

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, DELHI.

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Regn. No. C.A . 1913/1990. DATE OF DECISION: 12-12-1990.

Hawa Singh ..... Applicant.

V/s.

Commissioner of Police  
and Others ..... Respondents.

CORAM: Hon'ble Mr. P.C. Jain, Member (A).  
Hon'ble Mr. J.P. Sharma, Member (J).

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

1. Whether Reporters of local papers may be allowed to see the judgment? *yes.*
2. To be referred to the Reporter or not? *yes.*
3. Whether their lordships wish to see the fair copy of the judgement? *No.*
4. Whether to be circulated to all Benches of the Tribunal? *No.*

*J.P. Sharma*  
(J.P. SHARMA)  
MEMBER (J)

*P.C. Jain*  
(P.C. JAIN)  
MEMBER (A)

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Commissioner of Police  
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CORAM: Hon'ble Mr. P.C. Jain, Member (A).  
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Mrs. Avnish Ahlawat, Counsel for the Respondents.

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

JUDGEMENT

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant, a constable Driver in Delhi Police, has assailed order dated 3.7.1990 passed by the Deputy Commissioner of Police, North-West District, Delhi (Annexure 'B') for starting departmental proceedings against him, as also Summary of Allegations served on him by the Enquiry Officer (Annexure 'C'). He has prayed that the impugned order at Annexure 'B' and Summary of Allegations at Annexure 'C' be set aside. As an interim measure, he prayed that the respondents be restrained from conducting the departmental enquiry further till the criminal case FIR No.92/90 under Section 279/337 I.P.C. P.S. Narela, Delhi is decided.

2. Briefly stated, the facts are that on 30.4.90, Government vehicle No. DBL-3748 (Allwyn Nissan) P.P. Bawana (P.S. Narela), while being driven by the applicant, met with an accident with a tractor trolley No. HYS-5971 in the area of P.S. Narela. A case FIR No.92 dated 1.5.90 under Section 279/337 IPC was registered against the applicant. ASI Mohinder Singh, on whose statement, the above case had been registered, the applicant who was the driver of the vehicle

Clerk.

and one Balbir Singh, a public-man, were travelling in the vehicle at the time of accident. All the three received injuries and the vehicle was also damaged. The accident is alleged to have been caused because of rash and negligent driving by the applicant.

3. The case of the applicant is that both the criminal case as well as the departmental proceedings are based on the same facts; that the two proceedings are inter-linked; and that the witnesses are the same. As such, he contends that conducting of departmental proceedings simultaneously with the progress of the criminal case will prejudice his defence. He has cited a number of judgments<sup>\*\*</sup> in support of his case.

4. In the counter-affidavit, the respondents have contested the application and have stated that the departmental enquiry is being conducted for departmental misconduct, firstly giving a lift to an outsider, secondly ASI failing in his duty in supervising the driver from driving the vehicle rashly and thirdly non-performance of duty from 11.35 A.M. to 8.30 P.M. when the D.D. for departure states that the A.S.I. left the P.S. at 11.35 A.M. to get a statement u/s 164 Cr.P.C. recorded in case F.I.R. 173/89 at Tis Hazari and to execute a warrant in case F.I.R. 143/88 at Lanori Gate. It is further stated that none of these facts are charged in the criminal case

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<sup>\*\*</sup> Kusheshwar Dubey Vs. M/s. Bharat Cooking Coal Ltd. & Ors. (AIR 1988 SC p. 2118).

D.N. Patil Vs. Senior Superintendent of Post Offices & Anr. (1990 (2) ATLT CAT 462).

D.C. Chowdhary Vs. Senior Superintendent of Post Offices (ATR 1987 (1) January Part p. 101).

Judgment dated 22.3.1990 in O.A. 593/90 (Miss Jagtar Kaur Vs. The Commissioner of Police & Another) by the CAT, Delhi.

and, as such, the two proceedings are on different issues.

5. We have heard the learned counsel for the parties and have also perused the material on record. It was also agreed between the parties that the case may be finally disposed of at the admission stage and the learned counsel for the parties made their submissions accordingly.

