

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1538/89
T.A. No.

198

DATE OF DECISION 1-2-1990.

Freet Singh & Another Applicant (s)

Shri A.S. Grewal Advocate for the Applicant (s)

Commissioner of Police Respondent (s)
and others

Shri M.M. Sudan Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. T.S. Oberoi, Member (J)

The Hon'ble Mr. I.K. Rasgotra, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? Y,
2. To be referred to the Reporter or not ? NO
3. Whether their Lordships wish to see the fair copy of the Judgement ? NO
4. To be circulated to all Benches of the Tribunal ? NO

JUDGEMENT

The applicants, in the present O.A.,
have, inter alia, sought for the following reliefs:-

- (i) Order of Deputy Commissioner of Police,
West District, Delhi No. 3286-3304/P(W).
dated 6.7.1989 (Annexure 'C') initiating the
parallel departmental enquiry during the
pendency of the criminal case leading to the
same offence and facts, be quashed.
- (ii) Summary of allegations (Annexure 'D') dated
7.7.1989 be quashed.
- (iii) or in the alternative, the departmental
enquiry being conducted by the enquiry
officer/respondent No. 4 be stayed, till the
decision of the criminal case.

2. The facts giving rise to the filing of the
present O.A., briefly stated, are that on the relevant
date of July 4, 1989, both the applicants were serving as

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constables at Police Station Vikas Puri, New Delhi, when after making their departure entry vide D.D. No. 23-B dated 4.7.1989, they proceeded on patrolling duty, in their respective beat areas. As per allegations against them, instead of proceedings to their areas, for patrolling duty, they went to the adjoining Police Station in District Gurgaon (Haryana), where a case FIR No. 81 dated 4.7.1989, under Section 379 IPC, for allegedly taking away some money from a betel seller (Pan Wala) and fleeing away to the place of their duty, was registered. On an information to this effect having been lodged at Police Station Farookh Nagar, District Gurgaon, the applicants, besides some others, in van bearing registration number D.D.V. 851, were chased, by a police party headed by Head Constable Raj Singh. The van was also intercepted by Sub-Inspector Om Parkash of the Police Control Room, on receipt of a message to this effect, and on further enquiries by Sub-Inspector Madan Lal of Police Station Vikas Puri, the present two applicants, besides two other constables, namely, Rajender Kumar @ Raju and Jogender Singh @ Tarbu, of Haryana Police, were found to have allegedly committed the aforesaid criminal offence at Farookh Nagar. The case under Section 379 IPC registered at P.S. Farookh Nagar, is separately under investigation, while the applicants have been proceeded against, in the departmental enquiry, initiated by the Deputy Commissioner of Police, West District, vide his order dated 6th July, 1989, annexure 'C' to the application. The summary of allegations served upon the applicants is at annexure 'D'.

3. The main plea of the applicants is that the allegations as per FIR No. 81 dated 4.7.1989, registered against them at Police Station Farookh Nagar, and those as per summary of allegations, are quite similar and the two

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main witnesses in the criminal case as well as in the departmental enquiry are also the same and, therefore, parallel departmental enquiry proceedings are likely to cause serious prejudice to the defence of the applicants in the criminal case, where the accused persons have to keep their mouth shut and not to reveal their defence. The contention of the respondents, on the other hand, is that the departmental enquiry has been initiated on an altogether different allegation, i.e. the applicants wilfully and unauthorisedly left the place of their duty which ^{is} tantamount to misconduct rendering them liable to be proceeded departmentally under Section 21 of the Delhi Police Act. The respondents have emphasised that the allegations in the criminal case and the departmental enquiry are not similar or parallel, and as such, the proceedings in the departmental enquiry would not materially affect the defence of the applicants in the criminal case, particularly, as the evidence in the D.E. is documentary, even though some of the witnesses may be common in the two proceedings.

4. We have considered the rival contentions with regard to the above aspect of the case and carefully perused the summary of allegations and the order by which departmental enquiry has been initiated against the applicants. It is clear from these documents that the departmental enquiry relates to the unauthorised and wilful absence of the applicants from their area of duty. In the criminal trial, the finding will be with regard to their involvement or otherwise in the case registered against them under Section 379 at Police Station Farookh Nagar in Haryana. Therefore, in our view, there is no similarity in the allegations on the basis of which the departmental enquiry has been initiated and the facts on which the criminal case is subjudice. The examination of the two witnesses in the departmental enquiry was with a view to

determine whether the applicants had indeed left their place of duty and went out of police station jurisdiction without permission of the competent authority. We cannot therefore, come to the conclusion that the defence of the applicants in the criminal trial will be prejudiced by the examination of the two main witnesses in the departmental enquiry. It would not be out of place to mention here that the departmental enquiry against the applicants has since been completed and they have been issued a show cause notice proposing tentatively the dismissal of the applicants from service. The respondents have, however, been restrained, by way of interim relief, from passing any final order on the basis of show cause notice issued to the applicants.

