

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO.1262/92

DATE: 21.10.92

RAMESH KUMAR

..APPLICANT

VERSUS

THE COMMISSIONER OF POLICE 7 OTHERS ..RESPONDENTS

Shri S.K. Jain, counsel for the applicant.

Shri Pawan Behl, counsel for the respondents.

✓ TO BE REFERRED TO THE REPORTER OR NOT Yes
CORAM:

HON'BLE JUSTICE SHRI RAM PAL SINGH, VICE CHAIRMAN (J)

HON'BLE SHRI I.P. GUPTA, ADMINISTRATIVE MEMBER.

JUDGEMENT

(DELIVERED BY HON'BLE JUSTICE SHRI RAM PAL SINGH)

The applicant has filed this application under Section 19 of the Administrative Tribunal's Act of 1985, praying for quashing the impugned order dated 30.04.92 (Annexure P-3) and also for restraining the respondents from proceeding with the departmental

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enquiry pending against the applicant. By an interim order, this Bench on 22.07.92 stayed further proceedings of the departmental enquiry.

The applicant is a constable in Delhi Police Force. On 7.10.91 an FIR No.515/91 was registered against him and his wife for having committed an offence under Section 323/354 of the I.P.C in Police Station Malviya Nagar, North Delhi. The applicant was arrested and was subsequently released on bail. As the applicant was arrested, he was placed under suspension with immediate effect by order dated 24.10.91 passed by the Additional Deputy Commissioner of Police, New Delhi District. The department conducted a preliminary enquiry and then it submitted its report, upon which a departmental enquiry has been initiated and the applicant has been served with a memorandum of charge-sheet. It is this charge-sheet for which the applicant has made the above prayer.

The respondents on notice appeared and filed their counter, opposing the contents of the OA. They have also taken the preliminary objection that the applicant has not filed any representation against his grievance.

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The facts which emerge are that the applicant lives in the vicinity of the complainant Smt. Sama Kaur, wife of ASI Ishwar Singh residing in quarter No.440, PTS, Police Colony, Malviya Nagar, and opposite to her residence is the residence of the applicant and his wife. It is alleged that Smt. Sama Kaur was sweeping the front of her house when the wife of the applicant objected and subsequently verbal altercation developed into a quarrel. It is alleged that the applicant along with his wife assaulted and outraged the modesty of Smt. Sama Kaur and his teenager daughter, upon which the report is registered against the applicant.

The contention of the applicant is that in view that as a criminal case is pending against the applicant in a criminal court simultaneous departmental proceedings be not permitted to proceed because he is likely to be prejudiced in the criminal trial as he will have to disclose his defence in the D.E. Another contention of the applicant is that in view of the provisions of Rule 12 of the Delhi Police (Punishment & Appeal Rules) of 1980, ~~that~~ when a police officer has been tried and acquitted by a criminal court, he shall not be punished by the department on the same charge or on a different charge

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upon the evidence cited in the criminal case. For convenience Rule 12 is reproduced below:-

"12. Action following judicial acquittal.

1. When a Police Officer has been tried and acquitted by a criminal court, he shall not be punished departmentally on the same charge or on a different charge upon the evidence cited in the criminal case, whether actually led or not unless:-

- (a) the criminal charge has failed on technical grounds, or
- (b) in the option of the court, or on the Deputy Commissioner of Police, the prosecution witness have won over; or
- (c) the court has held in its judgement that an offence was actually committed and that suspicion rests upon the Police Officer concerned; or
- (d) the evidence cited in the criminal case discloses facts unconnected with the charge before the court which

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justify departmental proceedings on a different charge; or

(e) additional evidence for departmental proceedings is available. "

Rule 12 of Delhi Police Punishment and Appeal Rules of 1980 is a provision which deals with the Departmental enquiry after an acquittal has been recorded by a criminal court. This Rule comes into operation when a police officer has been tried and acquitted by a criminal court. He shall not be punished departmentally on the same charge or on a different charge upon the evidence cited in the criminal case whether actually tried or not..... Hence the provisions of this rule come into operation only when the delinquent has been tried and acquitted by a criminal court. The stage in this case is that the FIR has been registered and the matter is still under investigation. Hence the provisions of Rule 12 shall not be attracted unless and until the delinquent has been tried by a criminal court and acquitted. That stage is still very far off. Further more, the summary of allegations which has been served upon the applicant during the departmental enquiry, does not pertain only to the alleged offence which is subject matter of the police investigation. The summary of

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allegation clearly states.....that "you did not inform the department about your arrest in the said case which is pending trial in the court." It further contends that the above mentioned act, omission and commission on behalf of the constable Ramesh Kumar, amounts to grave misconduct, negligence and dereliction which renders and makes him liable to be dealt with departmentally for action under Section 21 of the Delhi Police Act of 1978. The summary of the allegation does not deal only with the incident for which the applicant is being investigated and may be tried in a criminal court for having contravened the provisions of the penal court. The subject matter of the departmental enquiry is the misconduct, negligence and dereliction of duty.

