

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2392/92
T.A. No.

199

30.7.93

DATE OF DECISION

| | |
|--------------------------|---------------------------------------|
| Shri Bir Singh | Petitioner |
| Shri K.L.Bhandula | Advocate for the Petitioner(s) |
| Versus | |
| Union of India | Respondent |
| Ravinder Dayal | Advocate for the Respondent(s) |

CORAM

The Hon'ble Mr. J.P.Sharma, Member (J)

The Hon'ble Mr. N.K.Verma, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

JUDGEMENT

(Hon'ble Shri N.K.Verma, Member (A)

Shri Bir Singh the applicant posted as Head Constable P.S.Karol Bagh, New Delhi has been served with a charge sheet dated 11-12-91 for alleged unauthorised/wilfull absence from Karol Bagh Police Station during the period 19-9-91 to 28-9-91 without any information to the competent authority. During this period of his unauthorised absence FIR No,460/91 dated 19-9-91 u/s 307/34 IPC was registered against him at the P.S. R.K.Puram alleging that he had stabbed one Shri Kirpal Singh son of Shri Mad Singh resident of village Katwaria Sarai on 19-9-91. The applicant managed to get anticipatory bail on 24-9-91. However, in the meantime he ~~had been~~ placed under suspension on 25-9-91 under the orders of the Deputy Commissioner of Police, Central District, Delhi. The applicant has assailed the impugned orders of his departmental enquiry and the suspension on the ground that this is going to affect the criminal case against him in the court of law and has prayed

for restraining the respondents from proceeding with the departmental enquiry and for quashing the suspension orders.

He has also prayed for interim relief of staying of the departmental enquiry on the part of the respondents.

2. The interim relief sought by the applicant was granted by this Tribunal vide its orders dated 29-10-92 which have been continuing ever since. The main ground of the applicant for the stay of the departmental proceeding is that the charges in the court of law and the departmental proceedings are the same and the witnesses are also identical in both the cases. He has submitted that in view of the several judgements of the High Courts, Supreme Court and this Tribunal the disciplinary proceedings may be stayed during the pendency of the criminal proceedings and he should be saved from multiple proceedings from the same set of offences.

3. The respondents in their counter have, however, denied that the proceedings in the departmental enquiry are on the same set of offences as that of the criminal case. The departmental enquiry is based on the charge of ~~enquiries~~ ^{Unauthorised} wilful absence of the applicant without any information to the competent authority for the period from 19-9-91 to 28-9-91. His absence was noted in the P.S. Karol Bagh vide DD No. 75-B dated 19-9-91 and he reported back to duty on 29-9-91 which was also registered vide DD No. 44-B dated 29-9-91 at the same police station. During the period of this unauthorised absence he has reportedly stabbed one Shri Kirpal Singh as a result of which FIR was registered at the P.S.R.K.Puram on 19-9-91 u/s 307/34 IPC. He did not intimate the facts of his having been taken to custody by the police on that day as also the fact that he had obtained anticipatory bail on 24-9-91 from the Hon'ble Court of Assistant Sessions Judge, Patiala House, New Delhi. Therefore, the applicant was charged with gross mis-conduct and remissness which is considered highly reprehensible for a member of the disciplined force making him liable for departmental action u/s 21 of the Delhi Police Act, 1978.

4. We have heard the learned counsel for both the sides very carefully. There was no denial of the fact that the applicant had absented himself without informing the competent authority during the period alleged in the departmental arrest and proceedings. The fact of his obtaining anticipatory bail was at no time brought to the notice of the competent authority by the applicant himself. The charges framed against him are not for criminal offence of stabbing one Shri Kirpal Singh but for the unauthorised and wilful absence and non-reporting of his arrest by the R.K.Puram Police and subsequent anticipatory bail obtained by him. He, therefore, tried to suppress the material information regarding his conduct which was in gross violation of the Conduct Rules under the Delhi Police Act.

5. The learned counsel for the applicant has strenuously tried to establish that the criminal offence being tried in the court of law will be seriously jeopardised if the departmental proceedings are held during the pendency of the criminal case and the delinquent official is punished on account of such a proceeding. Several judgements of Hon'ble Supreme Court, High Courts and this Tribunal have been cited. The last judgement of this Tribunal under D.A. No.2354/90 dated 16-11-90 has also been referred to ⁱⁿ ~~under~~ which the Hon'ble Supreme Court decision in the case of Kusheshwar Dubey Vs. Bharat Cooking Coal Ltd. (AIR 1988 SC p.2118) was ~~relied upon to~~ support the argument that the disciplinary proceedings must be stayed for proper processing of the criminal case. Their Lordships of the Supreme Court had expressed their views in that case 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 case there should or should not be such simultaneity of the proceedings would then receive judicial consideration and the Court will decide in the

28

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 that matter had held that it is neither possible nor advisable to evolve a hard and fast straight jacket formula valid for all cases and of general application. Every case differs in fact and these principles have to be applied in the facts and circumstances of the case only. We have tried to go into the details of the departmental enquiry and have found that only three witnesses have been cited in the list of witnesses and Memo of evidence which will only be about ^{evidence} factual occurrence of the incident of 19-9-91. The SHO of Karol Bagh is ~~only~~ to give evidence about the applicant's being absent without permission and information on 19-9-91 and his reporting back to duty on 29-9-91 as per the records of the police station. This SHO had no information about the arrest of the delinquent in the FIR No.75-B dated 19-9-91. (2) ~~of Two~~ Sub Inspectors of P.S.R.K.Puram would prove the contents of FIR No.460/91 dated 19-9-91 and the arrest of Head Constable Bir Singh (Applicant). The third witness Kirpal Singh is the victim of the stabbing who will only prove the alleged assault on him. While the third witness is a prime witness for the criminal prosecution, he is not a prime witness in the department proceedings as the act of stabbing has not been ^{included} ~~impugned~~ in the charge sheet as the alleged act of mis-conduct. The mis-conduct for which he has been charged in the departmental enquiry is the unauthorised absence without permission from his duty as a Head Constable at the P.S. Karol Bagh. We do not feel that the progressing of the departmental enquiry on these charges is going to jeopardise his criminal prosecution in the court of law. We will, however, like to

give ~~the~~ directions to the respondents not to use the positions
made in the departmental enquiry to the disadvantage of the
applicant in the criminal prosecution. We, therefore, feel
that with this stipulation there will be ^{no} disadvantage
accruing to the applicant in case the departmental enquiry
proceeds during the pendency of the criminal case. We,
therefore, order accordingly and dismiss this application.

There would be no orders as to costs.

N.K.Verma
(N.K.VERMA) 30.7.93
Member (A)

J.P.Sharma
(J.P.SHARMA) 30.7.93
Member (J)