

IN THE CENTRL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn. No. O.A. No. 1929/92

Date of decision 2.2.93.

Mange Singh

Applicant

Shri A.S. Grewal

Counsel for the applicant

vs.

Commissioner of Police & Ors.

Respondents

Shri D.N. Goburdhun

Counsel for the respondents

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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?
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).)

J U D G M E N T

The applicant who is a constable in the Delhi Police from 1.1.81 was arrested under FIR 63/89 by the Police Station, Narela, Delhi, for having committed a gang rape with the prosecutrix, Smt. Kanti Devi. This being a gang rape, a case has been filed by the Police against the applicant in a criminal court and the trial is said to be pending. The respondents initiated a departmental enquiry against the applicant for having committed a grave misconduct unbecoming of a police officer. This departmental enquiry is going on. On 27.9.92, by interim order, the respondents were directed not to pass any final orders. The applicant is, therefore, aggrieved by the continuance of the departmental enquiry and has prayed for staying the further proceedings of the departmental enquiry until

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the conclusion of the criminal trial in this Application filed under Section 19 of the Administrative Tribunals Act of 1985.

2. Respondents on notice appeared and have filed their counter. None for the applicant appeared when the case was heard on 29.1.93. However, we have gone through the entire record and heard the learned counsel for the respondents, Shri D.N. Goburdhun.

3. On perusal of the record, it appears that the applicant apprehends that he will be prejudiced in his defence in the criminal trial which is proceeding against him if the departmental enquiry is held. It also appears that he apprehends that if he cross-examined the witnesses of the prosecution in the departmental enquiry, then he will have to disclose ^{his} defence which will affect his defence in the criminal trial. We have considered all the grounds taken by the applicant. Another argument of the applicant appears to be that under Rule 12 of the Delhi Police (Punishment and Appeal) Rules of 1980, the departmental enquiry should not proceed when the applicant is being tried in a criminal court. For clarity, we reproduce the provisions of Rule 12 of the Delhi Police (Punishment and Appeal) Rules, 1980:

"12. Action following judicial acquittal.

1. When a Police Officer has been tried and acquitted by a criminal court, he shall not be punished departmentally on the same charge or on a different charge upon the evidence cited in the criminal case, whether actually led or not unless:-

- (a) the criminal charge has failed on technical grounds, or
- (b) in the option of the court, or on the Deputy Commissioner of Police, the prosecution witnesses have won over; or
- (c) the court has held in its judgment that an offence was actually committed and that suspicion rests upon the Police Officer concerned; or
- (d) the evidence cited in the criminal case discloses facts unconnected with the charge before the court which justify departmental proceedings on a different charge; or
- (e) additional evidence for departmental proceedings is available."

Rule 12 of Delhi Police (Punishment and Appeal) Rules

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of 1980 which deals with the departmental enquiry after an acquittal has been recorded by a criminal court. This Rule comes into operation when a police officer has been tried and acquitted by a criminal court. He shall not be punished departmentally on the same charge or on a different charge upon the evidence cited in the criminal case whether actually led or not..... Hence the provisions of this rule come into operation only when the delinquent has been tried and acquitted by a criminal court.

4. The position in this case is that an F.I.R. has been registered and the matter is still pending adjudication in the criminal court. The applicant is being proceeded in the criminal trial for having committed an offence punishable under Section 376/34 of the Indian Penal Code. Thus, his prosecution is for having committed an offence punishable under the general law, i.e., the Indian Penal Code, while in the departmental enquiry he is being proceeded for having committed a misconduct as a police officer and that misconduct is unbecoming of a police officer. The subject matter of the departmental enquiry is quite different from that of the criminal trial. In a criminal trial the prosecution is required to prove the case beyond all reasonable doubts, while in a departmental enquiry, the employer has to judge the misconduct of the employee which he is alleged to have committed during his employment. The standard of proof of a departmental enquiry is also different from that of the criminal trial. In a departmental enquiry, the proof by preponderance of probability is applicable, while in a criminal trial, the prosecution has to prove its case beyond all reasonable doubts. The law on this subject has been well-settled by the judgment of the apex court in the case of *Kukeshwar Dubey vs. Bharat Coking Coal Ltd.* (AIR 1988 SC 2118). Their Lordships of the apex court have made the following observations:

"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 circumstances of a particular case there should or should not be such simultaneity of the proceedings would then

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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."

The consistent view of the Supreme Court is that it is neither possible nor desirable to evolve a hard and fast straight-jacket formula for all the cases and of general application and every case has to be adjudged on individual situations. In the absence of any hard and fast straight-jacket law being laid down, we are of the view that simultaneous departmental enquiry in which the subject matter of the enquiry is misconduct during the employment can be done even if the applicant is being prosecuted in a criminal court. Admittedly, in a departmental enquiry if the applicant adduces any defence evidence, then that defence evidence cannot be used and utilised in the criminal trial.

5. We are, therefore, of the view that the prayer prayed for in this O.A. cannot be granted to the applicant. This O.A. is, therefore, dismissed with no order as to costs. Needless to say that the interim order passed earlier stands vacated.

L.P. Gupta
(L.P. GUPTA) 2/4/93
MEMBER (A)

Ram Pal Singh
(RAM PAL SINGH)
VICE-CHAIRMAN (J)