IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.Nos. Date of decision: 10.7.1992

1. OA-1431/92 and
2. OA-1432/92

1.Mr. Zaffaruddin Khan)
2.Mr. Jagdish Singh) .... Applicants

Versus

The Administrator, Union Territory of Delhi and Others .... Respondents

For the Applicants .... Miss Sangita Namchahal, Advocate

For the Respondents .... Mrs. Avnish Ahlawat, Counsel

CORAM:

The Hon'ble Mr.P.K. Kartha, Vice Chairman(J)

The Hon'ble Mr.B.N. Dhoundiyal, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgment? Yes

2. To be referred to the Reporters or not? Yes

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

As common questions of facts and law have been raised in these two applications, it is proposed to deal with them in a common judgement.

2. The applicants in both these applications have worked as Constables in the Delhi Police. They have prayed for setting aside and quashing the impugned order dated 15.5.1992 issued by the Deputy Commissioner of Police proposing to hold a

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departmental enquiry against them and to set aside and quash the impugned order dated 13.5.1992, whereby they have been placed under suspension pending such enquiry.

3. The applicants were deputed from 2.00 p.m. to 6.00 p.m. on 11.5.1992 to ensure the proper custody of one undertrial, namely, Harvinder Pal involved in case No.FIR-241/87 under Section 302/397 I.P.C., P.S. Lodi Road and in case F.I.R.771/87 under Section 392/397/34 I.P.C. P.S.:Rajauri Garden, New Delhi. Shri Harvinder Pal was admitted in RML Hospital on 7.5.1992 on the prescription of a doctor of Central Jail for treatment of diabetes. The proper guard consisting of one Head Constable and 7 Constables were deputed on him to avoid escape. The duties were sorted out for a period of 4 hours only. On 11.5.1992, during the course of the duty, the undertrial offered some 'namkeen' to the applicants in which he had mixed some intoxicants. After consuming that 'namkeen', both of them became unconscious and the undertrial managed to escape. FIR-177/92 has been lodged against the applicants under Sections 223/224/328 of the I.P.C. at Police Station Mandir Marg on 11.5.92.

The impugned order of suspension was passed thereafter on 13.5.1992 and the impugned departmental enquiry was ordered on 15.5.1992.

4. The respondents have stated in their counter-affidavit that in the criminal case, applicants have

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neither been summoned to join the investigations, nor have they been arrested. The case is still under investigation. According to them, the contents of the departmental enquiry are not related to the criminal case as it is being conducted for xx their misconduct and violation of the instructions.

5. The learned counsel for the applicants argued that during the pendency of the criminal case, departmental enquiry cannot be held against the applicants. In that case, the applicants will have to disclose their defence which will prejudice them in the criminal case registered against them. In this context, she relied upon the judgement of the Supreme Court in Kusheshwar Dubey Vs. Bharat Cocking Coal Ltd., AIR 1988 S.C. 2118.

6. As against the above, the learned counsel for the respondents stated that the departmental enquiry is not related to the criminal case which is being conducted for xx the misconduct and violation of the instructions by the applicants. The criminal case will be in respect of the conspiracy and on the question whether the applicants were instrumental in the escape of the undertrial.

7. When the applications came up for admission on 29.5.1992, the Tribunal passed an ex parte interim order directing the respondents not to give effect to the impugned order dated 15.5.1992 proposing to initiate departmental enquiry against the applicants. When the case came up for

admission on 3.7.1992, the learned counsel for the respondents opposed the admission as well as the continuance of the interim order.

8. We have heard the learned counsel for both the parties and perused the records of the case carefully. The incident referred to in the F.I.R. 117/92 registered with the Police Station, Mandir Marg, and in the allegations against the applicants in the impugned order dated 15th May, 1992, proposing to initiate departmental enquiry against them, is the same. Both refer to the undertrial giving 'namkeen' to the applicants and their eating the same leading to their falling unconscious and the escape of the undertrial when they were supposed to ensure his proper custody. There may be some variations in the details given in the charge-sheet and in the F.I.R., but the incident and the basic facts remain the same.

9. With regard to the contention of the learned counsel for the applicants that if the departmental enquiry initiated against the applicants were not to be stayed, they would have to disclose their defence and it would prejudice them in the criminal trial, the learned counsel for the respondents, submitted that the applicants themselves have admitted to have consumed the 'namkeen' which made them unconscious. This is an established fact which cannot be disputed. The learned

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counsel for the respondents also contended that the charge brought against the applicants in the criminal case is also not grave. The punishment prescribed for the offence under Section 223 of the I.P.C. is only imprisonment for a term which may extend to two years or with fine, or both.

10. In our opinion, the question whether there could be simultaneous proceedings against a Government servant in respect of the same incident, would depend on the facts and circumstances of each case. The Supreme Court has stated in Kusheshwar Dubey's case 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."

11. In the instant case, the basic fact of the applicants' falling unconscious by consuming the 'namkeen' while they were on guard duty on the undertrial, renders them liable to criminal prosecution under Sections 223, 224 and 328 of the I.P.C. as well as for departmental action for conduct unbecoming of Police officers.

12. In S.K. Bahadur Vs. Union of India, 1987 (4) SLJ (CAT) 51, this Tribunal has held that even if the petitioner is acquitted in the criminal court, that will not <u>per se</u> entitle him to be absolved of the charges of misconduct in the disciplinary proceedings in case

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these charges are proved. The decision of the Supreme Court in Kusheshwar Dubey's case, does not lay down the law in a straight-jacket formula that no simultaneous proceedings can be taken in respect of the same incident. In our opinion, the fact of the applicants having consumed 'namkeen' while they were on duty to guard against the escape of the undertrial being undisputed, no prejudice will be caused to them in the criminal trial if the departmental enquiry relating to their misconduct were to be held. The applicants have not alleged any mala fides against the respondents in deciding to take simultaneous proceedings against them. The criminal proceedings have not even commenced though an F.I.R. has been lodged in the Police Station.

13. In the facts and circumstances, we do not consider it appropriate to stay the departmental proceedings initiated against the applicants. The learned counsel for the applicants stated that in case the applicants are dismissed or removed from service, their families would be ruined and the applicants would not get any employment in Government elsewhere. This is a matter which the respondents should consider in case they decide to impose any penalty on the applicants after the conclusion of the departmental enquiry. In the circumstances, we see no merit in the present applications

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and the same are dismissed. There will be no order as to costs. The interim orders are hereby vacated.

14. Let a copy of this order be placed in both the case files.

(B.N. Dhoundiyal)
Administrative Member

(P.K. Kartha)
Vice-Chairman(Judl.)

True copy.

10/7/92