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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 2360/92

DECIDED ON : October 21, 1992

Inspector Prem Singh

... Applicant

-Vs.-

Additional Commissioner of
Police (Operation)

... Respondent

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THE HON'BLE MR. P. C. JAIN, MEMBER (A)

THE HON'BLE MR. J. P. SHARMA, MEMBER (J)

Shri Shankar Raju, Counsel for Applicant

Mrs. Avnish Ahlawat, Counsel for Respondents

JUDGMENT (CRAL)

Hon'ble Shri P. C. Jain, Member (A) —

The applicant who was an Inspector of Police in the Delhi Police was placed under suspension vide order dated 30.1.1991 (Annexure A-2). A departmental inquiry was ordered against him to be initiated/vide order dated 15.2.1991 passed by the Additional Commissioner of Police (Operations), Delhi (Annexure A-3). He was served with a summary of allegations and after examination of the prosecution evidence the charge was framed against him. After recording his findings the inquiry officer submitted his report a copy of which was given to the applicant and he was asked to make representation, if any. He did make a representation against the inquiry officer's report but before the orders could be passed by the disciplinary authority, he filed this O.A. under Section 19 of the Administrative Tribunals Act, 1985 and by an order passed on 15.9.1992 the respondents were directed,

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as an interim measure, not to pass any final order, if not already passed, on the inquiry report. Interim order has continued since then. The applicant has impugned the order dated 15.2.1991 by which the departmental inquiry was ordered against him as also the charge framed against him during the inquiry and memo dated 27.7.1992 (Annexure A-8) by which he was asked to make a representation on the findings arrived at by the inquiry officer. He has prayed for quashing the memo dated 28.1.1992 (Annexure A-6) as also for a direction to the respondents to keep the departmental inquiry in abeyance till the final disposal of the criminal case FIR No. 14/91 u/s 419/420/468/471 IPC pending trial in the court.

2. The respondents have contested the O.A. by filing a reply. The applicant has chosen not to file any rejoinder thereto. As the pleadings in this case were complete, it was decided with the consent of both parties to finally dispose of the case at the admission stage itself. Accordingly, we have perused the material on record and also heard the learned counsel for the parties.

3. The first contention of the learned counsel for the applicant is that as the applicant is an accused in the aforesaid criminal case under Sections 419/420/468/471 IPC, he would be prejudiced if an order is passed by the disciplinary authority in the departmental action initiated against him on the charge which is alleged ^{to be} virtually the same as in the criminal case. On the basis of material on record, it is not possible to uphold this contention. The summary of allegations served on the applicant is extracted below :-

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"It is alleged against Insp. Prem Singh, No.D-I/32 that on 31.12.90, while he was posted at PAP/IGIA Unit, he went to IGI Airport, Terminal-II New Delhi, in plain clothes, accompanied by two passengers known to him, for their clearance from Air-Lines and Immigrations Counters. The pax wanted to go by Lufthansa Flight No. LH-761 bound for Frank-Furt on the authority of forged passports bearing Nos. N 575784 dt. 11.6.82 issued at Jalandhar (Pb.) in the name of MANINDER SINGH S/o Sh. Balbir Singh and passport No. W-094714 dt. 20.11.84 issued at Jalandhar (Pb.) in the name of Gurtek SINGH S/o SOHAN SINGH. During the course of verification of the genuineness of the travel documents of the passengers at AFRRO's office, Insp. Prem Singh alongwith both the passengers slipped away from the Air-Lines counter leaving behind all the Travel documents.

On further enquiries and search, Insp. Prem Singh, No. D-I/32 was traced in the Departure Left Wing of IGIA. He was brought in the office of AFRRO and there, he admitted before Sh. Shyam Lal Singh, AFRRO that both the above passengers intending to go to Frankfurt were known to him and their travel documents were also forged. The Insp. inspite of being directed by the AFRRO to produce the said two passengers for establishing their identity and for taking legal action against them, failed to bring back the passengers even after 3/4 hours. This clearly shows that Insp. Prem Singh, No.D-I/32 first tried to get the above two passengers cleared on the authority of forged Travel documents and subsequently deliberately avoided their arrest.

The above act on the part of Insp. Prem Singh, No. D-I/32 amounts to grave misconduct of a very serious nature, which is unbecoming of a police officer, and renders him liable to be dealt with departmentally u/s 21 of Delhi-Police Act, 1978."

