a competent witness for the defence under s. 342-A of the Criminal Procedure Code and may give evidence on oath in disproof of the charges made against him. It may be very necessary for the accused person to enter the witness-box for substantiating his defence. But this is no reason for saying that the criminal trial compels him to be a witness against himself and is in violation of Art.20(3). Compulsion in the context of Art.20(3) must proceed from another person or authority. The appellant is not compelled to be a witness if he voluntarily gives evidence in his defence. Different considerations may arise if he is summoned by the customs authorities under s.108 to give evidence in the proceedings under ss.111 and 112. But he has not yet been summoned to give evidence in those proceedings.We express no opinion on the question whether in the event of his being summoned he can claim the protection under Art.20(3) and whether in the event of his being then compelled to give incriminating answers he can invoke the protection of the proviso to s.132 of the Indian Evidence Act against the use of those answers in the criminal proceedings. It may be noted that counsel for the customs authorities gave an undertaking in the High Court that they would not use in any criminal proceedings the statement, if any, that might be made by the appellant during the course of the adjudication proceedings."(emphasis given).

18. In the present case, no such ground has been raised. What is stated in para 5 of the OA is as follows:-

"A quick perusal of the summary of allegations will indicate that the charges in the departmental enquiry and the criminal case are idential and in case the petitioners participate in the departmental enquiry it is likely to incriminate them and his defence in the criminal case would be exposed to the detriment of the petitioners interest.

(b) Because the charges in the Departmental proceedings has a close and intimate connection with the criminal charges and it is in the interest of justice that the former may be stayed during the pendency of the criminal trial. Even though the proceedings are separate but the charge is substantially being the same and if the departmental enquiry is allowed to go on, the petitioner would be forced to disclose his defence in respect of the charge faced by him in the criminal case and that would certainly prejudice him in the criminal case."(emphasis added).

19. This aspect (viz. that disclosure of defence in D.E. case will prejudice the interest of the applicant in the criminal case) has not been considered in Tukaram's case

(Supra). It is in respect of such cases that the observations of the Supreme Court in para 6 of Kusheshwar's case - extracted in para 13 - would apply.

20. It is important to notice that, though the Supreme Court has declined to lay down a straight jacket formula to deal with such cases, some guidelines have, nevertheless, been provided for dealing with such cases. These guidelines are available in three judgements.

(i) In Delhi Cloth & General Mills Vs. Kushal Bhan (AIR 1960 SC 806) the case against the respondent was that a stolen cycle was recovered by the police at his instance, thereby suggesting that he had stolen the cycle. Though the Court observed:-

"We cannot say that the principles of natural justice require that an employer must wait for the decision at least of the criminal trial court before taking action against an employee."

yet, it gave a guideline when DE should be stayed. It held:-

".....We may, however, add that, <u>if the case is of a grave nature or involves questions of fact or law, which are not simple,</u> it would be advisable for the employer to await the decision of the trial court, <u>so that the defence of the employee in the criminal case may not be prejudiced.</u>" (emphasis given).

It is also worth mentioning that in that case, there was simultaneous intiation of both disciplinary and criminal proceedings and the respondent was dismissed in the disciplinary proceedings after he refused to participate in it. The Industrial Tribunal, however, refused to grant approval to the dismissal u/s 33(2) of the Industrial Dispute Act, on the ground that, in the meanwhile, the respondent was acquitted in the criminal trial. The Supreme

Court observed that there was no failure of natural justice if the respondents refused to take part and held that Industrial Tribunal erred in not granting that approval. It was also observed by the Supreme Court that as the facts were of a very simple nature and the employer could not be blamed for adopting the course which he did.

(ii) In Tata Oil Mills Vs. Workmen (AIR 1965 SC 155), the workman was charged with assaulting a chargeman of the company. The Apex court held that if an employer proceeds with the domestic inquiry, inspite of the fact that the criminal trial is pending, it cannot be said that the inquiry, for that reason alone, is vitiated or that the conclusion reached in that inquiry is bad in law or malafide. The Court observed as follows :-

> "As this Court has held in the Delhi Cloth and General Mills Ltd. v. Kaushal Bhan, 1960-3 SCR 227: (AIR 1960 SC 806) it is desirable that if the incident giving rise to a charge framed against a workman in a domestic enquiry is being tried in a criminal court, the employer should stay the domestic enquiry pending the final disposal of the criminal case. It would be particularly appropriate to adopt such a course where the charge against the workman is of a grave character, because in such a case, it would be unfair to compel the workman to disclose the defence which he may take before the criminal court."

