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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 1412/1990. DATE OF DECISION: 18-1-1991.

Raj Pal Singh Applicant.

V/s.

Commissioner of Police
and Others Respondents.

CORAM: Hon'ble Shri B.S. Sekhon, Vice-Chairman (J).
Hon'ble Shri P.C. Jain, Member (A).

Shri A.S. Grewal, Counsel for the Applicant.
Mrs. Avnish Ahlawat, Counsel for the Respondents.

(Judgment of the Bench delivered by
Hon'ble Shri P.C. Jain, Member (A))

JUDGMENT

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant, a constable in Delhi Police, has impugned order dated 15.5.90 (page 10 of the paper book) whereby a regular departmental enquiry has been ordered against him and the Summary of Allegations (page 11 of the paper book) served on him by the Enquiry Officer. He has prayed for that the impugned order dated 15.5.90 and the Summary of Allegations served on him be set aside.

2. Relevant facts, in brief, are that on the basis of F.I.R. No.81/90, a case was registered against the applicant under Section 379/323 I.P.C. P.S. Lajpat Nagar, South District, Delhi. He was arrested and released on bail. Copy of the F.R. is at Annexure 'A' to the O.A. One Shri Harish Kumar, resident of Defence Colony, New Delhi, lodged a complaint that when he was going from his shop to his house in car No.DBA 4847, along with his brother Satish Kumar and a friend Jawahar Arora and reached near 'E' Block, Amar Colony at about 10.30 P.M., a scooter driver with another man sitting behind him, stopped his scooter in front of his car, without asking any question

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pulled him out of his car and started beating him. The man concerned was a police employee. Simultaneously, he opened a door of his car and picked up an envelope containing Rs.70,000/- and concealed it in his jacket. Satish Kumar and Jawahar Arora, who were travelling in the same car, tried to rescue him from the beating and also witnessed the taking out of the money packet and keeping the same in his jacket. Thereafter, without caring for what he was saying, the Policeman took him to the Police Post continuously beating him. He also refused to return the envelope containing money when he was asked for on arrival at the Police Post. He came to know that the name of the Policeman was Constable Raj Pal.

3. The case of the applicant is that on the aforesaid alleged incident, a departmental enquiry has been ordered and that parallel proceedings in the departmental enquiry along with the criminal case will cause prejudice to his defence to be taken in the criminal case. It is also stated that the main and material witnesses in the criminal case as well as in the departmental enquiry are the same and they ^{are} inimically disposed towards the applicant.

4. The respondents have contested the application and have stated in their reply that the departmental enquiry is for the applicant's misconduct as a Police personnel whereas the criminal case is for involvement in criminal activities and there is no bar to proceed with departmentally against a person against whom criminal case is pending. It is also stated that the Department cannot wait for the trials as it takes years to complete a trial in courts below and otherwise ^{also} there are clear instructions of Central Vigilance Commission to the effect that there is no bar to proceed with departmentally if a criminal case is pending. It is admitted that the representation submitted by the applicant was received, considered, but rejected.

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5. We have perused the material on record and have also heard the learned counsel for the parties, who agree that as the same ground has to be traversed for a finding on the prayer for interim relief as for the final relief sought for, the case may be finally disposed of.

6. Ordinarily, there is no bar to a departmental enquiry being held against a Government servant even if a criminal case is pending against him in a court of law. However, where the criminal case and the disciplinary proceedings are grounded upon the same set of facts, it may be in the interest of justice that disciplinary proceedings are stayed. Relevant observations of the Supreme Court in the case of Kusheshwar Dubey Vs. M/s. Bharat Cooking Coal Ltd. & Ors. (AIR 1988 SC p. 2118) are reproduced below: -

"The view expressed in the three cases of this court seem to support the position that while there could be no legal bar for simultaneous proceedings being taken, yet, there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case. In the latter class of cases it would be open to the delinquent employee to seek such an order of stay or injunction from the Court. Whether in the facts and circumstances of a particular case there should or should not be such simultaneity of the proceedings would then receive judicial consideration and the Court will decide in the given circumstances of a particular case as to whether the disciplinary proceedings should be interdicted, pending criminal trial. As we have already stated that it is neither possible nor advisable to evolve a hard and fast, straight-jacket formula valid for all cases and of general

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application without regard to the particularities of the individual situation. For the disposal of the present case, we do not think it necessary to say anything more, particularly when we do not intend to lay any general guideline. "

Further in para 7 it has been held: -

" In the instant case, the criminal action and the disciplinary proceedings are grounded upon the same set of facts. We are of the view that the disciplinary proceedings should have been stayed and the High Court was not right in interfering with the trial court's order of injunction which had been affirmed in appeal."

7. In the case before us, a perusal of the F.I.R. and the narration of events in the order of the Additional Deputy Commissioner of Police, who ordered for a regular departmental enquiry to be held as well as the Summary of Allegations served on the applicant by the Enquiry Officer, shows that the allegations in regard to the incident on which both the proceedings are based are virtually the same. The main witnesses in the two proceedings are also likely to be the same and, as such, if the applicant is asked to disclose his defence in the departmental proceedings, his defence in the criminal case may be prejudiced, as both the proceedings are grounded on the same facts.

8. It was argued by the learned counsel for the respondents that trial in criminal cases takes an unduly long time and if the charged Police official is allowed to function with immunity during the period a criminal case remains pending, it brings a bad name to the Police Organisation. She, therefore, urged that the departmental proceedings be allowed to be continued till the stage the applicant is required to put up his defence. Though there is some force in the above said contention, yet it is clear

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that in such a situation, the departmental proceedings will not be completed and no order can be passed therein and as a result, the purpose of the respondents would not be achieved.

9. In view of the foregoing discussion, we are of the view that the disciplinary proceedings initiated against the applicant in pursuance of order dated 13.5.20 should be stayed till the disposal of the criminal case and we direct accordingly. However, there is neither any material on record nor any justification for quashing the Summary of Allegations and the prayer of the applicant in this regard is disallowed. The O.A. is thus partly allowed as above. We leave the parties to bear their own costs.

(P.C. JAIN)
Member (A)

(B.S. SEKHON)
Vice-Chairman (J)

18-1-91