

Central Administrative Tribunal
Principal Bench, New Delhi

OA No.1638/94

New Delhi: February 24, 1995

(5)

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

Jai Charan Verma
Sub Inspector No.D 743
R/o Village Dallupuraa
Delhi-91
(Advocate: Mrs Meera Chibber)

...Applicant

Versus

1. Govt. of NCT of Delhi
Through Commissioner of Police
Police HQs.
IP Estate, New Delhi
2. Deputy Commissioner of Police
8th Bn. DAP
PTS Mehrauli, New Delhi
3. P.R.Sondhi
Enquiry Officer
ACP 8th Bn. DAP
PTS, Mehrauli, New Delhi.Respondents

(Advocate: Shri H.L.Jad)

JUDGEMENT

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

In this application, Shri Jai Charan Varma, Sub Inspector, Delhi Police, has prayed for a direction to the respondents to keep the departmental enquiry vide order dated 27.9.93 (Annexure P-2) in abeyance, pending disposal of the criminal case against him.

2. It is alleged against the applicant that while posted in 8th Battalion, Delhi Armed Police, the applicant attended the case FIR No. 398/90 U/s 308 IPC registered against him, in the court of Shri A.K.Chaturvedi, M.M. Shahdra, on 7.4.93. On the same day, he threatened constable Jagdish Prasad in the court as to why he had filed an affidavit against him in the said case. On the complaint of constable Jagdish Prasad, an FIR case No.129/93 dated 7.4.93 under section 510

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IPC had been registered against him. He was arrested on 24.5.93 in the said case and was released on bail. Earlier too, it is alleged, the applicant was involved in several criminal cases.

3. The applicant alleges that in FIR case No. 129/93, a chargesheet dated 4.10.93 has been filed. He has stated that the charge-sheet in the criminal case as well as summary of allegations served upon the applicant are founded on the same set of facts, and continuance of the departmental proceedings will prejudice him in his defence in the criminal case.

4. This OA had come up on 17.8.94, and upon giving the applicant preliminary hearing on that date, notices had been ordered to be issued to the respondents to file their reply. After the respondents had filed their reply and the applicant his rejoinder, both parties were heard at some length on 16.2.95. Meanwhile, upon the applicant's prayer for interim relief, it was ordered while evidence of the PWs may continue to be recorded, if not already done, cross-examination should be stayed and the applicant be not compelled to produce any documents in the departmental proceedings till the respondents appear and were heard.

5. The respondents in their reply have challenged the contents of the OA. They stated that there is no apprehension of the outcome of the DE affecting the outcome of the criminal case because of the ingredients of the misconduct in the criminal case and in the departmental proceedings, as well as the quantum of proof required in both cases are not identical. As regards the plea taken by the applicant that he should rely upon certain documents to defend himself in the criminal case as well as in the DE and therefore he cannot produce the documents at this stage in the DE as it will affect the defence in the criminal case is concerned, the respondents state that this is simply a ploy to delay the departmental proceedings. They state that this prayer is being made only after the defence witness had been examined in the DE and only the applicant's own hand written statement of defence is

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required to be filed. They state this indicates that the plea taken by the applicant is an afterthought and is being advanced only to delay the departmental enquiry.

6. We heard Mrs. Chibber for the applicant and Shri H.L.Jad for the respondents. We have also perused the materials on record and have given the matter a very careful consideration.

7. Mrs Chibber stated that the averment that certain documents have to be produced by the applicant to defend himself in the criminal case as well as in the DE, and their production in the DE at this stage would adversely affect the defence in the criminal case, is ^{not} an afterthought because such a prayer had been made before the disciplinary authority on 1.8.94 itself, vide representation of the said date. She has stated that at the time of filing the defence statement, the applicant is not confined to filing the statement only but can also file certain documents on which reliance is sought to be placed. However, on our questioning her as to what these documents were which the applicant sought to rely upon, she expressed her inability to disclose the contents at this stage on the ground that it would prejudice the applicant in his defence.

8. Mrs Chibber has invited our attention to Hon'ble Supreme Court ruling in the case of Kusheshar Dubey Vs. M/s Bharat Cooking Coal Ltd 1988 AIR SC 2118 wherein it was held that while ~~putting~~ ^{there was} no legal bar for simultaneous proceedings being taken against the delinquent employee against whom disciplinary proceedings were initiated, yet there may be cases where it would be appropriate to defer disciplinary proceedings till disposal of the criminal case. Whether in a particular case there should or should not be simultaneous proceedings would depend upon the given circumstances in that particular case. In Kushweshar Dubey's case, however, as the criminal action and the disciplinary proceedings were founded on the same set of facts, the Hon'ble Supreme Court was of the view that disciplinary proceedings should have been stayed.

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Another judgement relied upon by Mrs Chhiber is A.I.Kavi Vs. Karnataka State Agro Industries Corp. 1993 (IV) SLR 483 wherein it has been held that two proceedings viz. disciplinary and criminal initiated upon the same set of facts cannot be allowed to go simultaneously. When disciplinary proceedings ought not to have been proceeded with, the fact that these have been proceeded with, would not make any difference or should not deter from staying disciplinary proceedings. Yet another judgement relied upon by her is in OA 243/94 Charan Singh Vs. Delhi Administration, decided by the Tribunal on 8.6.94.

9. Mrs Chibber also invited our attention to a memo dated 8.7.90 issued by the DCP (Vig.) which itself gives three options to the concerned authorities in respect of a departmental enquiry, where such departmental proceedings are instituted alongside criminal proceedings.

10. On the other hand, the respondents' counsel Shri Jad relied upon the ruling in N.H.Lamani Vs. Ministry of Railway 1993 (V) SLR (AP) 65 which states that authorities are not prevented from proceeding with departmental enquiry even though the criminal court is seized with the matter. Another ruling relied upon by Shri Jad is D.T.Sundararajan Vs. UOI 1984 Supplementary 3 SCC 674.

11. While it is not the case of the applicant that the respondents are legally prevented from proceeding with the departmental enquiry because the criminal court is also seized of the matter, the point to be decided is whether the continuance of the departmental proceedings would prejudice the applicant in his defence in the criminal case or not. In Kushweshar Dubey case (Supra) as stated above, Hon'ble Supreme Court in that case had noted that criminal action and the disciplinary proceedings were founded on the same set of facts and they were therefore of the view that the disciplinary proceedings should have been stayed. In the present case also, perusal of the charge-sheet and

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summary of allegations makes it clear that the criminal case as well as the departmental proceedings are founded on the same set of facts.

12. Under the circumstances, we consider that this is a fit case where further steps in the departmental enquiry should be stayed, pending disposal of the criminal case. This OA, therefore, succeeds and is allowed.

13. The respondents are directed to keep the impugned departmental proceedings stayed till final disposal of the criminal case. After final disposal of the criminal case, and in the background of the judgement therein, the respondents will be entitled to take further action in the impugned departmental proceedings, in accordance with law.

No costs.

A.Vedavalli

(Dr.A.Vedavalli)
Member (J)

S.R.Adige

(S.R.Adige)
Member (A)

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