

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn. No. O.A. 1485/92

Date of decision 1.X.92.

Tara Chand

Applicant

N. Pandey

Counsel for the applicant

vs.

Commissioner of Police & Ors.

Respondents

Pawan Behl

Counsel for the respondents

CORAM

The Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman(J).

The Hon'ble Mr. I.P. Gupta, Member (A).

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

✓ 2. To be referred to the Reporter or not? *Yes*

3. Whether their Lordships wish to see the fair copy of the judgment?

4. Whether it needs to be circulated to other Benches of the Tribunal?

(Judgment of the Bench delivered by Hon'ble Shri

Justice Ram Pal Singh, Vice-Chairman (J).)

JUDGMENT

The applicant was posted at Police Station Jahangirpuri as Head Constable No. 239 alongwith one ASI, Nobat Ram, in the month of July, 1989. On 26.7.89 at about 7.30 A.M., one Smt. Chaman Bano, wife of Laddan Siddiqi, of Chandbagh near Bhajanpura, aged 25 years, was brought to the Police Station. The applicant is said to have taken that lady to her mother-in-law's house at Village Ramgarh where he is alleged to have misbehaved with that female. Subsequently, the applicant is alleged to have brought Chaman Bano to the Police Station and is alleged to have detained her till 10.00 P.M. Thereafter, the applicant tried to persuade the lady to hand over the child to her mother-in-law and come to his room in the mess. It is further alleged that he brought the lady in his bath

Lalit.

7

room and locked the door and committed rape with her. On this incident, F.I.R. 252 dated 26.7.89 was registered in the Police Station, Jahangirpuri, against the applicant for having committed an offence punishable under Section 376 (2)(a) of the Indian Penal Code. Subsequently, a chargesheet was filed against the applicant in a criminal court where the trial is pending. Thereafter, a departmental enquiry was initiated by office order dated 4.2.92. The applicant was also suspended in August, 1989. By this O.A., filed under Section 19 of the Administrative Tribunals Act of 1985, the applicant prays for a direction of the court to the respondents to keep the initiation of the departmental inquiry in abeyance till the disposal of the criminal case pending trial against him under Section 376 (2)(a) of the I.P.C.

2. Respondents on notice appeared and filed their counter. They have raised a preliminary objection that the applicant has not exhausted the departmental remedy available to him by filing a representation before the disciplinary authority, under Section 20 of the A.T. Act. They have justified the initiation of the departmental enquiry and contend that this O.A. should be dismissed.

3. We have heard the learned counsel for the applicant, Shri M. Pandey, and the learned counsel for the respondents Shri Pawan Behl. The main contention of Shri Pandey is that if the departmental enquiry is permitted to continue, then he is likely to be prejudiced in his trial because in the departmental enquiry, he will have to open his defence to the witnesses who shall be examined in this inquiry. Hence, he contends that the departmental enquiry which is going on against the applicant should be kept in abeyance pending the adjudication of his alleged guilt by the criminal court. The apex court in the case of Kukeshwar Dubey vs. M/s Bharat Coking Coal Ltd. (AIR 1988 2118 S.C.), has laid down the law on the subject in the following words:

"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

Lambh

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 also, in the case of S.K. Bahadur vs. U.O.I. (1987 (4) S.L.J. (CAT) (PB-New Delhi p. 51), the same view was reiterated. Earlier to this in 1960, in the case of Delhi Cloth & General Mills Ltd. VS. Kushal Bhan (AIR 1960 S.C. 806), the apex court observed that it cannot be said that principles of natural justice require that an employer must wait for the decision, at least of the criminal trial court, before taking action against the employee. Keeping in view the law laid down, in Kusheshwar Dubey (supra) the apex court was of the view that it is neither possible nor advisable to evolve a hard and fast, straight-jacket formula, valid 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 circumstance as to whether simultaneous proceedings in a criminal court and disciplinary proceedings be permitted to go on or the latter should be stayed.

4. 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 in a departmental inquiry, the Presenting Officer is not required to prove its case beyond all reasonable doubts. The standard of proof in 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 and for having committed an offence punishable under that Act. Specific charges are framed and the trial begins

Lamlih

(9)

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.

5. It has not been brought to our notice as to and in what way the applicant will be prejudiced in a criminal trial if this departmental inquiry is permitted to be held. The learned counsel for the applicant has also contended that he will be required to disclose his defence in the departmental inquiry and the prosecution may take advantage of that defence in the criminal trial. This argument is fallacious because after the registration of the First Information Report under Section 154 of the Code of Criminal Procedure, the investigation of the alleged crime commences during which properties are seized, the statements of the witnesses are recorded under Section 161 of the Cr. P.C., circumstantial evidence is gathered and they are recorded in the Police Case Diary. Even the serologist and the chemical examination reports are obtained and when investigation is complete, a chargesheet is filed in a criminal court against the accused under Section 173 of the Cr. P.C. Thus, all the evidence gathered by the prosecution during the course of investigation is recorded in the Police Case Diary whose copy is filed in the criminal

Lambh

court and whose copy is supplied to the accused. In a criminal trial, the accused can, in the facts and circumstances of the case, as disclosed in this case, take the defence either of denial of committing of the crime or that he committed the alleged offence with the consent of the prosecutrix who was major. These are only two defences open to the accused and the last which he can take is that he has been framed falsely in the alleged crime either by his departmental enmey or by the family members of the prosecutrix. If these defences are also taken in the departmental inquiry, then keeping in view that a copy of the Police Case Diary has been supplied to the applicant, it cannot be said that the applicant will be prejudiced in any manner in the criminal trial. However, if he examines any defence witnesses in his defence in the departmental inquiry, then definitely the disciplinary authority cannot make it a subject of the prosecution case in a criminal trial. We direct that any defence evidence produced by the applicant in the departmental inquiry should not be produced by the prosecution which is adverse to the applicant.

6. We are, therefore, of the view that the prayer asked for in this O.A. cannot be granted to the applicant. The O.A. is, therefore, dismissed with no order as to costs. Needless to say that the interim order passed on 4.6.92 stands vacated.

I.P. Gupta
(I.P. GUPTA) 1.10.92

MEMBER (A)

Ram Pal Singh
(RAM PAL SINGH)

VICE-CHAIRMAN (J)