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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

OA No.2297/92

Date of decision: December 11, 1992

Sh.Rajinder Kumar ... Applicant

versus

Dy.Commissioner of Police,
8th Bn.DAP, New Delhi. ... Respondents

CORAM: THE HON'BLE SH.P.C.JAIN, MEMBER(A)
THE HON'BLE SH.J.P.SHARMA, MEMBER(J)

For the Applicant ... Sh.Shanker Raju, counsel

For the Respondents ... Sh.B.R.Prashar, Counsel.

JUDGEMENT

(Delivered by Hon'ble Sh.P.C.Jain, Member(A))

The applicant, a Constable in Delhi Police, while posted in 8th Bataillon, Delhi Armed Police, was placed under suspension and a departmental enquiry on the following summary of allegations was ordered against him, vide order dated 11.1.91(Annexure A-2):-

" It is alleged against Const.Rajinder Kumar (under suspension) that while he was posted to 8th Bn,DAP Delhi had cheated one Sh. Ravinder Singh S/O Shri Ram Pal Singh R/o H.N.264 Village Munirka, New Delhi with Rs.700/- near Dr.Ram Manohar Lohia Hospital along with another Const.Raj Kumar No.111/RB and some unknown girl while the complainant went on his way to Palam Colony. Consequently a case FIR No.17/19 dt.9.1.91 u/s 419/420 IPC PS Mandir Marg was registered against him.

The above act on his part amounts to grave misconduct, unbecoming of a Govt.servant violating the provision of Rule 3(1)(iii) C.C.S(Conduct) Rules, 1964 rendering him liable for punishment u/s 21 of the DP Act, 1978."

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After examination of the prosecution ~~and the~~ evidence in the departmental proceedings a charge was framed against him on 13.8.92(Annexure A -4). The applicant was asked to adduce his defence. It is in this background that he has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 in which he has assailed the order at Annexure A-2 by which a departmental enquiry was ordered to be initiated against him, the summary of allegation(Annexure A-3) served on him and the rejection of his request for keeping the enquiry in abeyance till final disposal of the criminal case. He has prayed for a direction to the respondents to keep the aforesaid enquiry in abeyance till the final disposal of the criminal case FIR No.17/19 dated 9.1.91 under Section 419/420 IPC pending in the court of Metropolitan Magistrate, New Delhi. As an interim measure, further proceedings in the departmental enquiry were ordered to be kept in abeyance by an order dated 10.9.92 passed by a Bench of this Tribunal.

2. The respondents have contested the OA by filing their reply. However, the applicant chose not to file any rejoinder. As the pleadings in this case were complete, it was decided with the consent of the parties to finally dispose

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of the OA at the admission stage itself. We have accordingly perused the material on record and heard the learned counsel for the parties.

3. Before going into the rival contentions of the parties on the merits of of the case, it may also be stated that on the charge of cheating one Shri Ravinder Singh S/O Sh.Ram Pal Singh resident of House No.264 Village Munirka, New Delhi of Rs.700 near Dr.Ram Manohar Lohia Hospital along with another Constable Raj Kumar, who is said to have since been dismissed, and some unknown girl, FIR No.17/19 under Section 419/420 IPC dated 9.1.91 Police Station Mandir Marg, New Delhi was registered against the applicant. The chargesheet in this case has since been filed in the court of Metropolitan Magistrate and it is stated by the applicant that the criminal case against him has been fixed for prosecution/ evidence and he has to cross examine the complainant on 9.12.92. The main contention of the applicant is that the departmental enquiry against him is on the identical charge which he is facing in the criminal case and as such continuance of the departmental enquiry is illegal, arbitrary, malafide, unjustified and in violation of the principles of natural justice and laid down departmental rules. It is also contended

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that in case the enquiry is proceeded with, the applicant shall have to disclose his defence which will greatly prejudice him in the criminal trial. It is the contention of the applicant that in accordance with the provisions of Rule 12 of the Delhi Police(Punishment & Appeal) Rules,1980, a departmental enquiry can be ordered against him only after acquittal in the criminal case. The respondents in their reply have rebutted the above contentions.

3. We have given our careful consideration to the rival contentions of the parties.

4. It is well settled that there is no legal bar for simulatenous proceedings under the relevant service rules and for criminal offence in accordance with the law of the land. Further, it is also well-settled that the court would decide in the given circumstances of a particular case as to whether the disciplinary proceedings should be stayed pending criminal trial, but " 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". The judgements^{C.} of the Supreme Court in the case of (1) Delhi Cloth and General Mills Ltd.Vs.Kushal Bhan (AIR 1960 SC 806);(2) Tata Oil Mills Co.Ltd.Vs.Its Workmen C.

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(AIR 1965 SC 155); (3) Jang Bahadur Singh Vs. Baij Nath Tiwari (AIR 1969 SC 30); & (4) Kusheshwar Dubey Vs. M/s. Bharat Coking Coal Ltd. & Ors. (AIR 1988 SC 2118) are referred to in this connection. In view of the well-settled position of law in this respect, we do not consider it necessary to refer to other cases cited by the applicant in the OA.

5. From the material on record in the case before us, it is clear that in the departmental enquiry initiated against the applicant after service of summary of allegation to him, 4 prosecution witnesses were examined and thereafter the charge as already referred to was framed against him in accordance with the prescribed procedure in the Delhi Police (Punishment & Appeal) Rules, 1978. The applicant has cross examined these witnesses and the cross examination by the applicant would have been in the background of the defence which he might be thinking to take in the proceedings as also in the criminal case pending against him. He has already cross examined the complainant in the departmental enquiry who is also a complainant in the criminal trial. In these circumstances, it is not possible to hold that if the enquiry is allowed to be

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proceeded with further, the applicant would be put to any prejudice in the matter of defence in the criminal trial. The evidence adduced in the departmental enquiry is not admissible as such in the criminal case where the witnesses can be confronted with their statements made during the course of investigation of the criminal case but not with the statements made in the departmental enquiry.

6. In the light of the foregoing discussion, we are of the considered view that on the facts and in the circumstances of the case, we would not be justified in interfering with the progress of the enquiry. Accordingly, the OA is dismissed, leaving the parties to bear their own costs. Needless to state that the interim order passed on 10.9.92 automatically stands vacated. If the applicant is aggrieved by ^{the final} ~~any~~ order which may be passed in the departmental enquiry, he would be free to approach the Tribunal at the appropriate time in accordance with law, if so advised.

J. P. Sharma
(J.P.SHARMA)
MEMBER(J)

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