

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI  
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O.A. No. 1587/92

09.12.1992

Shri Veer Sain Sharma

...Applicant

Vs.

Commissioner of Police & Ors.

...Respondents

CORAM :

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

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

For the Applicant

...Shri Sugriva Dubey

For the Respondents

...Shri O.N. Trishal

JUDGEMENT (ORAL)

(Judgement delivered by Hon'ble Shri P.C. Jain, Member (A))

The applicant, who was appointed in the Delhi Police was proceeded with disciplinary proceedings under Section 21 of the Delhi Police Act, 1978 on the alleged ground that he married woman Constable Surrender Kaur in the court of Shri S.M. Jaffri, Marriage Officer, Delhi whereas he was already married on 3.7.1987 with Mrs. Nisha Rani, daughter of Shri Rajpal, resident of Muzaffarnagar, New Delhi and who was still alive. The Enquiry Officer completed the enquiry in which the applicant also participated in as much as he also produced three defence witnesses in his defence. The finding of the Enquiry Officer was communicated to the applicant vide communication dt. 14.5.1992 (Annexure D) with a view to enabling him to make any representation or submission if he wishes to do so in writing within 15 days on receipt of that communication. It is this communication which has been impugned in this OA under Section 19 of the Administrative

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Tribunals Act, 1985 with the prayer that the same may be quashed, and for quashing the findings of the Enquiry Officer and for a direction to the respondents for reinstatement of the applicant with all back arrears and promotion. As an interim measure, he prayed for restraining the respondents from initiating any disciplinary proceedings pursuant to the impugned order till the final disposal of the OA, and by an order passed on 17.6.1992, the respondents, as an interim measure, were directed not to proceed with the departmental enquiry. This interim order has been continuing since then.

The respondents have contested the OA by filing the reply to which a rejoinder has also been filed by the applicant. As the pleadings in this case were complete, it was decided with the consent of the parties to finally dispose of the case at the admission stage itself. Accordingly, we have perused the material on record and also heard the learned counsel for the parties. The main contention of the applicant is that the departmental enquiry is illegal as a criminal case (FIR NO.37/88, Muzaffarnagar, UP) is pending against the applicant on the same charge. It is also contended in this connection that the proceedings of the aforesaid criminal case were stayed by the Allahabad High Court by an order passed on 12.5.1992 till 1.9.1992 which, according to the submission of the learned counsel for the applicant, has been extended and is valid even today. It is also contended that the applicant's Civil Suit No.45/88 for declaration that alleged marriage

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solemnised on 7.1.1988 in the name of the petitioner and respondent, Smt. Surendra Kaur in the court of District Marriage Officer, Delhi he declared as illegal and void abinitio on the ground of fraud and misrepresentation, was allowed in his favour by the Sub Judge, Delhi on 30.5.1992. Thus it is contended that the marriage certificate, having been already declared as null and void, and that the proceedings in the criminal trial having been stayed by the Allahabad High Court, departmental proceedings should not be allowed to be proceeded with on the same charge. In support of this contention, the learned counsel also cited judgement of the Tribunal in OA 1435/89 dt. 16.1.1992 as also in OA 1955/90 decided on 28.1.1992.

In the first case cited by the applicant, there was no stay of the criminal trial pending against the applicant therein. In the second case cited by the applicant, the question involved was of punishment of removal by a process of departmental enquiry in a case in which the applicant was acquitted by the criminal court. As such these judgements do not help the applicant.

It is well settled by at least four judgements of the Hon'ble Supreme Court that there is no legal bar as such to taking departmental proceedings under the relevant service rules during the pendency of criminal proceedings for an offence under the law. It has also been held by the Hon'ble

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Supreme Court that it would depend on the facts and circumstances in each case whether in any situation it would be judicially desirable to stay the departmental proceedings during the pendency of a criminal trial, and that no rigid formula can be laid down in this respect. Delhi Cloth and General Mills Ltd. Vs. Kushal Bhan, AIR 1960 SC 806; (ii) Tata Oil Mills Ltd. Vs. Its Workmen, AIR 1965 SC 155; (iii) Jung Bahadur Singh Vs. Baidya Nath Tiwari, AIR 1969 SC 30; and (iv) Kusheshwar Dubey Vs. Messers Bharat Coking Coal Ltd. & Ors., AIR 1988 SC 2118, are referred to in this connection. In this case, we find that after the summary of allegations had been served on the applicant and the examination of the prosecution witnesses, a charge was framed against the applicant on which he adduced three defence witnesses in support of his defence. The Enquiry Officer gave his report to the Disciplinary Authority. Thus the enquiry, as such is already complete and in that enquiry, the applicant has participated, and therefore, any contention to the effect that the applicant's defence would be exposed if the departmental enquiry is allowed to be proceeded with, cannot be a valid ground on the facts and in the circumstances of this case. Thus neither the law nor the facts of this case would justify any interference by the Tribunal in the further action which the Disciplinary Authority may like to take in accordance with law/rules on the Enquiry Officer's report.

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In the light of the foregoing discussion, we are of the considered view that the OA is devoid of merit and is accordingly dismissed leaving the parties to bear their own costs. Needless to state that the interim order passed on 17.6.1992 stands vacated.

*J.P. Sharma*

(J.P. SHARMA)  
MEMBER (J)  
09.12.1992

*P.C. Jain*

(P.C. JAIN)  
MEMBER (A)  
09.12.1992