

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1515/2004

New Delhi, this the 9th day of November, 2004

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.K.Naik, Member (A)

Insp. Diwan Chand Sharma
S/o Late Sh. Bhajan Lal Sharma
R/o D A 41 D
Police Flats, Hari Nagar
Delhi – 110 064. Applicant

(By Advocate: Sh. Arun Bhardwaj)

Versus

1. Commissioner of Police
PHQ, I.P.Estate
New Delhi.
2. Joint Comm. of Police
Armed Police
New Delhi.
3. Enquiry Officer
Deputy Commissioner of Police
Ist Bn, Delhi Armed Police (DAP)
Delhi. Respondents

(By Advocate: Sh. Ajesh Luthra)

OR D E R

By Mr. Justice V.S. Aggarwal:

Applicant (Insp. Diwan Chand Sharma), by virtue of the present application seeks setting aside of the order of 23.3.2004 and summary of allegations dated 4.6.2004, besides quashing of the orders of 30.9.2003 and 5.11.2003.

2. Some of the relevant facts are that the applicant, who was serving in Delhi Police, is alleged to have made a statement during the investigation of a criminal case. He is stated to have appeared in the Court of Shri J.M. Malik, Additional Sessions Judge and did not support his earlier recorded statement to the Police. The

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departmental proceedings have been initiated with the following summary of allegations:

- “1. Insp. Diwan Chand Sharma who was posted as Inspector in the Anti-Corruption Branch was one of the prosecution witnesses in the Shivani Bhatnagar murder case.
2. During the investigation, the mobile phone No.9811008825 figured repeatedly in the STD call details of phones 2029935 and 3630252 i.e. the official and residential phones respectively of Shri R.K.Sharma the main accused of the murder case.
3. The print-out records of 9811008825 showed phone calls made from a landline phone No.5138714, which is installed at the residence of Inspector Diwan Chand Sharma.
4. On 22.7.03, Inspector Diwan Chand Sharma was called by the Crime Branch team to Adarsh Nagar office. During questioning, he stated that the mobile No.9811008825 was owned by his brother-in-law, Shri Bhagwan and he also stated that in December, 1998 he was using mobile No.9811125330, which also figures in the print-out of Shri Bhagwan's mobile.
5. On 26.5.03, he appeared before the Hon'ble Court of ASJ Shri J.M.Malik as a prosecution witness. During the court trial, he turned hostile and denied having given any such statement in the case. He also denied having used the above mentioned mobile phone during December, 1998. He also stated in the Hon'ble court that Shri Bhagwan was illegally detained by the Crime Branch from 23.7.2002 to 30.7.2002.
6. The daily newspapers viz Nav Bharat Times, Rashtriya Sahara, Indian Express etc. carried news items based on his statement in the court and this has brought a bad image to the Delhi Police.”
3. The applicant alleges that while the trial is still pending, he cannot be stated to have made a false statement. Disciplinary inquiry can only be initiated when preliminary inquiry discloses a cognizable offence. The applicant did not appear in his official



capacity and, therefore, departmental proceedings cannot be initiated against him.

4. In the reply filed, it has been pointed that applicant was posted as Inspector in the Anti-Corruption Branch. He was one of the prosecution witnesses in the Shivani Bhatnagar murder case. During the investigation, the mobile phone 9811008825 figured repeatedly in the STD call details of phones No.2029935 and 3630252. These are the official and residential phones respectively of one R.K.Sharma, the main accused in the abovesaid murder case. The printout record of the abovesaid mobile reveals that calls were made from a landline phone installed at the residence of the applicant. He was called by the Crime Branch team to Adarsh Nagar. He stated that the mobile referred to above was owned by his brother-in-law and that in December, 1998 he was using Mobile No.9811125330. When applicant appeared in the Court of the learned Additional Session Judge, he did not support his earlier recorded statement. The act was unbecoming of a Police official and amounts to dereliction of his official duties.

5. We have heard the parties' counsel and have seen the relevant record.

6. So far as the contention that unless preliminary inquiry is held, departmental action cannot be initiated, the same is to be stated to be rejected. Preliminary inquiry is basically a Fact Finding inquiry. If the facts are established and known, in that event it is unnecessary that preliminary inquiry must be held. Rule 15 of the Delhi Police (Punishment and Appeal) Rules, 1980 does not contemplate that wherever cognizable offence is disclosed, preliminary inquiry must be held.

18 Aug

7. Learned counsel for the applicant has laid great stress on the fact that applicant was called as a witness. He was not involved in the investigation of Shivani Bhatnagar's murder case and therefore, the said act cannot be stated to be one in discharge of his official duties.

8. So far as this particular contention is concerned, we can, with advantage, refer to the summary of allegations. It is alleged against him that this act on the part of the applicant is a grave misconduct and it is unbecoming of a police officer. In addition to that, it has been urged that it is a dereliction in discharge of his official duties. At the risk of repetition, we may mention that assertion against the applicant is that he did not support his earlier recorded police statement. At this stage, we hasten to add that we are not expressing ourselves pertaining to the merits of the matter that is pending before the learned Additional Session Judge and even if departmental inquiry was to be held. If a person consciously resiles from a correctly recorded earlier statement made under Section 161 of the Code of Criminal Procedure, it would be an act which is an unbecoming of a Police Officer. At this stage, beyond this particular fact, further opinion need not be expressed because it would be embarrassing for either parties. This is for the added reason that the departmental inquiry has not even been concluded.