(iii) Lastly in Kusheshwar Dubey the Court has given guidelines which have been reproduced in the extract reproduced in para 14 (supra).

21. The only question is whether the circumstances of this case justify invoking the principles laid down by the Supreme Court in the aforesaid decisions.

22. The learned ASG has further referred to the following decisions in this connection.

i) M. Rama Rao vs. Regional Manager, State Bank of India - 1989 (6) SLR 129.

ii) Prem Prakash Kalra vs. Union of India - 1993 (3) SLJ 65 (CAT).

iii) S.K. Bahadur vs. Union of India 1987 (4) SLJ 51 (CAT).

iv) Unreported decision in OA-1431/92 & OA-1432/92 Zaffruddin Khan & Others vs. Administrator U.T. Delhi of Principal Bench.

We find it necessary to consider only certain issues raised by him based on S.K. Bahadur's case.

23. In S.K. Bahadur's case the departmental proceedings were allowed to be continued. Reference has been made to all relevant judgements other than Kusheshwar Dubey which had not been rendered by them. The learned A.S.G. specifically draws our attention to the observations made in para 11 of the judgement dealing with the apprehension that the defence put up by the petitioner in disciplinary proceedings will amount to prejudicing his case before the criminal court, by prematurely compelling him to reveal his defence during the disciplinary proceedings, which may be taken advantage of by the prosecution. The Tribunal felt that the fact that the disciplinary proceeding was being conducted by Ministry of Law and that the prosecution was being conducted by the CBI, should itself

give some assurance to the applicant that there will be no prejudice to him. Thereafter, the Tribunal observed as follows:-

"13. In order to fortify the petitioner against any misutilisation of evidence adduced during the disciplinary proceedings, for the purpose of 'framing him' in criminal proceedings, the learned Additional Solicitor General fairly gave an undertaking at the Bar that the respondents would not use in any criminal proceedings the statement, if any, that might be made by the applicant during the disciplinary proceedings. In view of this, we feel that the apprehension of the petitioner that as a result of the disciplinary proceedings he will be severely handicapped in defending his case in the criminal proceeding is unfounded."

For coming to this conclusion, the Tribunal has referred to a similar decision by the Bombay High Court in Kirlosker Brothers Ltd. vs. Union of India (CWP 5327/86), wherein among other things, the High Court held as follows:-

"4. In the present case the only ground that is urged by the petitioners to stay the adjudication proceedings is that they will be compelled to disclose their defence to the criminal prosecution in the adjudication proceedings which may embarrass them in this criminal trial. According to us this apprehension is misplaced since in the affidaivt filed on behalf of the Respondents it is categorically stated that they will not use in the criminal trial any of the statements made by the petitioners in the adjudication proceedings. In view of this assurance, the only ground urged in support of the petition does not survive."

24. The Tribunal also referred to the observations of the Supreme Court in Tukaram's case reproduced in para 17 above, particularly the emphasized portion thereof.

25. On that ground, the Tribunal permitted the parallel proceedings to continue.

26. The learned A.S.G., therefore, submitted that the Tribunal has laid down the law that a plea that disclosure of defence in the DE will prejudice the accused in the

criminal case is not a good ground to direct that the DE should be held in abeyance, particularly, when an undertaking is given by the respondents that whatever is brought on record in the disciplinary proceedings will not be used against the applicants in the criminal case. In the present case he gave such an undertaking on behalf of the respondents.

27. The learned counsel for the applicants, however, drew our attention to the following observations of the Tribunal that the criminal case was different from the DE:-

"8. A perusal of the articles in the disciplinary proceedings and the chage-sheet should show that except for Article I of the charge, there is no commonality between the imputation before the disciplinary authority and the charge-sheet before the criminal court. All the Articles of charges except the first, referred to the alleged misconduct of the petitioner for not reporting certain transactions, etc., to the competent authorities as required under the CCS (Conduct) Rules, 1964. These articles cannot be adjudicated upon by the criminal court."

Therefore, S.K. Bahadur is not to be relied upon.

28. For the purpose of considering the point raised by the learned A.S.G., we do not want to attach any importance to the feature of that case which distinguishes it from the present O.A. We have carefully considered whether such an undertaking eliminates the apprehension entertained by the applicants that their defence will be prejudiced. With great respect, we are unable to agree either with the views of the Tribunal in Bahadur's case or of the Bombay High Court in Kirloskar Brother's case for the reasons to be stated presently.

