

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI.

OA 530/91
OA 531-A/91

Date of decision:07.04.1992.

Counsel for the applicant Shri A.S. Grewal
Counsel for the respondents Shri O.N. Trishal

CORAM:

The Hon'ble Mr. P.K. Kartha, Vice Chairman(J)
The Hon'ble Mr. A.B. Gorthi, Member(A)

JUDGEMENT

(of the Bench delivered by Hon'ble Vice Chairman
Shri P.K. Kartha)

The applicant No.1 is working as a Head Constable, while applicant No.2 is working as a Constable in the Delhi Police. They are aggrieved by the impugned order dated 07.02.91, whereby, the respondents have proposed to hold a Departmental Enquiry against them under section 21 of the Delhi Police Act, 1978, during the pendency of a criminal case, investigation into , which is still under process.

2. We have heard the learned counsel of both parties and have gone through the records of the case carefully.

3. The Departmental proceedings have been proposed to be initiated against both the applicants by a common order dated 07.02.91. When the application came up for admission on 04.03.91, the Tribunal directed that the application be

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renumbered as OA 530/91 and OA 510-A/91, there
& joint application &
cannot be any ~~common~~ jointment in a case relating
to Departmental Enquiry.

4. The legal position applicable to a case of this kind is well settled. In a case, where the criminal actions and the disciplinary proceedings are grounded upon the same set of facts the disciplinary proceedings should be stayed. In this context reference may be made to the decision of the Supreme Court in Delhi Cloth and General Mills Limited Vs. Kushal Bhan, AIR 1960 SC 155; Tata Oil Mills Co. Vs. Its Workmen, AIR 1965 SC 155; and Kusheshwar Dubey Vs. M/s Bharat Coaking Coal Ltd., AIR 1988 SC 2118.

5. In the light of the foregoing position, we may consider whether the criminal action and the disciplinary proceedings are grounded upon the same set of facts in the instant case.

6. According to the FIR No.45/91, which has been registered in the Police Station Karolbagh, the applicants are alleged to have met a person named Nizam Bahadur on 27.01.91 near a wine shop, who is stated to be a refugee in India from Afghanistan & who was carrying a bag containing Rs.2,00,000/- in cash with him. The applicants took him to a Guest House nearby and made him to sit in a room where they told him that he was a militant from Kashmir and that he would be locked up/put behind the bars. Thereafter, applicant No.1 kept all the money with him and a sum of

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Rs.55,000/- was kept aside. He told the complainant that he would be produced before the Thaneedar and would tell him that it was only a sum of Rs.55,000/-. The Thaneedar whose name was Janak Prakash threatened the complainant. He stated that the entire amount was being impounded. A sum of Rs.55,000/- was thereafter recovered from the applicant No.1 during the course of enquiry. A case under section 384/411/161 IPC has been registered and investigation has been handed over to Police Inspector. According to the impugned order dated 07.02.91, it proposes a Departmental Enquiry against the applicant. On 29.01.91, Shri Nizam Bahadur appeared before the ACP Karolbagh and stated that he came to Karolbagh market to purchase some jewellery on 27.01.92 for his sister's marriage. He was detained by applicant Nos. 1 and 2 and his baggage was searched by them. Both of them were not in police uniform. They brought him to Police Station Karolbagh and produced him before the Sub-Inspector Janak Prakash, who was also not in police uniform. Sub-Inspector Janak Prakash and both the applicants illegally detained Shri Nizam Bahadur for ulterior motives and threatened him of dire consequences if he disclosed the facts to any one. Further, they let him off without making any entry in daily diary of Police Station record.

7. It will be seen from the narration of the facts in the FIR as well as impugned order dated 07.02.91, that the incident which is the **subject** matter of the criminal case and the **alleged**

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misconduct in the Departmental Enquiry is the same. The incident occurred on 27.01.91. The detention of Shri Nizam Bahadur by the two applicants in the Police Station Karolbagh has been mentioned in both FIR and in the charge-sheet. Threatening of Shri Nazam Bahadur by the applicants while in custody is also mentioned in the FIR as well as in the charge sheet.

8. Thus, it would appear that the facts mentioned in the FIR and in the charge sheet dated 07.02.91 are, by and large, the same. In view of this, we are of the opinion that the applicants are entitled to the relief sought in the application. Accordingly, the applications are disposed of with the following orders and directions:-

(i) We set aside and quash the impugned order dated 07.02.91 proposing to hold Departmental Enquiry against the applicants.

(ii) The respondents are restrained from proceeding with the Departmental Enquiry so long as the criminal proceedings are pending in the criminal court.

(iii) After the decision in the criminal case is pronounced, they will be at liberty to initiate disciplinary proceedings against the applicants for any alleged misconduct in accordance with the law.

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(iv) The interim order passed on 04.03.91
directing the respondents not to proceed with the
Departmental Enquiry initiated against the
applicants is hereby made absolute.

(v) There will be no order as to costs.

transcr 7/4/92
(A.B. GORTTI)

MEMBER (A)

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(P.K. KARTHA)

VICE CHAIRMAN

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