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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO. 1975/94

New Delhi, this the 18th day of April, 1995

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

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

Constable Ajay Singh
s/o Shri Madan Singh,
r/o H.No.1/11034, Gali No.4,
Subhash Park Extension,
Naveen Shahdara, Delhi.

... Applicant

By Advocate: Shri V.P. Singh

Vs.

1. Commissioner of Police,
Police Headquarters,
MSO Building, I.P. Estate,
New Delhi.

2. Dy. Commissioner of Police,
IIIrd Battalion, DAP,
Kingsway Camp, Delhi.

3. Inspector Rabhubir Parsad,
IIIrd Battalion,
DAP, Kingsway Camp,
Delhi.

... Respondents

By Advocate: Shri Girish Kathpalia

O R D E R (ORAL)

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

The applicant is a constable in Delhi Police since March, 1993 and an incident occurred on 28.5.94 when the applicant was possessed with a official fire arm and it is said that he was fondling with the fire arm and while in conversation with another constable Om Parkash, the fire arm missile was discharged as a result of fondling by the applicant causing injuries in the arm of said constable Om Prakash

resulting in registration of a case FIR No.280/94 u/s 337 IPC at P.S. Hari Nagar. The applicant was suspended on 30.5.94 and by the order dated 10.6.94 of the Deputy Commissioner of Police the departmental disciplinary enquiry was initiated u/s 21 of the Delhi Police Act read with Delhi Police (Punishment and Appeal) Rules, 1980 and the summary of allegations dated 15.6.94 was served on the applicant.

The applicant filed this application after making representation to the respondents on 22.9.94. It is contended that the act of the respondents in holding parallel departmental and criminal proceedings against the applicant will prejudice the applicant in his criminal trial and therefore the order dated 10.6.94 be set aside alongwith summary of allegations and the departmental enquiry be stayed.

The respondents filed the reply on notice and contested the application taking the stand that the applicant did not exhaust the departmental remedy and directly rushed to the Tribunal by filing the present application. The applicant has acted in a rash and negligent manner inasmuch as he was fondling with a fire arm and that as a

Police Constable he has to give more protection than his life to the aforesaid fire arm. While he started fondling with the same with the result that the missile shot out injuring the arm of Constable Om Parkash with whom he was in conversation at that time on 28.5.94.

The applicant has also filed the rejoinder reiterating the facts already stated in the original application.

We heard the learned counsel Shri V.P. Singh for the applicant and Shri Girish Kathpalia for the respondents.

There is no bar for holding parallel disciplinary departmental enquiry for the same act or misfeasance which amounts to misconduct according to service rules and offence according to law.

The criminal case is to be tried in the proper forum in the competent criminal court while the departmental action is initiated by the competent disciplinary authority under the relevant service rules applicable to the delinquent employee. However, the law has been clearly laid down in the case of Kusheswar Dubey Vs. Bharat Coking Coal Ltd. reported in AIR 1988 S.C. 2118. In that case the

Hon'ble Supreme Court considered the law on the point referring to earlier three decided cases by the Apex Court itself and finally has laid down that no strait-jacket formula can be laid down as to in which of the cases simultaneous parallel departmental proceedings and criminal prosecution for the same misfeasance/offence can be resorted to and that shall depend on each fact and circumstance of the particular case. In that reported case the original Civil Court issued an injunction to the respondents not to proceed with the departmental enquiry but the Appellate court reversed that order which was maintained by the High Court but set aside by Hon'ble Supreme Court with reasonings. That was a fit case where the simultaneous proceedings gone departmentally and other criminal court for the same misconduct/misfeasance cannot be resorted to simultaneously.

Now applying the principle of that case the applicant of course was in possession of official fire arm and it was expected as a part of his military drill to keep the said arm safely with safety cap attached to the said fire arm so that it may not be ejected the missile. However, this very fact has to be considered by the

criminal court whether the act of the applicant amounted to gross and negligent conduct on his part or an act in rashness and dereliction of the duty regarding preservation of the safety of the said fire arm or it was 'Vismajor' i.e. the act of God. The applicant has to give his defence in the criminal court and if the departmental proceedings are continued, the applicant shall disclose his defence in cross-examining the witnesses to be examined in the departmental enquiry by the administration also after the framing of the charge leading his own evidence on defence. This is likely to prejudice the stand of the applicant in the criminal case. Looking to another side, the department is not prevented from continuing the departmental proceedings against the applicant on the same misconduct of not properly securing the safety of the official fire arm, even after the decision of the criminal court though it may result in acquittal, as there is a provision under Rule 12 of the Delhi Police (Punishment & Appeal) Rules, 1980 where even after acquittal by the criminal court the department is at liberty to proceed against the delinquent on the same misconduct which has been subject of a charge in a criminal trial. If the department is allowed to proceed with departmental enquiry, the applicant

will suffer irreparable loss and that may prejudice in his defence. It is therefore a fit case for staying the departmental enquiry.

The counsel for respondents argued that the department may be permitted to proceed with the departmental enquiry upto the stage of examining the witnesses mentioned in support of the summary of allegations and the applicant will not be forced to cross examine those witnesses i.e. the framing of the charge shall be deferred till the criminal prosecution is concluded in the trial court. The contention of the learned counsel for the respondents therefore will not in any way prejudice the applicant. The learned counsel for the applicant also pointed out during dictation of this order that the witnesses of the administration had already been examined in support of the summary of allegations.

In view of the above conspectus/facts and circumstances the application is partly allowed with the following directions:

- a) The respondents will henceforth stay the departmental enquiry initiated against the applicant by the order dated 10.6.94 serving

the summary of allegations and if the witnesses of the administration had already been examined, defer the proceedings of the enquiry till the conclusion of the criminal case from the Trial Court. If the witnesses of the administration in support of the summary of allegations are yet to be examined or any of them has been left out then the examination of that can be concluded but the applicant shall not be forced to cross examine any of the witnesses and any cross examination done under coercion shall not be read as part of the departmental enquiry and shall not be considered by the Enquiry Officer while submitting the report against the applicant. The applicant shall be free to cross examine those witnesses if the respondents resorted to commence the departmental enquiry after the decision of the criminal case and the applicant shall have a right to cross examine by calling all those witnesses examined by the administration in support of the summary of allegations. If any of the witnesses has not been recalled and not put to cross-examination by the applicant then the testimony of those witnesses shall not be considered by the Enquiry Officer while submitting the report and shall not be

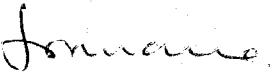
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formed the part of the enquiry proceedings.

b) The respondents shall be free to commence the enquiry on the same summary of allegations if so advised, after the conclusion of the criminal trial in the Trial Court, even after acquittal of the applicant if the case is covered by Rule 12 of Delhi Police (Punishment & Appeal) Rules, 1980 and thereafter give adequate opportunity to the applicant as aforesaid the right of defence if any charge has been framed against him.

In the circumstances of the case, the parties are to bear their own costs.


(B.K. SINGH)
MEMBER (A)


(J.P. SHARMA)
MEMBER (J)

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