

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No. 2323/92

DATE OF DECISION : 26.11.92.

MAHAVIR SINGH AND ANOTHER

...APPLICANTS

VERSUS

DY. COMMISSIONER OF POLICE

..RESPONDENTS

SHRI SHANKAR RAJU

..COUNSEL FOR THE APPLICANT.

SHRI A.K. AGGARWAL

...COUNSEL FOR THE RESPONDENTS

CORAM:

HON'BLE JUSTICE SHRI RAM PAL SINGH, VICE CHAIRMAN (J)

HON'BLE SHRI I.P. GUPTA, ADMINISTRATIVE MEMBER.

J U D G E M E N T

(DELIVERED BY JUSTICE SHRI RAM PAL SINGH)

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1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporter or not?

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Applicant No.1 and 2, both are employed as constables in Delhi Police. While, they were posted in Crime Branch, they are alleged to have committed the offence punishable under Sections 341/387/506/34 of the Indian Penal Code under F.I.R. No.352/91 dated 4.10.1991 registered in Police Station Ashok Vihar, Delhi. Subsequently, they were placed under suspension. Both

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the applicants were removed from service when the disciplinary authority passed an order under the provisions of 311(2), proviso 2(b) of the Constitution of India. They challenged the said order before the Principal Bench in OA 2856 and 2864/91. From a Bench of this Tribunal, the said order of removal was quashed by judgement dated 10.4.1992 with a liberty to the disciplinary authority for proceeding with a regular departmental enquiry against the applicants under relevant rules. After being reinstated in service on 22.10.1991, they were again placed under suspension. The disciplinary authority by order dated 2.7.1992 ordered the regular departmental enquiry against the applicants with regard to misconduct allegedly committed by them hereinabove. The applicants have challenged this departmental enquiry in this OA filed under Section 19 of the Administrative Tribunals Act of 1985 with prayer for keeping in abeyance the departmental enquiry till the final disposal of criminal case under F.I.R. No. 352/91 under Section 341/387/506/34 of the Indian Penal Code pending in Tis Hazari Criminal Court against them.

2. On notice, the respondents appeared and filed their counter wherein they have opposed the prayer of the applicants and contended inter alia that proceedings should not be stayed. They also contended that if the departmental enquiry is not concluded immediately then it will have to be kept pending for several years till the disposal of the pending criminal trial against the applicants. They have also contended that no grounds exist for staying/keeping in abeyance the departmental enquiry. Applicants have not filed their rejoinder.

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3. Learned counsel for the applicant took us through the First Information Report filed against them. The learned counsel for the applicant Shri Shankar Raju has taken us through the F.I.R. filed against the applicants before the criminal court. He had also drawn our attention to the memorandum of charge-sheet filed against them on the basis of which the departmental enquiry is proceeding. This departmental enquiry is proceedings under Section 21 of the Delhi Police Act. We have perused Annexure A-5, in which it is mentioned that during the course of investigation of the criminal case registered against these applicants, they were found to be deeply involved in the commission of that crime. This document also contends that the involvement of these police personnel in such activities and followed with registration of a case despite being a policeman, shows that they are of desperate character which amounts to gross misconduct and malafide with dereliction of duty on their part during the discharge of official duty. We have also perused summary of the allegations which is in Annexure A-6. The last paragraph of this document contains the following statement:

"It is further alleged that the registration of the case against both of you being Policeman highly speak of your desperate Character and amounts to gross mis-conduct with the malafide intention and also dereliction on your part in the discharge of official duties which renders both of you liable for departmental action under Section 21 of the Delhi Police Act 1978 read with CCS Conduct Rule 1964."

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It is the registration of the criminal case against the applicant which has been made the basis of the departmental enquiry and it is called mis-conduct on the part of the applicants because they were involved in a criminal case. Furthermore, attached with this document is list of witnesses in which it is shown that Mukesh Khari, witness who will prove contents of the FIR. Similarly, Umesh PW-II, Jogender Singh PW III are the witnesses of the actual crime allegedly committed by the applicants. Rest of the six witnesses are police personnel, who registered the FIR and who shall make their statements with regard to the involvement of the applicants in the alleged crime. We have also perused the charge-sheet and it appears that these very witnesses are also cited as prosecution witnesses. The main contention of the counsel for the applicant is that if he cross-examines these witnesses first in the departmental enquiry and then subsequently in a criminal trial, then his line of defence will become open to the knowledge of these witnesses and he will be prejudiced subsequently in his criminal trial.

4. The law with regard to the subject in hand has been settled by the apex court in the case of Kusheshwar Dubey Vs. Bharat Cooking Coal Ltd. (AIR 1988 SC p.2118). Their Lordships have expressed their views in the following words:-

"The view expressed in 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

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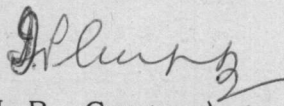
case there should or should not be such simultaneity of the proceedings would then receive judicial consideration and the Court will decide in the given opportunity of a particular case as to whether the disciplinary proceedings should be interdicted, pending criminal trial. As we have already stated 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."

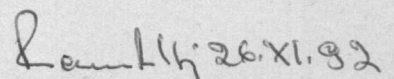
Their Lordships in view of the matter have held that it is neither possible nor advisable to evolve a hard and fast straight-jacket formula valid for all cases and for general application. Every case differs in fact and these principles have to be applied in the facts and circumstances of the case only. We are satisfied that if the departmental enquiry is permitted to proceed, the applicants shall be prejudiced in their defence which they are likely to take in the criminal trial pending against them. This case differs from those cases in which basis of the departmental enquiry are the mis-conduct committed by the delinquent during the discharge of their duties. The departmental enquiry in this case is a proceeding because an FIR has been registered against them and they are alleged to have committed the offences under the penal code. Hence, the facts and circumstances of this case are quite different from those cases where the misconduct of the delinquent is the basis of the departmental enquiry. In this case, the basis of the departmental enquiry is clearly the registration of a criminal case against the applicants. In such a situation this OA has to be allowed.

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5. We therefore, allow this OA and direct the respondents and their disciplinary authorities not to simultaneously proceed with the departmental enquiry initiated against the applicants vide Annexure 5 and Annexure 6 and keep it in abeyance until the final disposal of the criminal case pending in the criminal courts against the applicants. We make no orders regarding continuance or otherwise of the suspension of the applicants. Parties shall bear their own costs.


(I.P. Gupta)
Member (A)


(Ram Pal Singh)
Vice Chairman (J)