

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No.1878/94

NEW DELHI THIS THE 16TH DAY OF JANUARY, 1995

S HON'BLE SHRI J.P. SHARMA, MEMBER (J)
HON'BLE SHRI B.K. SINGH, MEMBER (A)

Shri Mahabir Singh,
S/o Shri Lakh Ram
R/o Village Baiyapur
District : Sonepat
Haryana

...Applicant

(By Advocate : Shri V.P. Sharma)

VERSUS

1. UNION OF INDIA, THROUGH
The Secretary,
Ministry of Communication,
Department of Telecom
Sanchar Bhavan,
NEW DELHI.
2. The Director General
Department of Telegraph,
Dak Tar Bhavan,
NEW DELHI.
3. The Asstt Chief Supdt (G-II)
Central Telegraph Office,
New Delhi-110001

(By Advocate Shri J. Banerjee, Proxy Counsel
appearing for Shri Madhav Panikar

JUDGEMENT (ORAL)

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

The applicant is working as Telegraph Assistant in the Telegraph Office, Sansad Marg, New Delhi. He has been served with a Memo of charg-sheet dated 14.8.93, with three articles of charges. The first article of charge relates to the occurrence of mar-peet by the applicant on 14th July, 1993 at 7 a.m. when he assaulted

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Shri O.P. Kirod, Assistant Chief Superintendent, Central Telegraph Office, New Delhi for which a F.I.R. was lodged in the Police Station, Connaught Place, New Delhi. The said act of mis-conduct is falling under Rule 3(i)(iii) of CCS/ (Conduct) Rules, 1964. But the second article of charge is that Mahabir Singh on 19.7.93 absented himself from the duty which was from 10 to 18 hours at about 1500 hrs without any permission. That is why he has violated Rule 62 of Part 3 of Tele-communication Manual. The third article of charge is that the applicant remained in the custody from 23.7.93 to 26.7.93 and he concealed this fact and he applied for leave on the false pretext for reasons of urgent work, he may be granted leave; and that is why he violated the Rule 18, Part-III of the Tele-communication Manual. On the basis of the F.I.R. lodged at the Police Station, Connaught Place on 14.7.83 at about 7 a.m. a Criminal case was registered against the applicant and chargesheet was submitted in the Criminal Court under Section 506/341 and 323 of IPC. The list of witness included Shri Om Prakash Kirod, Shri Khem Chand, Sub Ram, Dr Rajiv Sood, Dr Pankaj Kumar, Dr C. Vittal Prasad, Shri Nanak Chand Dixit, and Shri Mohan Chandra.

2. The applicant filed this application in September, 1994 and prayed for the grant of the reliefs that the respondents be directed to withdraw the impugned charge dated 14.8.93 as Criminal case on the same facts and allegations of misconduct is pending in the Criminal Court.

3. By the Order dated 19.9.94 an interim relief was granted to the applicant for a period of 14 days initially that the applicant may not be compelled to cross-examine the prosecution witnesses, if the enquiry proceedings are continued. This interim order was further extended.

4. The respondents contested this application and filed a reply, and have taken the stand that the applicant assaulted Shri O.P. Kirod, Asstt. Chief Superintendent, Central Telegraph Office at public place and earlier also he has committed similar acts which does not behove the government servant and amounts to misconduct. There are other misconducts committed by the applicant of absenting himself from the duty and giving wrong information while he was in judicial custody. He stated that the disciplinary authority has initiated case against the applicant under Rule 14 of the CCS (CCA) Rules, 1965 and

there is no bar in proceeding disciplinary action being taking simultaneously with the criminal proceedings. The application, therefore, according to the respondents should be as being devoid of merit.

5.1. The applicant has filed rejoinder reiterating the similar facts.

6. We heard the learned counsel Shri V.P. Sharma for the applicant and Shri J. Banerjee Proxy counsel appearing for Shri Madhav Panikar. Regarding the occurrence of assault at public place by the applicant on another employee of the same department, the matter is subjudice in Criminal court. The contention of the applicant's counsel, therefore is that if the grounds/allegations taken before the disciplinary authority and before the Criminal Court are same and in both the cases the prosecution witnesses are same, then he is liable to face punishment. If consequently he get acquittal in the criminal case, the order passed in the disciplinary enquiry cannot be undone as the criminal case is not likely to conclude earlier than the remedy by way of department is exhausted by the applicant if the occasion arises.