29. It is clear that the Supreme Court did not subscribe to this view. The observations of the Supreme Court in Tukaram's case were made in a totally different context as can be seen from the extract reproduced in para 17. The Court merely noted the undertaking given by the Customs authorities before the High Court as a statement of fact. This does not mean that the Supreme Court held the view that, because of this undertaking, there will be no prejudice to the appellant in the criminal case, if he discloses his defence in the penalty proceedings before the Department. More so, when in Delhi Cloth and General Mills and in Tata Oil Mills the Court felt that it would be unfair to compel the disclosure of the defence in the domestic enquiry.

30. It is naive to believe that the assurance given by the respondents would be a sufficient protection to the applicants when they appear as accused persons in the criminal trial. Just as in an anti dacoity operation, considerable advantage would accrue to the Police if they know in advance what the plans of the dacoits are or vice versa, so also, in the present case, the prosecution will stand to gain considerably if they come to know in advance, in the disciplinary proceedings, the details of the defence which the applicants are taking. Without directly using any of the materials gathered in the disciplinary proceedings, this knowledge can be used by an intelligent prosecuting agency to thwart the defence plea of the accused. This knowledge will also enable them to meet the defence of the applicants more effectively whenever the case comes for trial. In other words, if the applicants are required to disclose their defence prematurely, there is a real danger

of it becoming detrimental to their interest in the criminal case. Therefore, on this assurance, no request can be entertained that the parallel proceedings should be allowed to continue.

31. We also cannot agree that any law has been laid down in this regard in Bahadur's case. It is inconceivable that the Tribunal would have done so, when the Apex Court itself hesitated to lay down a straight-jacket formula. In any case, the plea of possible prejudice to the defence in the criminal case has found recognition in the pronouncements of the Supreme Court as a sound ground for interference vide para-20.

32. One more aspect requires mention. In a criminal case, the prosecution has to prove its case beyond all reasonable doubt. If this is not done the accused can safely keep quiet. In a D.E. the decision is taken on the preponderence of probability. Therefore, the charged officials cannot keep quiet even if the Department has presented a half baked case which has, however, the ring of probability. They have to present their defence to tilt the balance of probability in their favour. Therefore, disclosure of defence generally becomes inevitable in domestic enquiries.

33. In our view the applicants are entitled to the directions prayed for in sub para (1) of para 8 of the OA for the following reasons:-

i) The disciplinary proceedings and the criminal case are based on the same - or practically the same - facts. The two proceedings are, therefore, parallel.

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ii) Some of the offences cited in the chargesheet in the criminal case like Sections 308, 148, 342, 352 I.P.C. etc. are very grave and the questions of fact/law are not simple.

iii) Continuance of the D.E. will require the applicants to disclose their defence to disprove the charge or at any rate, throw serious doubts on the probability of the charges being true. That disclosure will seriously prejudice their defence in the criminal case.

34. Before we conclude, we have to dispose of the learned A.S.G's contention that this Tribunal should not interfere with the DE proceedings at the interlocutory stage. He relied on the Supreme Court's decision in Union of India vs. Upendra Singh (1994 (1) SLR 831 SC) for this contention. The Court, has, in para 6 of its judgement, mentioned the circumstannces in which the Tribunal can interfere at the stage when only charges are framed. The OA, no doubt, seeks a declaration that the proceedings be declared void for violation of the statutory requirements under Section 15(2) of the Delhi Police Act. That would be a good ground for our interference. We have, however, left that question open, as in our view, it is enough for us to hold that the continuance of the proceedings would prejudicially affect the defence of the applicants in the criminal case. This is a sound ground for interference at this stage.

35. In the end the learned A.S.G. pointed out that one does not know when the criminal trial will come to an end and it would be unfair to compel the respondents to wait till then. Though it is not in our province, we cannot keep observing that it is not beyond the power of the first respondent to make arrangments for the early trial of such criminal cases registered against police officials which, we know, have been registered in large numbers. In any case, in our view, this is no consideration to permit an action which will seriously prejudice the applicants in the criminal case.

36. For the foregoing reasons, we are of the view that the continuance of the departmental proceedings in pursuance of the Annexures A-1 and A-2 order would be prejudicial to the interests of the applicants and, therefore, we direct that such proceedings shall remain stayed until the relevant criminal case is decided by the criminal court. In the circumstannces, we do not find it necessary to consider on merits the prayer for a declaration that the proceedings are void on the ground of violation of Section 15 (2) of the Delhi Police Act.

37. The O.A. is allowed with the above directions. No costs.

(C.J. ROY)
MEMBER(J)
4-10-94.
'Sanju'

(N.V. KRISHNAN)
VICE-CHAIRMAN(A)
4-10-94.