

IN THE CENTRL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn. No. 2191/92

Date of decision 2-2-93..

Ashok Kumar

Applicant

Shri T.C. Aggarwal,

Counsel for the applicant

vs.

Delhi Administration & Ors.

Respondents

Shri V.K. Rao

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

By this O.A. filed under Section 19 of the Administrative Tribunals Act of 1985, the applicant prays for quashing Annexure A-4 dated 5.8.92 by which the disciplinary authority has asked for the explanation from the applicant after receipt of the report of the Enquiry Officer.

2. The applicant was a constable of Delhi Police and was posted in 8th BN D.AP. when he proceeded on 4-5 days casual leave with effect from 11.3.91. When on casual leave, on 13.3.91, he is alleged to have participated in the molestation and attempt to rape with a minor girl, Suman Devi, in the company of one Pramod Kumar in his native village, Nostoll, Distt. Ghaziabad, U.P. It is

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further alleged that the co-accused of the applicant, Pramod Kumar, and was trying to commit rape with minor girl, Suman Devi, the applicant stood guard outside the room where the occurrence was taking place. FIR 126/91 dated 13.3.91 was lodged in the Police Station, Sahibabad, Ghaziabad, U.P. under Sections 354/376/511 of the Indian Penal Code and both were arrested by the police. Subsequently after the investigations were over, a chargesheet was filed in the criminal court against the applicant and the co-accused, Pramod Kumar. Consequently, the applicant was suspended by order dated 16.4.91 and a departmental chargesheet was issued to him on 24.4.91. In this departmental enquiry, the applicant is being enquired for having committed gross-misconduct, lack of morality unbecoming of a police officer. The Enquiry Officer has submitted his report and now the matter is before the disciplinary authority. By ad interim order dated 27.8.92, the respondents were directed not to pass final orders in this departmental enquiry.

2. On notice, the respondents appeared and opposed the prayer in the O.A.

3. We have heard Shri T.C. Aggarwal, counsel for the applicant, and Shri V.K. Rao, counsel for the respondents, in great detail. The applicant contends that simultaneous departmental proceedings should not be permitted when a chargesheet has been filed by the Police in a criminal court. Shri Aggarwal further contended that if the departmental enquiry takes place, then he will have to disclose his defence in the departmental enquiry by way of cross examination and by way of putting up defence witnesses and this is likely to prejudice him in the coming criminal trial. Shri Aggarwal also contended that Rule 12 of the Delhi Police (Punishment & Appeal) Rules of 1980 provides that simultaneous proceedings should not be permitted to proceed. For convenience, we are producing the provisions of Rule 12 of the Rules:

"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:

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- (a) the criminal charge has failed on technical grounds, or
- (b) in the opinion of the court, or on the Deputy Commissioner of Police, the prosecution witnesses have won over; or
- (c) the court has held in its judgement 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 of 1980 is a provision 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.

3. The stage in this case at present is that an F.I.R. has been registered, investigation completed and the chargesheet has been filed. Rule 12 will come into operation only when the judgement is pronounced by the criminal court. Hence, the provisions of Rule 12 shall not be attracted unless and until the delinquent is tried by a criminal court and acquitted and that stage is very far off. Furthermore, it is clear from the summary of allegations that he was involved in a criminal offence which amounted to grave misconduct and lack of morality unbecoming of a police officer. It is thus clear that in the departmental enquiry, he is not being enquired into with regard to the offence committed by him in the company of Pramod Kumar. The applicant is a servant of the Delhi Police and it is his conduct which he has committed while in the service of the respondents that is being enquired into. He is being enquired for committing the grave misconduct and for not any offence punishable under the Indian Penal Code. In a criminal trial, the

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prosecution is required to prove its case beyond all reasonable doubts while in a departmental enquiry it is the misconduct which is judged and it is decided on the preponderance of probability. Thus, a criminal trial is quite different from the departmental enquiry because in a criminal trial it is contravention of the general rule of the penal law of the land for which, if the offence is proved, the accused will be punished. Any person who contravenes the provisions of the Penal Code is an accused and is liable to punishment provided in law. In this departmental enquiry, the applicant is not being tried for the crime he has committed. It is only his misconduct which is being enquired into in the domestic enquiry. The law on this point has been finally settled in the case of *Kukeshwar Dubey vs. Bharat Coking Coal Ltd.* (AIR 1988 SC 2118) by the apex court in the following words:

"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."

4. After the judgement of the Supreme Court, the law thus has been settled that no straight-jacket formula can be laid and it is also not advisable that a straight-jacket formula should be applied equally to all cases. Every case has to be judged on its own facts. We have observed earlier that the applicant is being enquired into for his misconduct and not for having committed any offence under the Indian Penal Code. Admittedly, the defence witnesses examined by the applicant in the departmental enquiry shall not be used against him in the criminal trial by the Police.

5. Thus, this O.A. has no merit and the prayer contained

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in this O.A. cannot be granted to the applicant. This O.A. is, therefore, dismissed with no order as to costs. The interim order passed earlier stands vacated.

L. P. Gupta
(L.P. GUPTA) 24/93
MEMBER (A)

Ram Pal Singh
(RAM PAL SINGH) 22.93
VICE-CHAIRMAN (J)