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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A.NO.1773/94

New Delhi, the 5th December, 1994

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

Hon'ble Shri S.R. Adiga, Member (A)

Shri Gurnam Singh, Constable,
s/o Shri Hari Singh,
R/o Baric No.4,
Headquarters, Malviya Nagar,
New Delhi.

... Applicant

By Advocate: Shri P.K. Bhardwaj

Vs.

1. Union of India
through Secretary,
Govt. of India,
Ministry of Home,
New Delhi.
2. Commissioner of Police,
Police Headquarters, I.P. Estate,
New Delhi.
3. Deputy Commissioner of Police,
Shri Kanwal Singh,
7th Bn, DAP, Delhi
Teen Murti Line.
4. Inspector S.K. Tomar,
Enquiring Officer,
7th Bn. DAP, New Delhi
Teen Murti Line.

... Respondents

By Advocate: Shri Arun Bhardwaj

O R D E R (ORAL)

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

The applicant is Constable in Delhi Police having been employed sometime in 1988. He belongs to Sikh community. He is said to have married one Majjit Kaur on 18.4.93. It appears that the relations between the spouse remained strained and the contention of the wife is that the applicant who is Police Constable harassed her, tortured her, beat her and before also placed her demand of dowry to the tune of

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Rs.50,000/-. Certain reports have also been lodged at the instance of the wife at Police Station Saraswati Vihar u/s 498A/406/34 IPC and on the basis of that complaint a criminal case has been investigated and the matter has been pending in the criminal court for trial.

2. The grievance of the applicant is that he has been served summary of allegations on the basis of an order issued by the Deputy Commissioner of Police for holding departmental disciplinary proceedings u/s 21 of the Delhi Police Act, 1978. In the summary of allegations the matter in issue for which the applicant is asked to explain ill ^{with} treatment of the wife and the demand of certain dowry from her parents. It is also mentioned that the applicant and the wife were summoned by the competent authority to reconcile their dispute but the applicant is said to have ran away and did not join the reconciliatory proceedings by the ACP. The applicant has already been suspended because of the criminal case by the order dated 11.8.94.

3. The applicant has prayed for the grant of the reliefs that the request of the applicant for deferring the departmental enquiry was wrongly rejected by the order dated 27.6.94, Annexure P and the disciplinary proceedings be kept in abeyance till the pendency of the criminal trial against the applicant. He also prayed that the order of suspension passed against him be declared as illegal and arbitrary.

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4. When the case came before the Bench on 7.9.94 the departmental proceedings were stayed partly ^{for} with the examination of witnesses made by the administration but the applicant be not forced to cross examine them. le

5. On notice the respondents opposed the grant of the reliefs giving details of the fact in issue and that the simultaneous disciplinary and criminal proceedings can continue.. That the applicant's conduct in the personal life was not in keeping with the character of a person employed in the police force. The applicant as a Govt. servant has to behave in personal life also to be an example to others and as such it is misconduct and unbecoming of a Govt. servant.

5. The applicant's counsel desired to file the rejoinder. However, at the time of hearing on admission we find that in the present case the averments made in the application itself and the reply furnished by the respondents is sufficient to dispose of the matter, as the respondents had not taken any specific stand in the counter which needs further clarification of the averments made in the application or to counter act the reply filed by the respondents. The learned counsel for the applicant therefore has given up the stand to file the rejoinder.

6. We heard the learned counsel for the parties. The insistence of the counsel for the respondents is that besides the act of the applicant in his personal life of not maintaining ^{-ship with} relation/his wife and also not cared her, tortured her, coercing her to ^{meet} ~~make~~ demands of dowry, The applicant did not obey the orders of superior DCP 7th Bn when it was desired that they may be reconciled ^{ation} between the parties and the applicant ran away and refused to come. le

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7. We have considered the particular contention of the learned counsel for the respondents in the light of the authority of Kisheshwar Dubey reported in AIR 1988 page 2118. In the aforesaid authority the Hon'ble Supreme Court has considered the viability of simultaneous disciplinary departmental proceedings and almost on the same allegations of misconduct the pendency of a criminal trial. The Hon'ble Supreme Court has also discussed the earlier law on the subject. In that case the Hon'ble Supreme Court laid down that no ^{straight jacket} state formula can be laid down as to whether simultaneous proceedings may go together and let it to the discretion of the judicial reviewing authority to decide the case in the conspectus of facts and circumstances of each case. Now coming to the present case FIR has already been lodged against the applicant at the instance of the wife under the relevant section of the IPC. Because of that criminal case the applicant has also been put under suspension. The trial before the criminal court would be on the analogous allegations which are subject matter of disciplinary departmental enquiry. The witnesses against the applicant would almost be the same as would be examined to prove the criminal charge against the applicant in the criminal case. The criminal case may be time consuming process because of the pendency of the matters but that itself would not be a ground to come to a definite conclusion that the departmental disciplinary proceedings can continue. What we have to see is whether the applicant shall be prejudiced in its trial before the criminal court in the event the departmental disciplinary proceedings commences earlier and concludes also before decision is given in the criminal case.

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It is a serious matter of the character assassination of the Govt. employee and there are likely to be certain ⁱprivileged communication as husband and wife having ill relationship. Sometimes the family court or the competent court holds the proceedings in Chamber also. Thus for the allegations levelled against the applicant by the wife does not appear expedient that the disciplinary departmental proceedings should continue simultaneously with the criminal trial.

8. We have also considered the fervent averment of the learned counsel for the respondents that the applicant ^adis ~~is~~ obeyed ~~his~~ part of the command issued to him by the DPC 7th Bn to appear for reconciliation. In view of this, the learned counsel for the respondents also argued that disciplinary departmental proceedings can be restricted only to this fault. However, there cannot be severance of the misconduct alleged in one and the same summary of allegations. If the applicant had committed any subordination by ignoring the orders which are legal in itself the department is everytime free to punish him after holding enquiry according to applicable service rules. But when this alleged disobedience is in context with certain personal life of the applicant which for reasons known to him he did not like to divulge before his immediate officers. At this stage it cannot be said that there can be severance of summary of allegations as desired by the counsel for the respondents. However the respondents shall be free to pursue the same against the applicant who is under suspension as said ^{above} after conclusion of the criminal trial.

9. The applicant has also prayed for quashing of the order of suspension. The power of judicial review ⁱⁿ ~~to~~ order of suspension is limited and in this case the applicant is under suspension because of a criminal case. Because of the criminal case he is put out of duties as he should not take any benefits of the office he holds either by ~~terrorising~~ ^{terrorising or intimidating} ~~of~~ ^{le} have the witnesses to be examined against him in the criminal trial so that order of suspension does not call for interference. No other point has been pressed before us.

10. The application is therefore partly allowed. That the disciplinary departmental proceedings commenced against the applicant on the basis of the summary of allegations dated 10.6.94 shall remain in abeyance till the disposal of the criminal trial against the applicant. However it is made clear that the respondents need not wait for the decision of appellate authority in the event the applicant suffers set back in the criminal case ^{and appeal is filed.}

The parties in the circumstances to bear their own cost.

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

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

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