9. However, the main contention raised was that the trial is still pending. The Court has not opined as to if the applicant has made a false statement in Court or not and therefore, departmental action cannot be initiated.

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10. We are conscious of the fact that the Supreme Court has gone into somewhat a similar controversy where departmental proceedings were initiated while criminal case on same facts was pending.

11. Entire case law had been considered by the Supreme Court in the case of **STATE OF RAJASTHAN v. B.K.MEENA AND OTHERS**, (1996) 6 SCC 417. In the cited case, the Central Administrative Tribunal had stayed the departmental proceedings till the conclusion of the departmental proceedings till the conclusion of the criminal trial. The same question had come up for consideration and the Supreme Court noted that proceedings in criminal trial were going to take a long time and conclusion of the same was nowhere in sight. The Supreme Court noted in this regard:-

“16. Now, let us examine the facts of the present case. The memo of charges against the respondent was served on him, along with the articles of charges, on 13.10.1992. On 9.2.1993, he submitted a detailed reply/defence statement, running into 90 pages, controverting the allegations leveled against him. The challan against him was filed on 15.5.1993 in the criminal court. The respondent promptly applied to the Tribunal and got the disciplinary proceedings stayed. They remain stayed till today. The irregularities alleged against the respondent are of the year 1989. The conclusion of the criminal proceedings is nowhere in sight. (Each party blames the other for the said delay and we cannot pronounce upon it in the absence of proper material before us.) More than six years have passed by. The charges were served upon the respondent about 4 years back. The respondent has already disclosed his defence in his elaborate and detailed statement filed on 9.2.1993. There is no question of his being compelled to disclose his defence in the disciplinary proceedings which would prejudice him in a criminal case. The charges against the respondent are very serious. They pertain to misappropriation of public funds to the tune of more than rupees one crore. The observation of

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12

the Tribunal that in the course of examination of evidence, new material may emerge against the respondent and he may be compelled to disclose his defence is, at best, a surmise-a speculatory reason."

Thereupon the conclusions drawn were that the disciplinary proceedings and criminal trial could proceed simultaneously. The stay of the disciplinary proceedings should not be a matter of course but a considered decision. Even if the disciplinary proceedings are stayed, the same could be reconsidered, if criminal trial gets unduly delayed. The findings in this regard read:-

"17. There is yet another reason. The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him under the Prevention of Corruption Act (and the Indian Penal Code, if any) are established and, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. Staying of disciplinary proceedings pending criminal proceedings, to repeat, should not be a matter of course but a considered decision. Even if stayed at one state the decision may require reconsideration if the criminal case gets unduly delayed."

Thereafter the Supreme Court had allowed the appeal and set aside the order of the Central Administrative Tribunal.

12. Our attention was drawn towards a decision rendered by the Supreme Court in the case of **CAPT. M. PAUL ANTHONY v. BHARAT GOLD MINES LTD. & ANR.**, JT 1999(2) SC 456. Same question had come up for consideration. The Supreme Court after



scanning through the various precedents some of which have been referred to above, had drawn the conclusions:-

“22. The conclusions which are deducible from various decisions of this Court referred to above are:

- (i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneous, though separately.
- (ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.
- (iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet.
- (iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.
- (v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest.”

13. It is settled principle that criminal proceedings are initiated to punish the accused for the offences purported to have committed by him, while departmental proceedings are initiated to maintain discipline in the department.

18 Aug

14. The present case before us is on a little different premise. Herein, the criminal trial is against the third person alleged to have been involved in a case punishable under Section 302 of the Indian Penal Code commonly known as Shivani Bhatnagar's murder case. The applicant has not officially been tried. He is being dealt with departmentally pertaining to the statement made by him. However, the fact which cannot be lost sight of is that the Court of Additional Sessions Judge will ultimately opine as to if the statement made by the applicant is correct or not. In certain circumstances, it cannot even opine in this regard but if any such opinion is expressed, it can reflect on the merits of the matter. This is for the reason that even in the case of **CAPT. M. PAUL ANTHONY (supra)**, the Supreme Court with respect to a person who has been acquitted on the same ground, recorded:

“34. There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, ‘the raid conducted at the appellant’s residence and recovery of incriminating articles therefrom.’ The findings recorded by the Inquiry Officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by Police Officers and Panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the Inquiry Officer and the Inquiry Officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the “raid and recovery” at the residence of the appellant were not proved, it

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would be unjust, unfair and rather oppressive to allow the findings recorded at the ex-parte departmental proceedings, to stand."

15. Once the trial is pending, we are of the opinion that precious little should be done to interfere with the same case "There cannot be anything of greater consequence than to keep the streams of justice, clear and pure, that parties may proceed with safely both to themselves and their character." The Lord Denning in his book THE DUE PROCESS OF LAW added that there is not one stream of justice. There are many streams. Anything done herein should not, therefore, reflect on the merits of the case because a trial as was stated before us, is still pending. The applicant even can be recalled as witness if deemed appropriate in particular circumstances and keeping in view the same, in our considered opinion, the departmental proceedings must remain in abeyance for sufficiently long time.

16. Consequently, we dispose of the present OA with directions:

- (a) Nothing said herein is an expression of our opinion on the merits of the matter.
- (b) The departmental proceedings should be kept in abeyance for a period of one year from today and thereafter if the trial does not make any headway, the respondents may restart the said departmental proceedings.

Naik
(S.K.Naik)
Member (A)

V.S. Aggarwal
(V.S. Aggarwal)
Chairman