5. The applicants have challenged the departmental enquiry on the ground that the same is vitiated because the respondents have not complied with the mandatory provisions contained in Rule 15 (2) of the Delhi Police (Punishment & Appeal) Rules, 1980. This rule envisages that where a police officer is found to have committed a cognizable offence in his official relations with the public, departmental enquiry shall be ordered after obtaining prior approval of the Additional Commissioner of Police concerned. The applicants aver that the departmental enquiry is illegal as the provisions of Section 15 (2) of the aforesaid rules have not been complied with. The respondents in their counter have opposed this submission of the applicants by stating that the applicants have not committed any cognizable offence in connection with their official relations with the public. Therefore, it was not necessary for them to obtain the prior approval of the Additional Commissioner of Police before initiating the departmental enquiry.

6. We have given careful thought to the above submissions of the parties. We have already observed

that the departmental enquiry was initiated on the allegation that the applicants had left their place of active duty without the permission of the competent authority. In other words, the departmental enquiry does not relate to the alleged commission of the criminal offence by the applicants. We do not find any substance in the submission of the applicants with regard to the challenge to the departmental enquiry for non observance of the provisions of relevant law.

7. The next contention of the applicants is that departmental enquiries have been ordered to be stayed in similar other cases and denial of this relief will be in violation of Articles 14 and 16 of the Constitution. The applicants have relied on the judgment of this Tribunal in O.A. No. 1770/87 - Gurmail Singh Vs. UOI, decided on 1st December, 1989 by another Bench of the Tribunal, wherein, according to the applicants, the departmental proceedings have been ordered to be stayed. We have gone through this judgment of the Tribunal very carefully. We find that contrary to staying the departmental proceedings, the relief claimed by the applicants in this regard was rejected. Even otherwise, the facts obtaining in the present case and those cited by the applicants are quite dissimilar. Therefore, this judgment is of no avail to the applicants. While wading through the judgment of Gurmail Singh Vs. UOI (supra), we find that the learned Bench has referred to many judgments. We may, with advantage, mention the judgment of the Supreme Court in the case of Delhi Cloth & General Mills Ltd. Vs. Kushal Bhan (AIR 1960 SC 806). It would be apposite to extract the following observations from the said judgment of the Supreme Court:-

"It is true that very often employers stay enquiries pending the decision of the criminal

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trial courts and that is fair; but we cannot say that principles of natural justice require that an employer must wait for the decision at least of the criminal trial court before taking action against an employee.... We may, however, add that if the case is of a grave nature or involves questions of fact or law, which are not simple, it would be advisable for the employer to await the decision of the trial court, so that the defence of the employee in the criminal case may not be prejudiced. The present, however, is a case of a very simple nature and so the employer cannot be blamed for the course adopted by him. In the circumstances, there was in our opinion, no failure of natural justice in this case..."

From the above, it is clear that the apex court is not in favour of staying enquiries initiated with a view to determine cases of simple nature. The aforesaid observations of the Supreme Court are on all fours with the facts and circumstances of the present case. The applicants have been charged with wilful and unauthorised absence from the area of active duty which do not involve the grave questions of fact or law. Therefore, we find little merit in the contention of the applicants set out in para. 7 above and have no option but to reject the same.

8. In the rejoinder, the applicants have pressed into service, to buttress their case, the opinion of the Legal Adviser to the Commission^{er} of Police, Delhi contained in Memo. No. 178/LA dated 27.6.1985 which envisages that the enquiry officer should keep in mind that he should not insist the defaulter to produce the defence evidence till the criminal case is decided from the court concerned. We are afraid that the opinion of the Legal Adviser does not help the applicants in any way because the charges on which the departmental enquiry has been initiated and those which are subject-matter of trial in criminal court are not akin.

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9. The applicants have further averred in their rejoinder that they had recorded their arrival at the Police Station Vikas Puri at 2.35 pm (Annexure H) whereas the alleged incident is said to have taken place at 1.15 pm and in this view of the matter, the charge regarding unauthorised absence from their respective beats is incorrect and baseless. We cannot go into this question as it is for the disciplinary authority to appraise the evidence in the departmental enquiry and form his own opinion on the basis of such evidence. The applicants have not alleged that the findings are perverse on account of the aforesaid entry regarding their arrival at the Police Station. In the face of other documentary and oral evidence, this contention of the applicants does not hold water.

10. The parties have filed their counter and rejoinder, together with certain documents filed on behalf of the applicants. They have also argued their respective cases, and agree that the case can be disposed of at this stage of admission itself. After hearing them, we are also of the view that the case can be disposed of finally at this very stage. We have, accordingly, gone into the merits of their respective contentions, and dealt with them, in our order, as above.

11. As a result of the foregoing discussion, we do not find it possible to grant any of the reliefs sought for by the applicants, mentioned at item (i) to (iii) of para. I above, and dismiss the application. The stay earlier granted by us on 12.9.1989, is vacated. The parties are, however, left to bear their own costs.

I.K. Rasgotra
(I.K. Rasgotra) 1/2/90
Member (A)

T.S. Oberoi
(T.S. Oberoi) 1.2.90
Member (J)