

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No. 1730/92
T.A. No.

199

(X)

DATE OF DECISION 22.7.93

<u>Shri H.P.Singh</u>	Petitioner
<u>Shri V.P.Sharma</u>	Advocate for the Petitioner(s)
Versus	
<u>Delhi Administration</u>	Respondent
<u>Shri Amresh Mathur</u>	Advocate for the Respondent(s)

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The Hon'ble Mr. J.P.Sharma, Member (J)

The Hon'ble Mr. N.K.Verma, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? X
2. To be referred to the Reporter or not? X
3. Whether their Lordships wish to see the fair copy of the Judgement? X
4. Whether it needs to be circulated to other Benches of the Tribunal? X

JUDGEMENT

(Hon'ble Shri N.K.Verma, Member (A))

In this O.A. under section 19 of the Administrative Tribunals Act, 1985 the applicant who was then S.H.O., Geeta Colony, Delhi Police has assailed the order dated 14-10-1991 under which a departmental inquiry against the applicant has been initiated by the Deputy Commissioner of Police. He has also prayed for restraining the respondents from proceeding with the inquiry on the basis of the impugned charge sheet.

2. The short facts of the case are that the petitioner while working as S.H.O. Geeta Colony on 23-2-1990 recorded a daily diary entry against one S.I. Sunder Dev No.D-2000 who was also posted at the same police station. The said S.I. Sunder Dev also recorded a daily diary No.24-B dated 23-2-1990 mentioning some details of case FIR No.15/90 under section 304, 308/34 IPC registered at Geeta Colony P.S.

in which the involvement of the petitioner was quoted. When the petitioner learnt about this daily diary entry by the S.I. Sunder Dev, he panicked and got the entry Roznamcha from 14-2-90 onwards recast after obtaining the signatures of the concerned police officer who had worked as Duty Officer during the said period. The signatures of the concerned police personnel who remained on leave etc., were found forged.

3. The enquiry relating to case FIR No.15/90 P.S. Geeta Colony was transferred to Vigilance Branch of the Delhi Police. During enquiries by the Vigilance Branch S.I. Sunder Dev No.D-2000 gave a written statement in his own hand-writing on the basis of which the Enquiry Officer of the Vigilance Branch proved that the deceased Subhash Chand died on account of beating given by the petitioner i.e. Inspector H.P.Singh, the then S.H.O. Geeta Colony. It was also proved during the enquiry that the petitioner and the S.I. Sunder Dev were responsible for recasting the Roznamcha from 14-2-90 onwards to escape from the allegations. The applicant was put under suspension on 5-6-1991 and served with a departmental charge-sheet on 14-10-1991. In the meantime, a challan was also submitted by the Police for prosecution against the applicant before the learned A.D.J. Shahdara Court.

4. The case of the applicant is that the respondents have initiated the disciplinary action against him notwithstanding the fact of the pending criminal case in the court of A.D.J Shahdara for which next date of hearing was fixed on 25-7-1992. The alleged facts in

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both- the police challan and the charge-sheet are the same and witnesses are also common. He apprehends that if the witnesses are produced before any authority first time and are cross-examined by the concerned parties and they are again produced either before the departmental proceeding or the court, it will give an occasion to improve the version and also will be used to fill up the gaps in the prosecution story. He contended that the initiation of departmental enquiry against the applicant is illegal and against the principles of natural justice for which several rulings of the Supreme Court and judgements of this Tribunal have been cited.

5. In the counter affidavit, respondents have contested the application and have stated that the departmental enquiry is being conducted for departmental mis-conduct of falsification of government records by recasting Roznamcha of P.S. Geeta Colony from 14-2-1990 onwards in collusion with S.I. Sunder Dev and obtaining forged signatures thereon. The respondents have admitted that three of the witnesses at Sl.No.(a) to (c) as alleged in para 4 of the D.A. are common in both- the police challan and the departmental enquiry pending against the petitioner. But the number of witnesses in the police case is quite big in as much as 25 names are mentioned therein, whereas in the departmental enquiry there are only 13 witnesses mentioned, of which three are common to both. The respondents deny that the contentions in criminal case in the departmental enquiry are identical. In the criminal case the applicant has been charged under section

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304,308/34 of IPC for the alleged death of one Shri Subhash Chand whereas the departmental enquiry has been initiated on the falsification of the daily diary.

6. We have heard learned counsels for both sides. The learned counsel for the applicant made strenuous efforts to impress the relevance of Hon'ble Supreme Court observations in re Gurcharan Das Chadda Vs. State of Punjab (AIR 1966 SC 1418) and re Kusheshwar Dubey Vs. Bharat Cooking Coal Ltd., & Ors. (AIR 1988 SC 2118). The relevant observations of the Supreme Court in the case of Kusheshwar Dubey Vs. Bharat Cooking Coal Ltd., & Ors. are given below:-

"The view expressed in the three cases of this 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 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 any general guideline."

These observations do not help the case of the applicant as the Hon'ble Supreme Court has very rightly observed that it is neither possible nor advisable to evolve a hard and fast, straight-jacket formula valid for all cases

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and of general application without regard to the particularities of the individual situation. The Supreme Court also have not given any general guidelines in the matter as would be seen from the concluding lines of the observations. In the instant case, we are not convinced that the prosecution of the departmental enquiry will vitiate the prosecution of the criminal case in the court of A.D.J Shahdara. Falsification of government records and manipulation thereon are departmental lapses for which departmental action has to be taken by the disciplinary authority and concluded without awaiting the outcome of the trial of the applicant in the court of A.D.J where he is charged with a grave offence of causing death. The witnesses who are common have nowhere been said to be material witnesses whose deposition in the departmental enquiry is going to affect the defence of the applicant adversely in the criminal charge. We can, however, safeguard the interest of the applicant by directing that the depositions made by these common witnesses will not be used by the prosecution to the disadvantage of the applicant.

7. We find that the submissions of the applicant are not adequate for us to direct the respondents to stay the departmental proceedings. We, therefore, dismiss the case without cost with the observations as made above.

N.K. Verma
(N.K.VERMA)
Member (A).

22-7-1993

J.P. Sharma
(J.P.SHARMA)
Member (Judicial)