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7. The learned counsel for the respondents however placed reliance on the decision of the Hon'ble Supreme Court in **Kusheshwar Duby Vs M/s Bharat Cooking Coal Ltd., reported in AIR 1988 SC 2118**). In that the Hon'ble Supreme Court has referred earlier to the decided case of Delhi Cloth and General Mills Vs Kushal Bhan, reported in AIR 1960 SC 806, Tata Oil Mills Vs Worken, reported in AIR 1965 SC 155. Reference has also been made to a decision of the Hon'ble Supreme Court in the aforesaid Order in the case of Jang Bahadur Singh Vs Baij Nath (AIR 1969 SC 30). After seeing these facts the Hon'ble Supreme Court has taken the following view :

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."

8. In the case of Kusheshwar Dubey the facts transpired is that the Criminal case was pending, and case was filed before the Civil Court, and the Civil Court granted injunction. The Appellate Court upheld the same and the High Court vacated the same. However, the Hon'ble Supreme Court upheld the order passed in injunction of the trial Civil Court. That was a fit case where the departmental proceedings should have been stayed till the disposal of the Criminal case.

9. While deciding Kusheshwar Dubey's case the Hon'ble Supreme Court held that no straight-jacket formula or concrete guidelines can be laid down as to in which of the cases departmental enquiry should be stayed and in which of these should be continued with the trial of the delinquent in that criminal case. However, in the present case the mar-peet has not taken place in the discharge of official functions of the applicants. It was an affray in a public place between the two persons who happened to be government employees. By virtue of this fact alone the departmental enquiry cannot be allowed to continue as the Criminal court under the common law of the land has to take the view whether actually such an incident has happened and the applicant is the accused liable to be convicted of the alleged

charge to be framed against him. Thus, as regards this article of one of the charges in our opinion is a fit case where at this stage the departmental enquiry cannot proceed and this article of charge shall be dropped from the memo of chargesheet served on the applicant by the Memo dated 14th August, 93. The learned counsel for the respondents did not contest this position in the light of the decision of the Hon'ble Supreme Court. However, the counsel for the respondents fervently argued with regard to the article 2 and 3 of the charges, its misconduct in the performance of the duty of the applicant for which there is no simultaneous criminal proceeding is pending against him and the respondents are within their right to continue the disciplinary proceedings with respect of the article 2 & 3 of the charge. Learned counsel for the applicant could not dispute this factual position. He could not also legally substantiate the contention that the departmental enquiry should be stayed with regard to the article 2 and 3 of the charges. The article 2 and 3 of the charges are separable and points out two different misconduct as article one of the charges is totally different which is in respect of alleged mar-peet between the applicant and Shri O.P. Kirod, Assistant Chief Superintendent.

10. In view of the above facts and circumstances the application is disposed of with the following directions :-

(i) that the respondents can proceed with the enquiry only with respect to the article 2 and 3 of the charges and the article one of the charges shall not be proceeded with against the applicant at present but the respondents will be at liberty to initiate proceedings against the article 1 of the charges after the conclusion of the Criminal trial, if so advised. Further, it is made clear that if any finding with regard to article 2 and 3 of the charges, shall not touch the matter concerning article one of the charges with respect to the alleged mar-peet between the applicant and Shri O.P. Kirod, Asstt Chief Supdt.

(ii) if these conditions are fulfilled, the respondents are free to continue departmental enquiry and pass order according

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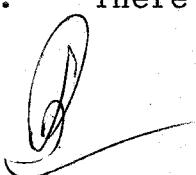
to law as laid down in the statutory
rules of CCS (CCA) Rules 1965.

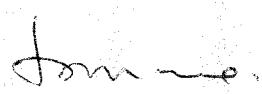
(iii) It is also made clear that article 1
of the charges shall be kept in abeyance
as not being dropped by virtue of this
order.

(iv) The charges shall be framed separately,
if so advised by the respondents, and
let the enquiry may be proceeded against
the applicant according to law.

11. The stay granted by this Tribunal by
the order dated 19th September, 94 is modified
accordingly.

13. There is no order as to costs.


(B.K. SINGH)
MEMBER (A)


(J.P. SHARMA)
MEMBER (J)

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