

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## NEW DELHI

O.A. No. 1435 of 1989  
T.A. No.

199

DATE OF DECISION 16.1.92.

Kashmiri Lal

Petitioner

~~Shri Shankar Raju~~

Advocate for the Petitioner(s)

Versus

Commissioner of Police

Respondent

Shri T.S. Kapoor

Advocate for the Respondent(s)

### CORAM

The Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman (J).

The Hon'ble Mr. P.S. Habeeb Mohd., Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(Judgement of the Bench delivered by Hon'ble Shri  
Justice Ram Pal Singh, Vice-Chairman (J).)

### J U D G M E N T

The applicant prays for keeping the departmental proceedings pending against him before the Enquiry Officer in abeyance, till the final disposal of the criminal case pending against the applicant in the court of the Metropolitan Magistrate, Tis Hazari, New Delhi.

2. The applicant is a constable of Delhi Police. On 3.12.83, the Inspector of Customs and Central Excise, Shri S.P. Bhardwaj, alongwith Shri Ajit Singh, Inspector, Customs, Shri S.D. Roy, Inspector Customs and Shri Mashih Charan conducted a raid in the shop of one Joginder Singh, Shop No. 116, New Lajpat Rai Market, Delhi, and seized a packet of 139 wrist watches from the shop owner.

It is at this very time, the applicant, Kashmiri Lal, constable, is alleged to have entered the shop with one Guddu and after manhandling the Customs officers and injuring Shri S.D. Roy, Inspector,

Customs, forcibly snatched the packet away. According to the respondents, the applicant has contravened the provisions of Rule 3(iii) of the C.C.S. (Conduct) Rules of 1965. FIR No. 980 dated 4.12.83 was filed against the applicant and a criminal case was registered in Police Station Kotwali, Delhi, under Section 186/332/353/380 of the Indian Penal Code and the applicant was arrested on 16.5.84, but was released on bail. He was, therefore, placed under suspension.

3. According to the applicant, this criminal case is still pending disposal while the respondents after a period of 6 years have started conducting a departmental enquiry. Hence, the applicant has prayed for either quashing the departmental proceeding or keeping it in abeyance till the disposal of the criminal case. Shri Shankar Raju, learned counsel for the applicant, contended that if he is forced to disclose his defence in the departmental enquiry, then he will be prejudiced in his trial before the criminal court. He further contended that in no way the applicant can be compelled to open his defence except during the trial. The applicant also contended that the continuance of the departmental enquiry is likely to prejudice him in the criminal trial.

4. Shri T.S. Kapoor, counsel for the respondents, supported his stand taken in the counter and contended that the departmental enquiry is not likely to prejudice the applicant in the criminal trial. He reluctantly admitted that the witnesses in the departmental enquiry are the same who are prosecution witnesses in the criminal trial.

5. Law on the point is well settled. In the case of *Kukeshwar Dubey vs. M/s. Bharat Cooking Coal Ltd. and Ors.* (AIR 1988 S.C. p. 2118), the apex court has observed that in a case where the criminal action and the disciplinary proceedings are grounded upon the same set of facts, the disciplinary proceedings should be stayed. This very principle was earlier held by the apex court in the case of *Delhi Cloth and General Mills Ltd. Vs. Kushal Bhan* (AIR 1960 SC 806) and also in the case of *Tata Oil Mills Company Ltd. Vs. Its Workmen* (AIR 1965 SC 155). The view taken by the apex court is that;

*Santhosh*

"while there could be no legal bar in simultaneous proceedings being taken, yet there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case...."

The same <sup>view</sup> has been followed by our Tribunal in the case of D.N. Patil (1991 (2) ATJ p. 36), Jai Prakash vs. UOI & Anr. (1991 (1) S.L.J. (CAT) p. 352) and in the case of D.S. Choudhary (ATR 1987 (1) CAT p. 101). In view of this well settled principle of law, we have examined the documents and have found that the same witnesses are being examined in the disciplinary proceedings who are witnesses in the criminal case. The criminal trial has not yet started. Thus, the applicant who will be <sup>b</sup> compelled to cross examine the witnesses in the disciplinary proceedings shall subsequently appear in the criminal trial. Thus, the applicant/delinquent will be compelled in the disciplinary proceedings to disclose his defence by way of cross examination or by way of his statement. It is likely to prejudice the applicant in the criminal trial which is yet to start. We are also of the view that the facts, circumstances and evidence appear to be identical in the criminal as well as in the disciplinary proceedings.

6. We, therefore, allow this O.A. and direct the respondents to stay the departmental proceedings against the applicant till the conclusion of the criminal trial in FIR No. 980 dated 4.12.83 pending in the criminal court. After the judgment in the criminal case, the respondents shall be at liberty to start the stayed departmental proceedings against the applicant. The parties are directed to bear their own costs.

(P.S. HABEEB MOHD.)  
MEMBER (A)

(RAM PAL SINGH)  
VICE-CHAIRMAN (J)