

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 534/2000

New Delhi this the 27th day of July, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI V. K. MAJOTRA, MEMBER (A)

Inspector Mannual Massy
No.D-1/40
R/o 22, Ashok Police Lines
Chankyapuri
New Delhi.

... Applicants

(By Dr. S.P.Sharma, Advocate)

-versus-

1. Union of India through
Secretary
Ministry of Home Affairs
North Block, New Delhi.
2. Lt.Governor
Rajniwas, Delhi.
Delhi.
3. The Commissioner of Police
Police Headquarters
M.S.O. Building, I.T.O.
New Delhi.
4. Joint Commissioner of Police
Southern Range, Police Headquarters
New Delhi.

... Respondents

(By Shri Ajesh Luthra, Advocate)

O R D E R (ORAL)

Shri Justice Ashok Agarwal:

By the present OA, applicant claims stay of further proceedings of the departmental enquiry initiated against him pending criminal trial which is also being initiated against him. It is, inter alia, contended that the charge contained both in the departmental enquiry as also one in the criminal trial are similar. If both the proceedings are permitted to continue simultaneously, the applicant would be required to disclose his defence in the departmental

✓ enquiry and this may prejudice his defence in the criminal trial. Shri Ajesh Luthra, learned counsel who appears on behalf of the respondents, on the other hand, has rebutted the contention of the applicant as raised by his advocate Dr. S.P.Sharma and has contended that the charges in both the proceedings are distinguished and prayer made in the present OA is wholly unjustified. ⑧

2. In order to resolve the aforesaid controversy, it may be useful to reproduce both the charges; one contained in the departmental enquiry and the other in the criminal prosecution. As far as the disciplinary proceedings are concerned, the charge recites as under:-

"That during the period from 1.6.75 to 28.4.97 while working in the capacity of Sub Inspector and Inspector in Delhi Police being a Public Servant was duty bound to report all his transactions exceeding Rs.10,000/- to his deptt. But Shri Mannual Massy did not intimate to his deptt. about his following transactions:

i) That Shri Mannual Massy purchased a plot No.C-7/62 Section-7, Rohini measuring 48 sq.mtr. for Rs.25,000/- in the name of his wife Smt.Sarita Massy from Shri R.K.Batra of Rani Bagh, Delhi on the basis of general power of attorney executed in the name of Smt. Sarita Massy on 17.4.88 and constructed the house upto second floor at the cost of Rs.4,17,784/-.

ii) That Shri Mannuyal Massy also purchased a shop No.37, C.C. Market Naraina in the name of his wife Mrs.Sarita Massy on general power of attorney on 12.8.96 for Rs.75,000/-

iii) That Shri Mannual Massy was allotted flat No.A-25/F in Delhi Police Employees Co-operative Housing Society, Mayur Vihar, New Delhi which was exchanged for consideration of Rs.20,000/- with bigger flat No.B-4/F with another allottee Smt.Nirmala Devi in the same society.

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Thus Shri Mannual Massy failed to maintain absolute integrity and devotion to duty as public servant by either not taking permission or not giving intimation to his deptt. for his above transactions and thereby contravened the Rule 3 of C.C.S. (Conduct) Rules, 1964 and is therefore liable for action under C.C.S.(C.C.A.) Conduct Rules, 1965." (9)

3. As far as criminal prosecution is concerned, this is what has been alleged in the chargesheet submitted against the applicant:

"...case RC-26(A)/97-DLI u/s 7 of PC Act, 1988 against Sh.Manual Massey, Inspector, Delhi Police who was posted as S.H.O. Police Station, Naraina New Delhi, the search of the house premises No.22, Ashoka Police Lines, New Delhi and other places was carried out and incriminating documents pertaining to properties and other assets were recovered, showing acquisition in his name and in the name of his family members. On scrutiny of these documents, Shri Manual Massey was found in possession of the following moveable/immoveable properties:-

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|--|-----------------|
| 1. Kisan Vikas Patra/FDR/NSC etc. | Rs. 2,30,000.00 |
| 2. Bank balances | Rs. 2,30,705.00 |
| 3. Cash | Rs. 2,75,700.00 |
| 4. Household articles as per memo | Rs. 2,50,000.00 |
| 5. Property No.62, Pocket C, Sector-VII, Rohini, Delhi | Rs.12,00,000.00 |
| 6. Property No.MIG Flat B-4F, Delhi Police-Employees Co-operative, Mayur Vihar, New Delhi. | Rs. 1,20,000.00 |
| 7. DDA Shop No.37, Community Centre, Central Market, Naraina, Phase-I, New Delhi. | Rs. 5,00,000.00 |
| 8. Jewellery(Gold/Silver) | Rs. 2,66,000.00 |
| 9. Car No.DL 4CC 4538 800 Maruti. | Rs. 1,25,000.00 |

The salary of Shri Manual Massey since 1972 appears to be Rs.6,00,000/- approx., whereas the total assets calculated is Rs.27,51,405/-. Assets approx. Rs.21,51,405/- are disproportionate to his known sources of income.

