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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA 1328/2000

New Delhi, this the 19th Day of December, 2000

Hon'ble Shri V.K. Majotra, Member(A),  
Hon'ble Shri Shanker Raju, Member(J),

Shri H.C. Dharambir Singh S/o Shri Surjan Singh,  
R/o H.No. K-23, Police Colony,  
Model Town,  
Delhi.

.....Applicant.

(By Advocate:Shri Arun Bhardwaj)

Versus

- 1.. Commissioner of Police,  
Police Headquarter, I.T.O.,  
M.S.O. Building, I.P. Estate,  
New Delhi.
2. Addl. Dy. Commissioner of Police,  
North West District,  
Ashok Vihar, Delhi.
3. Insp. Ram Vilas(E.O),  
AATS (N.W.D.),  
Ashok Vihar, Delhi.

....Respondents.

(By Advocate:Shri Devesh Singh)

O R D E R(Oral)

Shanker Raju, Member(J)

In this application, Head Constable of Delhi Police after being involved to in a criminal case of harbouring the accused was charged under Section 216 IPC. FIR No. 56/2000 has been registered against him at Police Station, Khanjhawala. The applicant was arrested and later on released on bail.

2. The respondents' ordered a departmental enquiry against the applicant dt. 7.6.2000 on allegations of his alleged involvement in the criminal case. The order of the enquiry was followed with summery of allegations dt. 1.7.2000 alleging that the involvement of the applicant in a criminal

case 216 IPC for allegedly harbouring one accused, Sanjay who was involved in a murder case 302 under section IPC. Alongwith the summery of allegations, list of witnesses and documents has been appended.

3. Applicant being aggrieved with initiation of simultaneous proceedings i.e., criminal and departmental enquiry on the same set of facts made a representation to the disciplinary authority at Annexure-B requesting for keeping the departmental enquiry in abeyance till the disposal of the criminal case. The respondents have not disposed of his representation and rather proceeded with the enquiry by calling witnesses for their examination as per the Delhi Police (Punishment & Appeal) Rules, 1980.

4. The applicant in this emergent situation has approached the Tribunal vide this OA praying for keeping the departmental enquiry in abeyance till the disposal of the criminal case. The applicant approached this Tribunal seeking relief of quashing of the order of departmental enquiry by which the simultaneous proceedings have been initiated against him and further praying for any other relief deem fit and proper in the facts and circumstances of the case.

5. Applicant in his OA at Annexure-G appended the circular issued by the Deputy Commissioner of Police (Vigilance) on 31.8.99 wherein the following ordered by the departmental authority is reflected:-

"In continuation of this office memo No.4756-89/P.Cell/Vig/P-VII, dt. 28.5.98 regarding conducting of parallel Departmental Enquiries in criminal cases, it is further clarified that the matter has been re-examined in this HQ in consultation with L.A. to C.P.,

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Delhi who has opined that in a recent case decided on 30.3.99 by the Apex Court in Civil Appeal No.1906 of 1999 Capt. M.Paul Anthony Vs Bharat Gold Mines Ltd. & Anr. It has been held that "If the D.E. and criminal case based on identical and similar set of facts and the charge in the criminal case against the delinquent employee... it would be desirable to stay the D.E. Proceedings till the conclusion of the criminal proceedings". Secondly, in POC Act cases, Investigating Agency does not favour to hold the departmental proceedings till the finalisation the criminal case pending against the delinquent Police Officer and if the D.Es in such cases are ordered, the required documents are not made available to the disciplinary authority for taking up the departmental proceedings".

Therefore, keeping in view, the position mentioned above it has been decided that in case where parallel D.E. has been ordered in the Crl. case on the same facts as given in the Crl. case, D.E. can be held in abeyance in the of natural justice till the conclusion of the Ct1. Case and after the decision of the Ct1. case, it may be decided whether a D.E. is to be held or not keeping in view the provisions of Rule of Delhi Police (Punishment & Appeal) Rules, 1980. The decision in this regard should be taken by the disciplinary authority itself instead of making any reference to this as the provision of Rule 12 of Delhi Police(Punishment & Appeal )Rules , 1980 is very clear in this regard."

6. The applicant contended that despite the circular which is fully applicable in his case the respondents have not followed the same and the departmental enquiry has been continued on the orders of the Deputy Commissioner of Police. Further he contended that this decision had to be meticulously complied with. The respondents have also in their reply to para 4.5 categorically replied that no such application has been received in thier office.

7. Whatsoever may be the circular issued by the Deputy Commissioner of Police(Vigilance) should be applicable to the case of the applicant whether any representation has been made by the applicant to the respondents or not. The representation in question is at Annexure B. According to the applicant it has been made to the Deputy Commissioner, North

West District, Delhi regarding keeping the departmental enquiry in abeyance and the same may be treated a valid representation and should be considered by the respondents keeping in view their own circular dt. 31.8.99. It is also made clear that Hon'ble Apex Court in the latest judgement regarding the disciplinary proceedings in the case of Caption M. Paul Anthony Vs. Bharat Gold Mines Ltd. & Anr. JT 1999(2) SC 456 has laid down certain guidelines for decided them as to have been case is reproduced:-

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately. (ii) The departmental proceedings and the criminal case are based on identical and similar set off acts and the delinquent employee is of agraventure which involves complicated question of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case. (iii) Whether the of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon then nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the chargesheet. (iv) The factores mentioned at ii & iii above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceeings cannot be unduly delayed. (v) If the criminal case does not proceed or its disposal being unduly delayed, the departmental proceedings, even if they were stayed on account of pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee if found not guilty his owner may be vindicated and in case be is found guilty, administration may get rid of at the earliest.

8. As (supra) there is no delay in conclusion of trial pending against the applicant the chargesheet has been filed around September, 2000. We feel there is no undue delay as such as the case of the applicant would not fall under the exceptional clause as laid down in another case of B.K. Meena & Others Vs. State of Rajasthan by the the Hon'ble Apex

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court. We accordingly direct the respondents to treat Annexure B as the representation of the applicant and dispose of the same keeping in view the above observations within a period of three months from the receipt of the copy of this order. Till the time representation is not disposed of by a well reasoned order by the respondents the departmental enquiry initiated against the applicant shall remain in abeyance. We accordingly partly allow the OA. No order as to costs.

S. Raju

(Shankar Raju)  
Member(J)

/Kadar/

V.K. Majotra

(V.K. Majotra)  
Member(A)