

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI.

O.A.No.386/90

Date of decision: 21.07.1993.

MP 906/93

Shri Bhoop Singh

..... Applicant

versus

Union of India and Ors. ....

Respondents

Coram:-

The Hon'ble Mr. Justice S.K. Dhaon, Vice-Chairman

The Hon'ble Mr. B.N. Dhoundiyal, Member(A)

For the applicant : Ms. Jasvinder Kaur, counsel

For the respondents : Ms. Pratima Mittal, proxy  
counsel for Sh. K.C. Mittal,  
counsel

JUDGEMENT(ORAL)

(delivered by Hon'ble Mr. Justice S.K. Dhaon, Vice-Chairman)

On 28.10.1989 a first information was lodged in the Police Station, R.K. Puram alleging therein that the petitioner had committed offence under Section 376/511 & 342/506 of I.P.C. This report was lodged by one Kumari Anita aged 11 years. She alleged that the petitioner attempted to rape her after molesting her. On 31.1.1990 a memorandum was issued to the petitioner. A perusal of the Article of charge as contained in the said annexure shows that it was alleged therein that the petitioner while

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functioning as Constable committed a gross misconduct on 28.10.1989 inasmuch as one Ms. Anital was molested for which FIR was lodged on 28.10.1989 under Section 376/511 & 342/506 IPC in Police Station, R.K. Puram, Delhi.

It is admitted that the criminal case is going on against the petitioner. The question for our consideration is whether the departmental proceedings should be allowed to continue simultaneously with the criminal trial, which the petitioner is facing. We have seen the charge memo given to the petitioner in the departmental enquiry and the chargesheet in the criminal trial. There can be no two opinions that in the departmental proceedings, the petitioner is facing the same charge which is the subject matter in the criminal case. It is a settled law that in a criminal trial the burden to prove the guilt is on the complainants. It is also well settled that in a criminal trial it is open to the accused to merely deny the charge. In a departmental enquiry, a delinquent employee is called upon to putforward his version and thereafter substantiate the same. We are satisfied that there is a likelihood of the petitioner being prejudiced in the trial if he is compelled to discloses his defence in the departmental proceedings. Reliance is placed by the learned counsel for the respondents upon a decision of this Tribunal in the case of Ramesh Kumar Vs. Commissioner of Police & Ors. reported in 1983(1)SLJ P.631. In that case, the decision of the Hon'ble Supreme Court in the case of Khusheshwar Debey Vs. U.O.I. (AIR 1988 SC P.2118) is referred to. The Hon'ble Supreme Court has laid down that

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no hard and fast rule can be laid down as a matter of law that the departmental enquiry and criminal trial cannot be proceeded simultaneously. A decision has to be taken on judicial considerations after considering the facts and circumstances of each case. We have already indicated that as per the facts of the instant case there is a likelihood of the petitioner being prejudiced if he is compelled to disclose his defence in the departmental enquiry. The departmental enquiry is held up since 13.3.1990 under an interim order passed by this Tribunal. That order continues to operate even now. Taking into consideration the totality of the facts and circumstances of the instant case, we direct that the departmental enquiry shall remain in abeyance till the criminal proceedings against the petitioner are over. If the petitioner is convicted by the criminal court, the departmental proceedings may be dropped. If he is acquitted, it will be open to the authorities to continue with the departmental proceedings in accordance with law.

With these directions the present application is disposed of finally. There will be no order as to costs.

B.N.D.  
(B.N. Dhaundiyal)

Member (A)

S.K.  
(S.K. Dhaon)

Vice-Chairman

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