

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No.1412/92

08.01.1993

Shri Rajbir Singh

...Applicant

Vs.

Addl. Commissioner of Police
& Anr.

...Respondents

CORAM :

Hon'ble Shri P.C. Jain, Member (A)
Hon'ble Shri J.P. Sharma, Member (J)

For the Applicant

...Shri Shankar Raju

For the Respondents

...Shri O.N. Trishal

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

J.P. Sharma
(J.P. SHARMA)

MEMBER (J)

P.C. Jain
(P.C. JAIN)
MEMBER (A)

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NEW DELHI.

Date of Decision: 08.01.1993

OA 1412/92

RAJBIR SINGH

... APPLICANT.

Vs.

ADDL. COMMISSIONER OF POLICE ... RESPONDENTS.
& ANR.

CORAM:

HON'BLE SHRI P.C. JAIN, MEMBER (A).

HON'BLE SHRI J.P. SHARMA, MEMBER (J).

For the Applicant ... SHRI SHANKAR RAJU.

For the Respondents ... SHRI O.N. TRISHAL.

JUDGEMENT

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J).)

The applicant is Constable (Driver), who joined Delhi Police on 14.2.90. On 11.11.91 he was driving vehicle No.DL 1C 5146 with Inspector Ganga Sahai and the vehicle met with an accident with car No.DL-2C 4873 and vehicle No.DBL 7589 with the result that two ladies sitting in vehicle No.DL-2C 4873 died as a result of accident. FIR No.300/91 dated 12.11.91 was written at Police Station Chankya Puri under Section 279/337/304A IPC and he was placed under suspension w.e.f. 12.11.91. A departmental enquiry against him by the Additional Commissioner of Police, Traffic Line, was ordered dated 17.1.92 for the alleged misconduct. The Enquiry Officer issued the summary of allegations to the applicant as follows:

It is alleged against Conts. (Driver) Rajbir Singh, No. 1331/T that on 11.11.91 he was performing his duty as driver on Gypsy No. DL-1C-5146 allotted to Insp. Ganga Sahai of

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Traffic Police. He left the inspector at his residence at about 7.45 p.m. and came back to Teen Murti Traffic Lines at about 8.15 p.m. where the vehicle was supposed to be parked. At about 10.15 p.m. he took the Gypsy out of the premises of Teen Murti Traffic Lines illegally without recording any departure/information. While going on Sardar Patel Marg, he hit a car No. DL-2C-4873 which collided with vehicle No. DBL-7589 from opposite side resulting in the death of two ladies out of three sitting in vehicle No. DL-2C-4873. A case FIR No. 300/91 dated 12.11.91 u/s 279/337-304/A I.P.C. P.S. Chanakya Puri was registered against him.

2. The above act on the part of Const. (Drv) Rajbir Singh, No. 1331/T amounts to gross misconduct, unbecoming of a member of Police force which renders him liable for departmental action u/s 21 of Delhi Police Act. 1978.

2. A list of documents and witnesses to be relied in the said departmental proceedings have also been annexed with the summary of allegations.

3. The case of the applicant is that a criminal case has been registered against him under various sections of IPC and is under investigation whereas in the departmental proceedings, the prosecution witnesses are going to be examined. The applicant, therefore, has prayed for the grant of relief that the respondents be directed to keep the departmental enquiry initiated against him in abeyance, till the disposal of the criminal case aforesaid.

4. The respondents contested the application and stated that the applicant was posted as Driver in Govt. Gypsy No. DL-IC 5146 allotted to Inspector Ganga Sahai of Traffic Lines.

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The applicant left the Inspector at his residence at about 7.45 p.m. and came back to Teen Murti Traffic Lines at about 8.15 p.m. where the vehicle was supposed to be parked. At about 10.15 p.m. he took the Gypsy out of the premises of Teen Murti Traffic Lines illegally without recording any departure/information. He met with an accident while going at Sardar Patel Marg hitting a car No. DL-2C 4873 which collided with vehicle No. DBL 7589 from opposite side resulting in the death of two ladies. According to the respondents, the above act of the Constable (Driver) amounts to gross misconduct which rendered him liable for departmental action under Section 21 of the Delhi Police Act, 1978. As such a departmental enquiry was ordered to be held against him. The applicant has no case and the application be dismissed.

5. The applicant has not filed any rejoinder to the reply of the respondents.

6. We have heard the learned counsel for the parties at length and have gone through the records of the case. The issue involved in the present case is whether the Departmental Enquiry can be initiated against the applicant during the pendency of the criminal case in which the applicant has to be tried as an accused under various Sections of the IPC by the criminal court. The law with regard to the subject in hand has been settled by the Apex Court in the case of Kusheshwar

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Dubey Vs. Bharat Cooking Coal Ltd. (AIR 1988 SC 2118).

Their Lordships have expressed their views in the following words:-

"The view expressed in 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 opportunity 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 record of 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."

7. The Lordships have, therefore, held that it is neither possible nor advisable to evolve a hard and fast straight-jacket formula valid for all cases and for general application. Every case differs in fact and these principles have to be applied in the facts and circumstances of the case only. The only argument advanced by the learned counsel for the applicant is that the applicant shall be prejudiced in his defence which ^{he} is likely to take in the criminal case pending against him. In the present case, however, it appears from the reply filed by the respondents that after the duty hours

and parking a vehicle in Teen Murti Traffic Police Lines the applicant has taken the Gypsy without any authority or giving any information to take it out. The summary of allegations against the applicant, therefore, pertain to this misconduct also. In the criminal case, of course, the allegations against the applicant are of committing an accident at Sardar Patel Marg. That is an additional allegation against the applicant in the Departmental Enquiry.

8. The position of law referred to above has also been recorded by the Hon'ble Supreme Court in the case of Delhi Cloth and General Mills Ltd. vs. Kaushal Bhan (AIR 1960 SC 806), Tata Oil Mills Co. Ltd. vs. its workmen (AIR 1967 SC 155) and, Jung Bahadur Singh vs. Baij Nath Tiwari (AIR 1969 SC 30). From a perusal of the above position of law it is clear that there is no legal bar in simultaneous proceedings in a criminal offence in a court of law and for Departmental Proceedings in accordance with the relevant service rules. The principles of natural justice also do not require that an employer must wait for the decision in the criminal case before the criminal court and thereafter take disciplinary action against an employee.

9. The investigation is still in progress and no charge sheet, as averred in the application, has been filed. The

charges which at all levelled against the applicant in a criminal case is now confined to the issue of the accident in the night at Sardar Patel Marg. The applicant ~~cannot~~ ^{has been} be charged for taking out the Gypsy unauthorisedly after duty hours for which departmental proceedings have been initiated.

10. Regarding the arguments of the learned counsel that he will be prejudiced in defence so that stage has not yet arrived and moreover the interest of the applicant ~~has not yet~~ ^{can be} secured by making an observation that defence of the applicant given in the departmental proceedings shall not be used against him in the criminal case. Subject to this observation, the OA is dismissed leaving the parties to bear their own costs.

J. P. SHARMA
(J.P. SHARMA) 8.1.93
MEMBER (J)

C. C. 8/1/93
(P.C. JAIN)
MEMBER (A)