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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
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C.A. NO. 2060/92

Date of Decision : 4.12.92

Constable Ram Singh ... Applicant
Vs.
Additional Deputy Commissioner ... Respondents
& Anr.

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

For the Applicant ... Shri Shankar Raju
For the Respondents ... Shri B.R. Parashar

JUDGEMENT

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER(J))

The applicant, while posted at P.S. Tilak Nagar in Delhi Police has been involved in a corruption case and he was arrested in case FIR 278 dt. 3.9.1984 under Section 5 of the Prevention of Corruption Act and 161 IPC, P.S. Tilak Nagar and placed under suspension by the order of even date and was transferred to New Delhi District Lines, P.S. Parliamentary Street with immediate effect. The respondents besides the above criminal case also initiated departmental proceedings against the applicant by the order dt. 14.5.1992 (Annexure A2) and summary of allegations has been served on the applicant by the memo dt. 14.7.1992.

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In the present application, the applicant has prayed for the reliefs that his suspension order dt.3.9.1984 and initiation of the departmental proceedings by the impugned orders (Annexure A2 and A3) be quashed or in the alternative the departmental proceedings be kept in abeyance till the disposal of the criminal case against him. The grounds taken by the applicant in this application are that he shall be prejudiced in his defence in the criminal case and there are certain precedents where it has been held that till the disposal of the criminal case, the departmental proceedings be kept in abeyance. It is further taken as a ground that the departmental enquiry under Rules 11 and 12 of the Delhi Police (Punishment and Appeal) Rules, 1980 is barred during the pendency of the criminal case. Another ground taken is that if the applicant is acquitted from the Criminal Court on a different finding recorded by the judicial Court and if he is punished by the departmental authority in the departmental proceedings, then there shall be two different findings on

- (A) R.Raja Manar Vs. UOI, 1992 (1) ATJ-CAT-595.
- (B) Kushehwar Dubey Vs. Bharat Co.Ltd., 1989 (2)ATLT SC 468
- (C) Jai Prakash Vs. UOI, 1991 (1) SLJ-CAT 362
- (D) O.A. NO.1435/89-Kashmir Lal Vs. Commissioner of Police decided on 16.1.1992.
- (E) O.A. NO.593/90 in RE-Jagtar Kaur Vs. Commissioner of Police decided on 22.8.1990.

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the same charge. In any event the finding of the judicial body should be allowed to prevail and not to differ with the Criminal Court finding and in this connection reliance has been placed on the case of Ex-Head Constable Ram Niwas v s. Commissioner of Police, 1992 (1) ATJ CAT 364.

2. The respondents, on the other hand contested this application and filed the reply that the applicant was involved in a corruption case and he was placed under suspension. It is further stated that during suspension period, the applicant remained unauthorisedly absent from the headquarter where he was posted for a number of days in February, June, September and October, 1990. Since the applicant was involved in a corruption case, so he was put under suspension and could not be given duty. The respondents have also referred to the Memo dt.15.1.1992 (Annexure B to the counter) in which the vigilance cell has written to Deputy Commissioner of Police on the subject of criminal cases pending against the police officers and the relevant para is quoted below :-

"There is no legal bar to the initiation of departmental disciplinary action under the rules applicable to the delinquent public servant where criminal proceedings already in progress. In departmental enquiry, the official is not tried for any criminal offence. The disciplinary authority starts the proceedings for the purpose of satisfying himself as to whether the defaulter is guilty of any misconduct and delinquency and likely to reach a conclusion whether the delinquent deserves to be retained in public service or to be reverted or to be reduced in rank or otherwise, suitably dealt with for the delinquency concerned."

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There is also a circular of the department filed by the respondents (Annexure C to the counter) and para 2(iii) of the same is reproduced below :-

"While deciding such cases, the instructions quoted in para 28.2 Chapter XIII Volume I of the Vigilance Manual should also be kept in view by the concerned disciplinary authorities. This para inter alia provides, "It is necessary that all relevant matters be considered in each individual case and a conscious view taken whether disciplinary proceedings may not be started along side criminal prosecution. In a case where the charges are serious and the evidence strong enough, simultaneous departmental proceedings should be instituted so that a speedy decision is obtained on the misconduct of the public servant and a final decision can be taken about his further continuance in employment."

On the basis of the above circular of the department as well as Vigilance Section, the respondents have taken the stand that there is no bar to start departmental enquiry simultaneously with the criminal case against the applicant. The applicant shall not at all be prejudiced and he cannot be reinstated as the charges against the applicant are serious. The applicant could not be granted any leave during suspension under the provisions of FR 56.

3. We have heard the learned counsel for the parties at length and have gone through the record of the case. Regarding suspension, the applicant has assailed the order dt. 3.9.1984 when actually the departmental proceedings have commenced against him. The applicant has been suspended as envisaged under Delhi Police (Punishment and Appeal)

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Rules, 1980. Thus it cannot be said that the order of suspension dt.3.9.1984 suffers from any infirmity.

4. The applicant has not made any prayer for enhancement of the subsistence allowance though he has been under suspension now from the last 8 years. The subsistence allowance was ordered to be revised after the expiry of three months under the provisions of FR 53. Since the applicant has not made any grievance to that effect, the respondents are following the said provision.

5. As regards the start of the departmental proceedings after 8 years, the applicant has taken a contradictory stand as it is averred in the application as also argued by the learned counsel that the departmental proceedings should not be commenced after inordinate delay and in this connection the applicant has placed reliance on the following authorities. Taking the stand taken by the applicant in this application, it cannot be said that the department cannot initiate disciplinary proceedings against the applicant on the basis of the misconduct.

