

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 593/90
T.A. No.

199

DATE OF DECISION 22.8.1990

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|---|--------------------------------|
| <u>Miss Jagtar Kaur</u> | Petitioner |
| <u>Shri Shanker Raju</u> | Advocate for the Petitioner(s) |
| Versus | |
| <u>The Commissioner of Police & Another</u> | Respondent |
| <u>Shri B.R. Prashar</u> | Advocate for the Respondent(s) |

CORAM

The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? *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 it needs to be circulated to other Benches of the Tribunal? */ No*

JUDGMENT

(of the Bench delivered by Hon'ble Mr. D.K. Chakravorty,
Administrative Member)

The grievance of the applicant, who is a Woman Sub-Inspector in the Delhi Police, is that the respondents have initiated departmental enquiry against her on the same facts on which a criminal case has been launched against her.

2. There is no dispute about the facts of the case. The applicant was enrolled in the Delhi Police as Woman ASI in 1972 and thereafter she was promoted to the rank of Sub-Inspector in 1975.

3. The applicant was allotted a Government quarter in 1980. She was implicated in a criminal case which is pending in the Court of Additional Sessions Judge, Delhi. The charge

brought against her on 30.3.1989 is as follows:-

" Firstly, that you on 14.4.1988 at about 2.00 PM being the occupier and having control or use of quarter No.C-7, Old Police Lines Delhi, within the jurisdiction of police station Civil Lines, knowingly permitted it to be used for the commission of offence of keeping and transporting heroin by your co-accused Santokh Singh and thereby committed an offence punishable under Section 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and within my cognizance.

Secondly, that you, at the same time, date and place, abetted the commission of an offence of possessing of heroin by your co-accused Santokh Singh at your aforesaid house which he could commit consequent upon your abetment and thereby committed an offence punishable under Section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and within my cognizance."

(vide Annexure A-2, page 16 of the paper book)

4. The respondents have also ordered a departmental enquiry against her vide their order dated 7.8.1989 which reads as under:-

" It has come to notice that one Santokh Singh who was arrested in case FIR No.33/86 u/s 21/61/85 NDPS ACT, P.S. Civil Lines, Delhi, and who had jumped the bail, used to reside with the W/S.I. in the above said Govt. quarter. Shri Santokh Singh was later on arrested by the officers of Crime Branch with some narcotics when he came out of the said quarter. W/S.I. Jagtar Kaur No.D/2502 did not obtain any permission of the competent authority nor inform the department regarding allowing an unauthorised person to stay in the Govt. quarter allotted to her for her residential purpose, in contravention of S.O. No.III/1/79.

The above act on the part of the W/S.I. amounted to grave misconduct and unbecoming of a police officer which renders her liable for departmental action u/s 21 of the Delhi Police Act, 1978.

I, therefore, order that a regular departmental enquiry u/s 21 of Delhi Police Act, 1978 be conducted against W/S.I. Jagtar Kaur No.D/2502 (now under suspension). Shri Sita Ram ACP/M.D.S. will conduct the departmental enquiry against the W/S.I. on day to day basis and submit his findings at the earliest. The progress of the departmental enquiry should be intimated to this office on every Friday.

(vide Annexure A-3, page 17 of the paper book)

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stayed. The Supreme Court referred to its earlier decisions in The 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.

9. It will be noticed that in the criminal case, the question whether the Government quarter occupied by the applicant was used to harbour one Santokh Singh, will arise for decision. The allegation in the departmental enquiry is also that the applicant has unauthorisedly allowed Shri Santokh Singh to stay in her quarter. It is true that the criminal court will go into the question of the offence punishable under the Narcotic Drugs and Psychotropic Substances Act, 1985 while in the departmental proceedings, the enquiry will be in regard to her alleged misconduct of allowing an unauthorised person to stay in the Govt. quarter. The stay of the unauthorised person in the Govt. quarter is the common fact or element in both the proceedings.

10. In view of the aforesaid factual position, we are of the opinion that the departmental enquiry which has been initiated against the applicant should be stayed till the criminal court gives its verdict in the pending case. During the hearing, the learned counsel of the applicant stated that the applicant has put in about 18 years of service and that she has another about 22 years of service left.

5. In the aforesaid departmental enquiry, she has been given the following summary of allegations:-

" W/SI Jagtar Kaur No.D/2502 is the allottee of Govt. Quarter No. C-7 Old Police Line, Delhi, which was allotted to her by DCP, Lines vide order No.29282-90/Genl. P&L, dated 12.11.1980. The said quarter was occupied by her on 12.2.1981. It has been alleged against W/SI Jagtar Kaur No.D-2502 that one Santokh Singh who was arrested in case FIR No.33/86 u/s 21/61/85 NDPS ACT P.S. Civil Line, Delhi and who had jumped the bail used to reside with the W/SI in the above said Govt. quarter. Shri Santokh Singh was later on arrested by the officers of Crime Branch with some narcotics when he came out of the said quarter. W/SI Jagtar Kaur No.D/2502 did not obtain any permission of the competent authority nor inform the department regarding allowing an unauthorised person to stay in the Govt. quarter allotted to her for her residential purposes, in contravention of S.O. No.111/1/79.

The above act on the part of W/SI Jagtar Kaur No.D/2502 amounts to gross misconduct and unbecoming of a police officer which renders her liable for departmental action u/s 21 of Delhi Police Act, 1978".

(vide page 21 of the paper book)

6. Some of the persons mentioned in the list of witnesses in the departmental enquiry as well as in the criminal case are common.

7. The applicant has been placed under suspension pending the criminal case as well as the departmental enquiry.

8. There is ample authority in support of the proposition that it will not be desirable to continue two parallel proceedings, one in the criminal court and another by way of disciplinary proceedings in respect of allegations based on the same facts. In Kusheshwar Dubey Vs. M/s Bharat Cooking Coal Ltd., AIR 1988 SC 2118 at 2120, the Supreme Court has observed in a case where the criminal action and the disciplinary proceedings are grounded upon the same set of facts, the disciplinary proceedings should be

11. In the facts and circumstances of the case, we hold that it will neither be proper nor equitable to proceed with the departmental enquiry so long as the criminal proceedings are pending in the criminal court. After the decision in the criminal case is pronounced, the respondents will, however, be at liberty to initiate disciplinary proceedings against the applicant for any alleged misconduct, in accordance with law.

12. The application is disposed of at the admission stage itself with the aforesaid directions. The interim order passed on 6.4.1990 to the effect that the respondents are restrained from proceeding with the departmental enquiry is hereby made absolute.

The parties will bear their own costs.

D. K. Chakravorty
(D.K. CHAKRAVORTY)
MEMBER (A)
22/8/1990

P. K. Kartha
(P.K. KARTHA)
VICE CHAIRMAN (J)
22/8/90