

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A.No. 141/91

Date of Decision: - 13-12-1991

Shri Bhagwan Singh

Applicant

Shri P.S..Sharma

Counsel for the Applicant

versus

Commissioner of Police

Respondents

Shri M.K. Sharma

Counsel for the Respondents

CORAM:

The Hon'ble Mr.P.K. Kartha, Vice Chairman(J).

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

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *yes*

JUDGEMENT

(of the Bench delivered by

Hon'ble Member Shri B.N. Dhoundiyal)

This O.A. has been filed by Shri Bhagwan Singh, Head Constable under Section 19 of the Central Administrative Tribunal Act, 1985, against the impugned order dated 18.9.90, issued by the

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Deputy Commissioner of Police, initiating a regular Departmental Enquiry on the same facts on which criminal prosecution has also been launched against him and which is pending. The question arising for consideration is whether two parallel proceedings can be held on the same facts simultaneously.

2. According to the applicant, one constable Toni Lukose lodged an F.I.R. on 26.7.90 against him and Sub-Inspector Ravinder Kumar alleging manhandling him while the former was on duty. They were arrested and later released on bail by the Metropolitan Magistrate, New Delhi. Criminal proceedings are pending and the applicant has filed a counter case against the said Constable Toni Lukhose. Relying on the judgement given by the Hon'ble Supreme Court in Kusheshwar Dubey Vs. M/s Bharat Cooking Coal Ltd. & Ors. (1988(4)SCC 319), he has prayed that the impugned order dated 18.9.90 be set aside as the proceedings on the same facts are pending simultaneously in the criminal court and this would cause great prejudice to his defence. Other grounds for quashing the order given by the applicant are (a) discrepancy in the statement of allegations in the F.I.R. and the summary of allegations given by the Inquiry Officer (b) Discrimination against the applicant as much as similar departmental inquiry has not been ordered against Ravinder Kumar Pandit, Sub-Inspector, who is a co-accused in the criminal case and

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(c) withholding the medical certificates of the applicant and Ravinder Kumar Pandit. A representation made on 11.1.91 by the applicant to the authorities to stay the departmental proceedings was rejected on 14.1.91.

3. According to the respondents, Constable Toni Lucose along with DHG Inder Pal was on duty near Ganda Mala Back side B Block, Greater Kailash, between the night of 25.7.90 and 26.7.90 when, at about 2.00 A.M. the applicant and SI Ravinder Kumar Pandit under the influence of alcohol picked up a quarrel with him, tore his uniform, caused him physical injury and tried to snatch his rifle. D.H.G. Inder Pal reported the matter to duty officer police station, Greater Kailash, and SI Sidhartha Pareek and his staff reached the spot and apprehended both of them. A medical examination showed that they were under influence of liquor and that Constable Lucose had suffered physical injuries. A F.I.R. was registered on the basis of the statement given by Constable Lucose under Section 353/186/332-IPC and both of them were placed under arrest. The Commissioner of Police ordered a preliminary inquiry and basing himself on the report of such enquiry, ordered initiation of departmental enquiry against the applicant as well as Constable Toni Lucose and imposed a penalty of censure to Inspector on duty at P.H. Greater Kailash for not releasing arrested Sub-Inspector on bail even when his identity was established. The impugned order dated 18.9.90 initiating the regular Departmental Inquiry was ordered against the applicant thereafter.

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4. We have gone through the records of the case and heard the learned counsel for both parties. It is admitted that a scuffle did ensue on that day between the applicant and Constable Toni Lucose. The contention of the respondents is that in the Departmental Enquiry the delinquent police personnel is not tried for the offence committed under the Indian Penal Code or any other Penal provision. The Departmental Enquiry is initiated for the purpose of a fact finding exercise within the department itself and it does not/cannot have any interference with the proceedings or findings in the Criminal Court. The Departmental Enquiry is to establish the facts and the alleged misconduct while the criminal proceedings are initiated in the criminal offence allegedly committed by the accused.

5. In a catena of judgements, it has been held that where criminal or disciplinary action are initiated simultaneously, stay of disciplinary action is justified. Our legal system gives fair opportunity to an accused in a criminal case and when the incident forms the basis of the criminal case as well as the Departmental Enquiry, the case of the accused in a criminal case will be prejudiced if the Departmental Enquiry is proceeded with, even if there may be technical differences in the charges/allegations. In the leading case of Kusheswar Dubey Vs. Bharat Coaking Coal Ltd., (1984(4)SCC 319) the Supreme Court had held that "where the criminal action and enquiry proceedings are granted on the same facts xxxxx disciplinary proceedings should have been stayed".

6. In the facts and circumstances of the case, we direct that the respondents shall not proceed with the departmental enquiry initiated by them. The respondents, however, will be at liberty to take any decision regarding Departmental proceedings as per the rule after a final verdict has been given in the criminal case. The interim order passed on 22.1.91 is hereby made absolute. There will be no order as to costs.

B.N. Dhoundiyal
(B.N. DHOUNDIYAL) 13/12/91
MEMBER(A)

P.K. Kartha
(P.K. KARTHA) 13/12/91
VICE CHAIRMAN(J)