

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI.

OA.1720/92

Date of Decision:17.5.93

Shri Joginder Singh Applicant

Versus

Commissioner of Police

and others

Respondents

Shri R.C. Ahuja Counsel for the applicant

Shri Pawan Behl Counsel for the respondents

CORAM: The Hon. Mr. N.V. KRISHNAN, Vice Chairman(A)

The Hon. Mr. B.S. Hegde, Member(J)

J U D G E M E N T (Oral)

(delivered by Hon. Mr. N.V. KRISHNAN, Vice Chairman(A))

The applicant has filed MP 909/93 for amending the original application and he has also filed MP 910/93 for an interim relief. On the last occasion, we noticed that in view of the averments made in the application, it should be possible to dispose of this OA after hearing the respondents.

2. Accordingly we perused the records and heard the parties.

3. The original application was filed in July, 1992 mainly for a direction to the respondents



not to initiate any departmental proceedings against the applicant till the decision of the criminal case pending in the court of Smt. Anu Ahlawat. This prayer was made on the ground that the charges in the disciplinary proceedings are the same as the charge in the criminal case and if the departmental enquiry is proceeded with, it might prejudice the applicant's defence in the criminal case. The applicant later filed MP 909/93 to amend the application. He has also enclosed the amended application which he wants us to consider. The main prayer in that <sup>application is</sup> the enquiry proceedings in the departmental enquiry be stayed till the criminal case is decided. Orders are also sought that the examination of defence witness be stayed and the order in Disciplinary Enquiry be not passed till this OA is disposed of. A separate MP 910/93 is also filed for this purpose.

4. The learned counsel for the respondents has drawn our attention to the Annexure-E letter, enclosed with the amended OA filed along with MP 909/93. English translation has also been provided. That is a letter written by the applicant to the Deputy Commissioner of Police and is reproduced below:

"With humility it is submitted a copy of the Departmental Enquiry Findings was given to the applicant calling upon to submit representation, if any within a period of 15 days. The applicant intends to submit his representation for which he requests for extension of time for 07 days i.e. upto 28.3.93. The applicant shall before the final decision during the course of Personal Hearing present his defence."

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5. It is evident from this letter that the enquiry officer has completed the enquiry proceedings and given his report to the disciplinary authority who has furnished a copy thereof, to the applicant for making his representation. The applicant has also stated that he would make a representation, for which, he has sought additional time. The applicant has also since filed an interim ~~relief~~ <sup>reply</sup>.

6. Therefore, in so far as, prejudice to the criminal defence case is concerned, one should assume that as the defence has already been recorded by the enquiry officer, nothing can now be done and therefore, this OA has now become infructuous. However, the learned counsel for the applicant contends that the enquiry officer did not either examine the applicant nor ~~give~~ him any chance to present his defence witnesses. He, therefore, requests that an order may be issued that the disciplinary proceeding may be completed and final order should not be passed till the criminal case is over.

7. We have considered the matter. The only anxiety that applicant has, is that the applicant's defence in the criminal case should not be prejudiced by any action taken now. If the applicant has neither been examined nor has the Enquiry Officer examined any witness, then no prejudice will be caused by any order passed by the disciplinary authority. However, if on a further representation made by the applicant, the


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disciplinary authority is satisfied that the procedure adopted by the Enquiry Officer is totally illegal and he finds it necessary to remand the case to the Enquiry Officer again for giving an opportunity to the applicant to enter upon his defence, it is open to the applicant, at that stage, to request the Enquiry Officer not to proceed with the enquiry, as it might prejudice his criminal case and if this request is not heeded to, and he has any grievance, he can approach this Tribunal. We cannot, at present, anticipate what order will be passed by the disciplinary authority. For all we know, the disciplinary authority himself <sup>vs</sup> ~~fail~~ <sup>in</sup> might, force, the representation made by the applicant and drop the charges made against him.

8. In the circumstances, we permit the applicant to file his final representation, if any, against the Enquiry Officer's Report, within 10 days from the date of receipt of this order and the Disciplinary Authority may then pass final order in the disciplinary enquiry in accordance with law and with these observation, we dismiss the application and vacate the interim order.

  
(B.S. HEDGE)

MEMBER(J)

  
17.5.83  
(N.V. KRISHNAN)

VICE CHAIRMAN(A)