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Central Administrative Tribunal  
Principal Bench, New Delhi.

O.A.No.1806/94

New Delhi this the 28th Day of February, 1995.

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

Shri Ram Avtar,  
S/o Shri Behari Lal,  
Resident of Teen Murti Police Line,  
New Delhi. Applicant

(through Sh. Inderjit Sharma, advocate)

versus

1. Commissioner of Police,  
P.H.Q., Building, I.T.O.,  
Delhi.
2. Shri S. Prakash, I.P.S.,  
Dy. Commissioner of Police,  
Kingsway Camp,  
1st Bn. D.A.P.,  
Delhi. Respondents

(Head Constable Sh. Sadhu Ram on behalf of  
respondents)

ORDER(ORAL)

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

The applicant who is a driver in Delhi Police is alleged to have been involved in an accident on 24.11.91 at 3.15 P.M. near outer-gate of old Secretariat with Matador No.6302 and injuries were caused to some of the passengers. A case against the applicant vide F.I.R.No.277 dated 24.11.1991 was registered at P.S. Civil Lines under section 279/337 I.P.C. It appears that the respondents have also initiated simultaneously disciplinary departmental enquiry under Section 21 of the Delhi Police Act, 1978. A summary of allegations was served upon the applicant and Sh. Ravi Sehgal was appointed as an enquiry officer. The applicant made certain representations and ultimately it has been decided by the competent authority that the disciplinary enquiry against the applicant be continued by the order

dated 26.7.1994. The representation against the same has also been rejected by the order dated 25.8.94. The applicant has filed this application in September, 1994 praying that the disciplinary departmental proceedings against the applicant be stayed till the registered criminal case against the applicant is disposed of from the court of Metropolitan Magistrate, Tis Hazari, Delhi and for quashing the order of reopening the departmental enquiry against the applicant by the order dated 26.7.1994 so also the order rejecting his representation. The application was considered by the Tribunal on 9.9.1994 and an interim direction was issued to the respondents whereby the right of the applicant to cross examine the prosecution witnesses was reserved and that the applicant will not be compelled to cross examine the prosecution witnesses.

Notice was issued to the respondents who contested this application and filed their reply. The facts of the case are not denied. In the counter, it is stated that there is no legal bar to the initiation of departmental/disciplinary action under the rules applicable to the delinquent public servant where criminal proceedings are already in progress. In the departmental enquiry, the delinquent servant is not tried for any criminal offence. It is, therefore, stated that the department is within its right to initiate and conclude the departmental enquiry without awaiting the result of the criminal case registered against the applicant.

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We have heard the learned counsel for the applicant and the departmental representative.

In a case involving an accident, there is always involvement of third person and third person's liability has to be enforced in Civil law as well as by examining such persons as witnesses in criminal case. Under Sections 279 and 337 of the I.P.C., ingredients have to be established by the prosecution i.e. the action of the person concerned is rash and negligent which has resulted in accident of the vehicle causing injuries to third persons. The applicant is a driver was discharging his official duties. There is also vicarious liability of the master in respect of the such servant engaged in due discharge of duties of the master. The applicant was discharging the duties of the master i.e. the respondents in such a case, it is a primary case to be decided by the criminal court whether the applicant was guilty of such driving which amounted to negligent as well as rash. The applicant who is an accused in the criminal trial is likely to be prejudiced will have to show that he is an innocent. In such a way, the continuance of the disciplinary departmental enquiry which has recently commenced for an occurrence of November, 1991, would not be in the interest of justice. The right of the respondents to hold simultaneously departmental enquiry is not disputed. The law on the point has been laid down in the case of Kusheshwar Deubey Vs. Union of India reported in AIR 1988 P.2118, there the Hon'ble Supreme Court considered whether the departmental proceedings should continue simultaneously with the criminal case, depends on the circumstance of each case.

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No strait jacket formula can be laid down as to in which of the cases such a disciplinary departmental enquiry be stayed or in such other cases enquiry may continue simultaneously. Applying ratio of that same to the present case, we find that what has to be established in the criminal trial, whether the applicant was rash or negligent in driving the vehicle and the something has to be established by the departmental witnesses in the departmental enquiry, the witnesses are common. The applicant has not been involved in a case of moral turpitude. The respondents have not commenced any enquiry for about three years or so. In such a case, reopening the enquiry in 1994 by an order passed in July, 1994 does not appears to be just and fair.

In view of the above facts and circumstances, we find that the holding of simultaneous enquiry on the same charge on which the applicant is being tried before a criminal court is not in the interest of justice and will be prejudicial to the interest of the employee.

The respondents will, however, have their right in case the ingredient of Rule 12 of the Delhi Police (Punishment & Appeal) Rules, 1980 are met in case the acquittal of the applicant is ordered by the criminal court. The respondents are, therefore, not deprived of holding an enquiry at a subsequent stage even after acquittal of the applicant by the criminal court. In case the enquiry is led to continue simultaneously and the applicant is finally acquitted, he cannot be

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compensated for the irreparable loss likely to be suffered by him in case of punishment in the departmental enquiry.

In view of the above facts and circumstances of the case, the application is allowed and the respondents are directed not to continue with the departmental enquiry based on the charge/summary of allegations regarding an accident which is said to have taken place on 24.11.1991 while driving a government vehicle till the disposal of the criminal case pending against him on the same basis. However, the respondents will have the liberty to invoke the provisions of the relevant Rule 12 of the Delhi Punishment and Appeal Rules, 1980, if so advised. There will be no order as to costs. Interim order already passed is made absolute.

(B.K. Singh)

Member (A)

(J.P. Sharma)

Member (J)

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