A trial in the criminal court is governed by the provisions of Code of Criminal Procedure and the provisions of Indian Evidence Act. In a criminal trial, the burden of proof lies upon the prosecution to prove its case against the accused beyond all reasonable doubts. The accused in the trial is given ample opportunity of cross-examination of every prosecution witness, while a departmental inquiry is quite different from that of a criminal trial. An accused is tried in a criminal court for having contravened the provisions of the Indian Penal Code

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and for having committed an offence punishable under that Act. Specific charges are framed and the trial begins against the accused. In a departmental inquiry, the delinquent is not tried for having committed an offence punishable under the Indian Penal Code, but he is inquired into for having committed a misconduct unbecoming of the post or office he holds. The employer has a right to keep in his employment a person of unblemished character and that is why, the provisions of the departmental inquiry under the Rules or under the Act have been framed. In a departmental inquiry, it is the misconduct which is the subject matter of inquiry and not the offence committed by the accused punishable under the Indian Penal Code. Thus, a departmental inquiry is quite different from the criminal trial. The misconduct which is inquired into by the employer in a departmental inquiry is adjudicated upon even on the smallest evidence, while in a criminal trial the crime alleged is required to be proved by the prosecution. The employer's right to hold a departmental inquiry for the misconduct cannot be circumvented because the employer is required to run a blemishless administration.

The law in this regard has been settled finally by the Apex Court in the case of Kukeshwar Dubey Vs. Bharat Coking Coal Ltd. (AIR 1988 SC 2118) in the following words:-

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"The view expressed in the three cases of the Court seem to support the position that while there could be no legal bar for simultaneous proceedings being taken, yet, there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case. In the latter class of cases it would be open to the delinquent-employee to seek such an order of stay or injunction from the Court. Whether in the facts and circumstances of a particular case there should or should not be such simultaneity of the proceedings would then receive judicial consideration and the Court will decide in the given circumstances of a particular case as to whether the disciplinary proceedings should be interdicted, pending criminal trial. As we have already stated that it is neither possible nor advisable to evolve a hard and fast, straight-jacket formula valid for all cases and of general application without regard to the particularities of the individual-situation. For the disposal of the present case, we do not think it necessary to say anything more, particularly when we do not intend to lay down any general guideline."

Earlier to this judgement in the case of S.K. Bahadur Vs. U.O.I. (1987(4) SLJ CAT PB New Delhi p.51) the same view was reiterated. Earlier to this

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in 1960 in the case of Delhi Cloth and General Mills Ltd. Vs. Kushal Bhan (AIR 1960 SC 806), the Apex Court observed that it cannot be said that the principles of natural justice require that an employer must wait for the decision at least of the criminal court, before taking any action against the employee. Keeping in view the principles laid down in Kuseshwar Dubey (supra), it is clear that the Apex Court was of the view that it is neither possible nor advisable to evolve a hard and fast, straight-jacket formula, laid for all cases and of general application with regard to the particularities of the individual situation. Thus each case has to be decided on its own facts and circumstances and then it is to be judged whether simultaneous proceedings in a criminal court and disciplinary proceedings be permitted to go on or the latter should be stayed.

As stated earlier, the subject matter of the enquiry in the departmental proceeding is completely different from the allegations made in the criminal case. Admittedly the Disciplinary Authority or the Police should not use the statement of the delinquent or the statement of his defence witnesses which are submitted by the delinquent in a departmental inquiry

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as a basis for the prosecution case in a criminal trial. Any defence taken by the delinquent in departmental inquiry or any defence evidence adduced by the applicant for the said enquiry, must not be used by the prosecution in the criminal court during the criminal trial.

We are therefore of the view that the prayer asked for in this OA cannot be granted to the applicant. The OA is therefore dismissed with no order as to cost. Needless to say that the interim order passed earlier stands vacated.

I.P. Gupta
(I.P. Gupta) 21/10/92

Member (A)

Ram Pal Singh
(Ram Pal Singh)

Vice-Chairman (J)