

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A.NO.1714/94

(6)

New Delhi, this the 7th day of February, 1995

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

Constable Jagdish Chander, No.1932/31
s/o Shri Chandgi Ram,
Police Station Defence Colony,
New Delhi.

... Applicant

By Advocate: Shri R.L. Sethi

Vs.

The Commissioner of Police,
PHC, I.P. Estate,
New Delhi.

... Respondents

By Advocate: Shri Anoop Bagai

JUDGEMENT (ORAL)

The applicant has been served with a summary of allegations alongwith one Constable Hoshiar Singh, that while posted at Police Station, Defence Colony he made the departure for Haryana/Rajasthan to arrest a P.O. vide DD No.27-B dated 5.8.92 of Police Station, Defence Colony, New Delhi. Constable Jagdish Chander i.e. the applicant got issued a service revolver and 10 cartridges for self defence. It is stated that at about 5 p.m. on 14.8.92 while they were travelling in a private bus No.RSB-461 running from Bahrar to Hatundi, a quarrel took place with the bus Conductor Shri Jai Singh on the payment of bus fare. The bus stopped at river Chironi and all the passengers got down from the bus. During scuffle Constable Jagdish Chander opened fire and as a result one passenger named Suresh Kumar was injured for which FIR No.169/92 u/s 307 IPC P.S. Mundaver(Raj) was registered against Constable Jagdish Chander and Constable Hoshiar Singh. On the basis of these summary of

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allegations, the departmental enquiry proceeded against the applicant and since the applicant did not participate and cooperate with the enquiry, the ultimate order of proceedings/^{to}continue ex parte was passed by the Addl. Deputy Commissioner of Police on 26.7.94.

2. The applicant filed this application on 25.8.94 challenging this order and prayed for the grant of the reliefs that the disciplinary departmental proceedings be stayed till the disposal of the criminal case and has also prayed as an interim relief that meanwhile the proceedings be stayed. By the order dated 26.8.94 the further proceedings in the departmental enquiry was stayed for a period of 14 days and that order continues till today.

3. We heard Shri R.L. Sethi, counsel for the applicant and Shri Anoop Bagai, counsel for the respondents, who also made available the departmental enquiry file which has been perused by us.

4. The stand taken by the respondents is that the applicant acted in a manner of unbecoming of a police personnel and that he being armed with service revolver misused the same by causing injury to one of the persons and also that while travelling in a private bus. The applicant alongwith other Constable Hoshier Singh has alleged refused to pay the bus fare demanded by the conductor of that bus. It is stated in the counter also that the departmental enquiry has already commenced in July, 1993 and the applicant has also been served with summary of allegations. We do find in the departmental enquiry that the applicant has given statement that he has been served with summary of allegations and denied various allegations levelled against him.

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5. It is stated in the counter that the applicant has no case. The applicant has also filed the rejoinder with filing No. 607 dated 19.1.95. / reiterating the facts already stated in the original application. The said rejoinder is not on record. But a copy of the same was made available by the learned counsel which has been perused by us. The Registry will place that rejoinder on record.

6. Basically we have to find out whether the departmental disciplinary proceedings and the said criminal case registered u/s 307 IPC vide FIR No. 169/92 at P.S. Mundaver in Rajasthan State can continue simultaneously or not. Practically there is no bar for holding simultaneously departmental proceedings as well as criminal trial against the delinquent who is also accused in the criminal case. However, the Hon'ble Supreme Court has consider^{-ed} the matter in the case of Kusheshwar Dubey V. M/s. Bharat Coking Coal Ltd reported in AIR 1988 S.C. 2118 while upholding the judgement of the Trial court and quashing that of the High Court upholding injunction issued by the Trial court in deferring the departmental enquiry till the disposal of the criminal case. However, the Hon'ble Supreme Court has observed that no straightjacket formula can be laid down as to in which of cases the departmental enquiry can continue and that in which it should not. It depends on the facts and circumstance of each case.

7. Now coming to the case in hand we do find that the applicant alongwith Constable Hoshier Singh posted at the same Police Station, Defence Colony are involved in a case u/s 307 IPC registered vide FIR No. 169/92 at P.S. Mundaver in Rajasthan State. That case relates to

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causing injury which might have been resulted in the death of one Suresh Kumar and alleged to have been as a result of shot fired by the constable Jagdish Chander by the service revolver. That is the matter to be decided by the Criminal court. The department is not proceeding against that alleged accusation of firing by service revolver against the said Suresh Kumar. The department is proceeding only against the applicant along with Constable Hoshia^{for a mischief}r Singh/who were sent on official duty and the applicant was issued a service revolver with 10 cartridges only to be used for self defence as they had gone to apprehend certain persons against whom some FIR was lodged at Police Station, Defence Colony. The use of the applicant of the said service revolver is to be seen by the criminal court and that cannot be subject for consideration in the departmental enquiry. The only allegation which could be gone intoⁱⁿ departmental enquiry is whether the applicant as a police personnel travelled in a private bus and that there were some alteration on fare with the conductor of the said bus which resulted into certain unseemly scene at the river Chironi in a State of Rajasthan. That cannot be a part of consideration by the criminal court. No charge of affray i.e. fight in a public place has been framed by the criminal court against the applicant nor it can be framed nor there is any report in that regard.

8. We do find that the applicant had earlier joined the departmental proceedings but he has avoided cooperating with the Inquiry Officer as a result of which necessary orders were obtained from the Addl. DCP to proceed ex parte against the applicant by the impugned order dated 26.7.94.

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9. Now in such a situation so far as the accusation of firing at Suresh Kumar is concerned, the departmental enquiry cannot be proceeded. But as regards the other misconduct alleged against the applicant, the departmental enquiry can very well proceed and we are following the ratio of Kusheshwar Dubey (supra).

10. However, we do find that the order of Addl. D. C. P. dated 26.7.94 though allows the applicant to participate in the departmental enquiry if he appears before the Inquiry Officer but at the same time restricts the recalling of the witnesses already examined nor to be allowed to cross examine by the delinquent. This part of the order needs to be reconsidered as the person has approached the Inquiry Officer while he had earlier avoided, the Inquiry Officer should consider recalling of such witnesses who have been examined, if any, and allow to cross examine them. It will amount to giving an adequate and full opportunity on the principles of natural justice to the delinquent.

11. The application is therefore disposed of with the direction that the respondents may continue with the enquiry but the ultimate charge to be framed against the applicant, if any, should confine to itself only to such allegations which do not cover the case which is pending against the applicant at P. S. Mundavar (Rajasthan) u/s 307 IPC. Regarding rest of the allegations, the departmental enquiry can proceed and the charge should confine to that aspect only.


In case any of the witnesses has been examined the Inquiry Officer will also consider the request of the applicant to recall any such witnesses of the administration

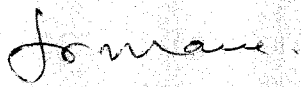
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and give opportunity to cross examine if desired by
the applicant in the departmental enquiry.

No cost.


(B.K. SINGH)
MEMBER (A)


(J.P. SHARMA)
MEMBER (J)

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