It is clear from a perusal of the above that the allegation against the applicant was for first to get two passengers cleared on the authority of forged travel documents and subsequently deliberately avoiding their arrest. The charge framed during the inquiry as at page 24 of the paperbook is also exactly the same. These allegations cannot be deemed to be part of the charges in the offences under
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which the criminal case has been filed. We have, therefore, no hesitation in holding that the charges of misconduct in the departmental inquiry against the applicant are neither the same nor similar as the issue in the criminal case. Secondly, admittedly, a challan has been filed in the aforesaid criminal case and in which the applicant is not one of the accused. Learned counsel for the respondents submitted that the applicant was neither arrested in the criminal case nor has he been summoned by the court till date in that case. However, learned counsel for the applicant submitted that the name of the applicant has been shown in column two of the challan form and as such he can be called by the court during the course of the criminal trial and that there is a possibility of his being so called. Apart from the fact that the contention is somewhat hypothetical, it needs to be stated that even if the applicant were to be an accused and actually facing a criminal trial, as per the proposition of law consistently reiterated by the Supreme Court, he has no right to claim that legally during the pendency of a criminal trial he cannot be proceeded with departmentally. This position was reiterated by the Supreme Court in the cases of — (1) Delhi Cloth and General Mills Ltd. Vs. Kushal Bhan (AIR 1960 SC 806); (2) Tata Oil Mills Co. Ltd. Vs. Its Workmen (AIR 1965 SC 155); (3) Jang Bahadur Singh Vs. Baij Nath Tiwari (AIR 1969 SC 30); and (4) Kusheshwar Dubey Vs. M/s Bharat Coking Coal Ltd. & Ors. (AIR 1988 SC 2118). This issue was examined by a Bench of this Tribunal to which one of us (Hon'ble Shri P. C. Jain) was a party in O.A. No. 60/92 between Ranbir Singh vs. Delhi Administration, Delhi decided on 14.8.1992 and after also

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examining a number of decisions of the Tribunal as mentioned therein, the Bench came to the following conclusion :-

"14. From a perusal of the judgments cited on both sides as discussed above, it is clear that there cannot be any dispute about the settled legal position that there is no 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. Further, neither during the pendency of a case on a criminal charge nor after disposal of such a case, there is any legal bar to holding of disciplinary proceedings. Again, it cannot be said that principles of natural justice require that an employer must wait for the decision in the case before the court before taking disciplinary action against an employee. Having said this, it also needs to be stated that, as held by the Supreme Court in the case of Kusheshwar Dubey (supra), no hard and fast or rigid formula has been laid down for determining the cases in which it would invariably be desirable to stay the disciplinary proceedings pending disposal of the criminal case; it is on the facts and in the circumstances of each case a view has to be taken as to whether in any particular case it would be judicially desirable to stay departmental proceedings pending the disposal of a criminal case. In some of the judgments discussed above, even in the cases where the departmental proceedings and the criminal case were on the same charge or where the charges disciplinary proceedings overlapped, it was not considered desirable to stay the disciplinary proceedings...."

In the case before us even the question of the applicant being prejudiced in his defence in the criminal case in the event of disciplinary proceedings being continued against him, does not at all arise. We say so for two reasons. Firstly, the applicant is not an accused in the criminal case and he is not one of those who are facing criminal trial in that case. The question of his defence in the criminal trial thus being exposed does not arise. Secondly, the disciplinary proceedings against him have reached a stage where the inquiry officer has submitted his report to the disciplinary authority. The applicant participated in the disciplinary inquiry, he

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cross examined the prosecution witnesses obviously on the lines of the defence which he wanted to take, he has been given a copy of the inquiry officer's report, and he has also produced his defence in the departmental inquiry.

4. In the light of the foregoing discussion, we are of the considered view that the O.A. is devoid of merit and is accordingly dismissed leaving the parties to bear their own costs. Needless to state that the interim order passed on 15.9.1992 automatically stands vacated. It is also not necessary to state that if the applicant is aggrieved by the final order which may be passed against him in the disciplinary proceedings, he will be free to approach the Tribunal in accordance with law, if so advised.

J. P. Sharma
(J. P. Sharma)
Member (J)

P. C. Jain
(P. C. Jain)
Member (A)

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