

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI.

O.A. No. 699/91

Date of Decision 27.3.92

Shri Jagdish Prasad Meena

Applicant.

Ms. Susham Lata Dhawan

Advocate for the applicant.

Versus

Union of India & Ors.

Respondents.

Shri Jag Singh

Advocate for the respondents.

CORAM:

The Hon'ble Mr. I.K. Rasgotra, Member (A)

The Hon'ble Mr. J.P. Sharma, Member (3)

1. Whether Reporter 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 (3) Shri J.P. Sharma).

The applicant is a driver in the Mail Motor Service, Naraina, New Delhi-110028, Department of posts, Ministry of Communications and has been driving vehicle No.DFL 6853 on official duty for transportation of mails on 29.8.87. He was involved in an accident with private vehicle. The police Authorities of Rajinder Nagar Police Station, New Delhi registered FIR No.276/87 under section 279/337/304-A of IPC against the applicant. The applicant was arrested and kept in custody by the police authorities of Rajinder Nagar Police Station till he was bailed out subsequently. The case on the basis of FIR 276/87 is pending in the court of Metropolitan Magistrate, Tis Hazari Court, Delhi where the applicant was charge-sheeted on 6.6.88.

2. The respondents has also issued a chargesheet on 13.1.88 against the applicant. The charge in the departmental proceedings are almost the same for which the applicant is facing trial in the criminal court under FIR 276/87. The applicant requested the respondents to stay the departmental proceedings but to no effect. His request was turned down even by the appellate authority. In this application, the applicant has prayed:

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(a) That the departmental proceedings now being progressed by the Inquiring Authority on identical execution of the criminal proceedings be ordered to be stayed till the finality of criminal proceedings.

(b) The Departmental Memorandum of charge containing question of law i.e. causing accident and deaths of two person be ordered to be struck down as legally invalid and inoperative.

3. The applicant further filed an amended application. In this amended application only the applicant has mentioned his designation in the title of the application as also got the jurisdiction of the Tribunal.

4. The respondents contested the application and stated that as a result of the preliminary inquiry the applicant was proceeded against under rule 14 of CCS(CCA) Rules 1965. The proceedings initiated by the department are based on the lapses and acts of omission and commission relating to his conduct as an employee of the department, during the course of employment whereas as the criminal case against the applicant is under the relevant Section of Indian Penal Code causing death by rash and negligent driving. The two cases are entirely different and entail different consequences. Therefore there is no bar to the two proceedings containing simultaneously. Thus it is stated that the applicant has no case.

5. We have heard the learned counsel of the parties at length and have gone through the record of the case. In the case of Hindustan Aeronautics Employees' Association Vs. Hindustan Aeronautics Ltd. II (1990) ATLT (HC) 490 Orissa High Court, it has been held that if the case is of grave nature or involves question of facts and law which are not simple, it would be advisable for the employer to await the decision of the trial Court so that the defence of the employee in the criminal case may not be prejudiced.



6. In case of Kusheshvar Dube Vs. M/s Bharat Cooking Coal Ltd & Ors. reported in AIR 1988 SC 2118, the Supreme Court considered the similar question and held that in all cases departmental proceedings are to be stayed notwithstanding the nature of allegation and the points involved for adjudication. The court has recognised the rights of the employer to continue the departmental proceedings notwithstanding the pendency of a proceedings before a Court of Law. The learned counsel of the applicant also relied on the decision of the CAT, Jabalpur Bench in the case of DC Choudhary Vs. Senior Superintendent of Post Offices (Jabalpur) A.T.R. 1987(1) CA.T 101. It has been held that where the charges in a departmental and criminal trial are not parallel and the criminal charges are of grave nature involving questions of the fact and law which are not simple and where the departmental enquiry was not started soon after lodging the FIR and was initiated nearly four years later then it would be appropriate to await the decision of the criminal case by keeping further proceedings in abeyance pending decision of the criminal case against the delinquent.

7. Coming to the nature of the charges in the criminal case, the applicant has filed a copy of the FIR. 276/87 (Annexure A-3) and the chargesheet at Annexure A-4 which has been submitted in the court of the Magistrate. In the chargesheet the charge against the applicant is that on 29.8.87 at about 20.30 hrs, when driving vehicle No. DFL-6853, he got involved in an accident with Private Vehicle No. DHA 8681 thereby causing death of two persons and injuries to certain to certain others and committed the offence due to rash and negligent driving. In the departmental chargesheet the article of charge against the applicant is that while he was functioning as driver and driving DEL 6853 he caused accident by rash and negligent driving to his vehicle which resulted the death of two persons, serious injuries to Shri Sichan Dyal of Ambassador Car No. DHA 8681 and also caused heavy damages to Mail Van under his charge as well as three Car Nos. HDA 8681 (Ambassador) DD4.1216 and DBB 1433 (Maruti) involved in the accident and twisted the facts of the case. Thereby he is alleged to have acted in violation of Rule 3(i) (ii) & (iii) of CCA (Conduct) Rules 1965.

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8. Admittedly therefore for the same act simultaneous proceedings are going on one in the criminal court where the charge sheet was filed in Feb 1988 and the other in the Departmental case vide memorandum of charges served on 13.1.88. The F.I.R. relating to the accident is, therefore is the source document in the departmental proceedings, similarly certain other documents which are part of the chargesheet filed in the criminal court are also taken into account in the departmental inquiry. In fact the prosecution in the criminal case has to prove the charge against the accused by showing evidence while the applicant has to reveal his defence. If the defence of the applicant is revealed in the departmental inquiry which is almost on the same alleged misconduct of the applicant, then the departmental proceedings would cause prejudice to his defence.

9. In view of the above facts, the order dt 20.7.90 Annexure A-1 passed by the Senior Manager, Mail Motor Service, New Delhi cannot be said to be just and equitable order.

10. In view of the above discussions, the application is allowed. The impugned order is quashed and the departmental proceedings are stayed till the application has given his defence in the criminal case, thereafter the respondents shall be free to commence the departmental proceedings from the stage at which they have been stayed by this order. In the circumstances the parties to bear their own cost.

J. P. Sharma
(J.P. SHARMA) 27.3.92
Member (J)

I. K. Rasgotra
(I.K. RASGOTRA)
Member (A) 27/3/92