In view of the above prima facie case of disproportionate assets u/s 13(1)(e) of PC Act, 1988 against Shri Manual Massey, Inspector

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No.D-1/40, Delhi Police, R/O Qtr. No.22,
Ashoka Police Lines, New Delhi is made out.
Yours faithfully, sd/- (Ved Prakash) dt.28.4.97
Inspector of Police, CBI, ACB New Delhi.

The aforesaid facts prima facie, disclose commission of offence punishable u/s 13(1)(e) PC Act, 1988 against Shri Manual Massey, Inspector of Police/SHO, Delhi Police, Police Station Naraina, New Delhi. A regular case is therefore registered and investigation entrusted to Sh.P.K.Sharma, Inspr., CBI ACB New Delhi."

4. At first blush Shri Ajesh Luthra appears to be justified in his contention. Whereas the charge in the disciplinary proceedings is the non-communication of the assets acquired by the applicant to the department, as far as criminal prosecution is concerned, the same relates to acquisition of assets which were disproportionate to his known sources of income. Even if this be so, we find, on closer scrutiny, that if the disciplinary proceedings are permitted to continue pending the criminal prosecution, applicant will be required to disclose his defence as to whether, he has purchased the property in question; if so, whether the same has been purchased by him in the name of his wife; or whether somebody else has purchased the same in the name of his wife; whether the said property stands in the name of his wife, the source of acquisition etc. Various defences are open in the criminal prosecution. Disclosure of his defence in the disciplinary proceedings, in our view, is bound to or at least is likely to prejudice his defence at the criminal trial.

5. As far as the property which is the subject matter of the disciplinary proceedings is concerned, the same also forms the subject matter of the assets which are alleged to be disproportionate to his known

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sources of income in the criminal prosecution. In criminal trials a horizon of defences are open which often unfold themselves at the trial.

6. In the case of D.N. Patil v. Senior Superintendent of Post Offices, Belgaum and another, (1991) ATC 318, the Bangalore Bench of the Tribunal which was seized with a controversy similar to the one which has arisen in the present case has observed:-

"Though formally, the charges levelled against the applicant in the departmental enquiry are different in that he has been accused only of procedural irregularities, these irregularities directly relate to the transactions of 2 money receipts of Rs.50,000 and Rs.2,000 and in respect of these very transactions he is being accused of misappropriation in the criminal case. The two sets of charges, one levelled in the departmental enquiry and the other in the criminal case are so closely interlinked that they cannot be separated from each other. If the applicant is absolved of the charge of misappropriation in the criminal case, the question of any procedural irregularity may not arise at all. On the other hand, if the departmental enquiry is allowed to go on, the applicant may be forced to disclose his defence in respect of the charge faced by him in the criminal case and that would certainly prejudice him in the criminal case. We may at this juncture recall the observations of the Supreme Court in Tata Oil Mills v. Workmen (AIR 1965 SC 155)(160):

"....As this Court has held in the Delhi Cloth and General Mills Limited v. Kaushal Bhan, (AIR 1960 SC 806) it is desirable that if the incident giving rise to a charge framed against a workman in a domestic enquiry is being tried in a criminal court, the employer should stay the domestic enquiry pending the final disposal of the criminal case. It would be particularly appropriate to adopt such a course where the charge against the workman is of a grave character, because in such a case, it would be unfair to compel the workman to disclose the defence which he may take before the criminal court..."

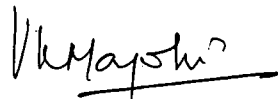
De. J.

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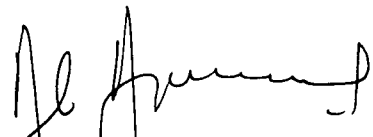
On the strength of these observations themselves, the present application deserves to be allowed."

7. As had been found in the aforesaid case, in the present case also we find that though the charges in both the proceedings are different, the same are so closely interlinked that it would be impermissible or in any event unfair to permit both the proceedings to continue simultaneously. Permitting the same, in our view, is bound or in any event is likely to embarrass the defence of the applicant in the criminal trial.

8. For the foregoing reasons, the OA is allowed. Pending criminal trial which has been initiated vide RC-29(A)/97-DLI dated 28.4.1997 at Annexure P-1, the disciplinary proceedings initiated against the applicant vide order 2.9.1999 at page 32 of the OA are stayed. No order as to costs.



(V.K. Majotra)
Member (A)



(Ashok Agarwal)
Chairman

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