6. At the outset, we may mention here the relevant portions from the F.I.R. on the basis of which a criminal case has been registered and the Summary of Allegations in the departmental proceedings. The F.I.R. mentions that the applicant made one Balbir Singh, Photographer, to sit on the back side of the vehicle on his asking for a lift. It also mentions that the applicant started driving the vehicle at fast speed as soon as they reached Singhu Border and were proceeding to Ch. Ram Dev Way towards Narela, and that the A.S.I. advised him not to drive the vehicle so fast, but he did not care. As a result of the accident, the aforesaid Balbir Singh and the applicant sustained injuries and the Government vehicle was badly damaged. The 'Summary of Allegations' (Annexure 'C') in the departmental proceedings narrates the accident of 30.4.90, registration of FIR No.92 dated 1.5.90 u/s 279/337 IPC, that one Balbir Singh, who was not in Police Department was travelling in the vehicle at the time of accident, that the accident has been due to rash and negligent driving and as a result, the A.S.I. Mohinder Singh, Balbir Singh and the driver received injuries and the Government vehicle was severely damaged. It further states that "Moreover, driver Hawa Singh No.642/NW had given lift to Balbir Singh of Narela, who was in no way connected with police work." It also contains allegations against the ASI for not ensuring that the driver did not drive fast and in a rash manner and for not allowing the driver to give lift to an outsider in the Government vehicle on duty. The charge against the A.S.I. about utilisation of time from 11.35 A.M. to 8.30 P.M. is also mentioned. The operative part reads as below: -

"The above acts on the part of Const. (Dvr.) Hawa Singh No.642/NW and ASI Mohinder Singh No.2515/N amount to gross misconduct individually and jointly which renders them liable to be dealt with departmentally under section 21 D.P. Act. "

7. From the above, it is seen that both the ASI and the applicant are being proceeded jointly in the departmental proceedings and that the Summary of Allegations is not only confined to the charge of the applicant having given a lift to a person who was in no way connected with the police work. We are unable to infer from the Summary of Allegations that the question of rash and negligent driving by the applicant is not a subject-matter in the departmental proceedings. Moreover, the aforesaid Balbir Singh also received injuries due to the accident and, as such, he would presumably be a material witness in the criminal case. Thus, the facts on which the criminal case is based and the facts on which the departmental proceedings have been initiated cannot be said to be not connected with each other. The contention of the applicant that the witnesses in the two proceedings are the same, has not been rebutted by the respondents. We were informed that the challan in the criminal case has already been submitted in the court.

8. In the case of Kusheshwar Dubey (supra), the Supreme Court 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. The Supreme Court also referred to its earlier decision in DELHI CLOTH AND GENERAL MILLS LTD. Vs. KUSHAL BHAN, AIR 1960 SC 806 and in TATA OIL MILLS COMPANY LTD. Vs. ITS WORKMEN, AIR 1965 SC 155. Relevant observations of the Supreme Court in the case of Kusheshwar Dubey (supra) 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 or 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 formule valid for all cases and of general 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. "

9. The learned counsel for the respondents cited the judgment of the C.A.T. in O.A. 1770/1987 - Shri Gurmail Singh Vs. Union of India & Others- dated 1.12.1989. We have gone through this judgment and we do not find anything therein which is not in conformity with the above observations of the Supreme Court. In that case, the Tribunal came to the conclusion that the case did not involve any complicated or serious question of facts or law and, as such, the departmental proceedings could be proceeded with without waiting for a decision in the criminal case. The departmental proceedings were initiated in that case in respect of an alleged second marriage while his first wife was alive and the first wife had filed a criminal case under Section 494/109/114/119/134 I.P.C. in the court of Metropolitan Magistrate.

10. The learned counsel for the applicant did not press the second prayer to the effect that 'Summary of Allegations' (Annexure 'C') be set aside. In any case, there is no

justification for granting the aforesaid prayer, firstly, because it is not in dispute that an accident did take place, a Government vehicle was damaged and an unauthorised person was travelling in the vehicle at the time of accident and secondly, injuries were inflicted on some persons.

11. In view of the foregoing discussion, we are of the view that the departmental proceedings initiated in pursuance of the order dated 3.7.1990 passed by the Deputy Commissioner of Police, North West District Delhi, in so far as these relate to the applicant herein, be kept in abeyance till the disposal of the criminal case FIR No.92 dated 1.5.90 under Section 279/337 IPC by the court concerned. We direct the respondents accordingly. The prayer of the applicant for quashing the 'Summary of Allegations' is disallowed. The application is disposed of accordingly with costs on parties.

*J. P. Sharma*  
(J.P. SHARMA)  
Member (J)

*P. C. Jain*  
(P.C. JAIN)  
Member (A)