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- (1) N.Ved Vyas Vs. Govt.of M.P., 1990 (3) SLR-CAT-588
- (2) State of M.P.Vs. Bani Singh, 1990(2)SLR 798 SC
- (3) G.R.Murthy Vs. UOI, 1990(2) SLJ CAT 75.
- (4) Ramesh K.Desai Vs. UOI, 1990 (3)SLJ CAT 241.
- (5) V.Ram Bhadran Vs.UOI, 1992 (1) SLJ CAT 46.

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6. The learned counsel for the applicant also argued that the misconduct against the applicant is also of unauthorised absence during suspension period and he has referred to the fact that police official under suspension has not to perform any duty and also he has not to report for attendance during the suspension period and in this connection he has referred to the authority of 1982(2) SLJ 166 (Zonal Manager, Food Corporation of India Vs. Khalil Ahmed Siddiqui), 1979 (2) SLR 194 (Chittranjan Ghos Vs. Inspector General of Police), 1984 (3) SLR 493 (Ganga Vaidya Vs. Chairman, Karnataka Land Army Ltd. Regarding this contention, the applicant can raise necessary objection to the said ~~accusation~~ against him in the departmental proceedings and he can assail the ultimate result if the finding is held against him. It shall not be proper to deal with that matter at this stage on merits.

7. The main question that arises is whether the simultaneous proceedings can be drawn against the applicant along with the criminal case or not. In this connection, two recent decisions of the Tribunal in Tara Chand Pandey Vs. Commissioner of Police (OA 1485/92) decided on 1.10.1992 and in the case of Ramash Kumar Vs. Commissioner of Police (OA 1262/92) decided on 21.10.1992 are relevant. Both the

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decisions are based on the ratio of the case of Kusheshwar

Dubey Vs. Bharat Coking Coal Ltd., 1988 SC 2118. The

Hon'ble Supreme Court observed that whether the departmental proceedings should be stayed or not, wholly depends on the facts and circumstances of a particular case.

The relevant portion of the said judgement is extracted

below :-

"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 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."

3. The contention of the learned counsel for the applicant is that the departmental enquiry be deferred as the applicant will have to disclose his defence earlier which shall prejudice him in the criminal case when the trial commences. There is no substance in this contention because the witnesses in departmental

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proceedings cannot be said to be same as also the misconduct on which the applicant is proceeded against is not only of charge of illegal gratification, but also of unauthorised absence from duty for a particular period. The Hon'ble Supreme Court has also considered the matter in the case of Delhi Cloth & General Mills Ltd. Vs. Kushal Bhan, AIR 1960 SC p-806, (ii) Tata Oil Mills Company Ltd. Vs. Its Workmen, AIR 1965 SC p-155 and (iii) Jung Bahadur Singh Vs. Baij Nath Singh, AIR 1969 SC p-30. There is as such no ~~xxxxxx~~ legal bar/for simultaneous proceedings for a criminal offence in a court of law and for departmental proceedings in accordance with the relevant service rules.

9. We have carefully analysed the arguments of the learned counsel for the applicant that in the criminal trial, already charge has been framed on 17.2.1987 and the charges in the criminal trial are almost the same as in the departmental proceedings. In the departmental proceedings, the summary of allegations against the applicant consists of two parts :- Firstly, that he accepted Rs.300 as illegal gratification

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from one Shri Ramesh and secondly, that during suspension period, he remained unauthorisedly absent from the district lines without any kind of leave/permission of the competent authority and he is liable for departmental action under Section 21 of Delhi Police Act, 1978. The list of witnesses mentioned there in only mentions official witnesses and none of the private witnesses is mentioned to be examined in support of the summary of allegations. While in the criminal case for the charges levelled against him, the complainant to be examined is one Shri Ramesh besides other evidence. Further, he is also to be tried in the criminal case with another co-accused SI Bahadur Singh. Thus from a perusal of the above facts and circumstances, the allegations against the applicant are of corruption and the departmental authorities in view of the various circulars referred to in the judgement have thought it proper and expedient to proceed with the departmental enquiry after waiting for eight long years for the

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decision of the criminal case. The applicant himself has taken certain grounds of delay and laches in pursuing the departmental enquiry after a long time. The department has no hold on the criminal case, which is a separate matter. In the facts and circumstances of this particular case in view of the authorities referred to above, particularly of Kushashwar Dubey (supra), the department can very well proceed against the applicant simultaneously with the criminal trial.

10. The principles of natural justice do not require that an employer must wait for the decision of the criminal case before taking disciplinary action against the employee. In the absence of any rigid formula, it cannot be said that in every case, the disciplinary proceedings should be stayed pending the disposal of the criminal case. Every case has to be considered on the facts and circumstances attached to that particular case. If the offence made out is of grave and serious nature and the acquisitions levelled against the delinquent does not warrant his continuance in active service of the department, then the

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administration is free to draw disciplinary proceedings against such a delinquent employee.

11. In the light of the foregoing discussion, we are of the view that the impugned order does not call for any interference and the DA is dismissed as devoid of merit. However, it is made clear that the defence which shall be taken by the delinquent official in the departmental proceedings shall not be used by the prosecution in the criminal case to the prejudice of the applicant. Interim order, earlier passed, stands vacated. No costs.

J. P. SHARMA
(J.P. SHARMA) 1.12.92
MEMBER(J)

(C. C. JAIN) 1.12.92
(P.C. JAIN)
MEMBER(A)