

8

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI.

OA No. 2513/92

Date of decision: - December 3, 1992

Sh. Raj Singh & ors. ... Applicants

versus

Commissioner of Police,  
New Delhi & ors. ... Respondents

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

For the Applicant .. Sh.V.P.Singh, counsel.

For the respondents .. Sh.Pawan Bahl, counsel.

JUDGEMENT

(DELIVERED BY HON'BLE SH.P.C.JAIN, MEMBER(A)

All the three applicants in this OA e.g.

(i) Sh.Raj Singh, Head Constable, (ii) Sh.Naresh Kumar, Constable and (iii) Sh.Rajinder Prasad, Constable, all of Delhi Police, have assailed the departmental proceedings initiated against them in pursuance of the order dated 13.7.92 (Annexure C) and the rejection of their request for keeping the same in abeyance till the decision of the criminal case filed against them. They have prayed for that the aforesaid impugned order dated 13.7.92 as also the summary of allegations dated 22.8.92 served on them in pursuance of the above order be set aside and proceedings in the departmental enquiry be ordered to be stayed. As an interim measure, they have prayed that the respondents be restrained from conducting the inquiry further till the criminal case FIR 443/92

U/S 365/384/34 IPC, P.S. Kotwali District North,

Delhi pending against the applicants is decided.

2. The respondents have contested the OA by filing their counter-reply to which a rejoinder has also been filed by the applicants. The applicants have also filed MP No. 3287/92 praying for restoration of ad-interim ex parte stay order passed on 30.9.92 by which the respondents were directed not to proceed further with the enquiry proceedings and which was vacated by order dated 13.10.92. The respondents have also opposed the prayer in this <sup>a</sup> Misc. Petition by filing/separate reply.

3. As the pleadings in this case were complete, it was decided with the consent of the 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 at length.

4. As a background to this case, it may be stated that all the three applicants while posted at P.S. Lahori Gate on 28.5.92 are stated to have been found moving around in the area of Sub Division Kotwali in plain clothes in a private blue Maruti Van No. DHN-1667 with three members of the public. They spotted the complainant Sukh Pal in conversation with two others in front of the presentation convent school and took all the three into the van on Ce.

10

the pretext that they were gambling. Thereafter, they moved towards G.P.O., Kashmere Gate. On the way they are said to have been told Sukh Pal that he would be put in the lock up unless he paid them whatever money he had on which Sukh Pal gave them Rs.1100/-. Thereafter, they stopped the van on the road leading towards cremation ground and pushed them out of the van and sped away. Sukh Pal is stated to have noted the registration number of the van and the matter was reported to the Police. In this connection F.T.R.No.443 dated 28.5.92 u/s 365/384/34 IPC P.S.Kotwali, Delhi was registered against them. They were subsequently arrested. They were also placed under suspension vide order dated 9.6.92(Annexure B). The challan in the criminal case is said to have been filed in the court and it is against 5 persons including all the three applicants. The departmental proceedings have been ordered against all the three applicants vide order dated 13.7.92 passed by the Deputy Commissioner of Police, North District, New Delhi pursuant to which the summary of allegations dated 22.8.92 was served on them by the Inquiry Officer. Two prosecution witnesses have also since been examined reserving the rights of the applicants to cross examine when their defence assistant was available. The request of the applicants for keeping the departmental enquiry in abeyance till disposal of the court case was rejected vide communication dated 29.9.92(Annexure R-1).

5. The first contention of the applicants is that the act of the respondents in initiating departmental proceedings against them is in violation  
*Cle.*

of Rules 11 & 12 of the Delhi Police(Punishment & Appeal) Rules,1980. Rule 11 deals with action by the department on conviction of a member of the Police force in a criminal case. Rule 12 deals with action on acquittal. In this case, there has been neither conviction nor acquittal of the applicants so far and as such the provisions of these rules are not relevant.

6. The second contention of the applicant is that pending trial of the applicants in the criminal case,departmental proceedings cannot be initiated against them. This contention is not legally tenable (Delhi Cloth and General Mills Ltd. Kushal Bhan(AIR 1960 SC 806);Tata Oil Mills Co.Ltd.vs. Workmen(AIR 1965 SC 155); Jang Bahadur Singh Vs.Baij Nath Tiwari( AIR 1969 SC 30); and Kusheshwar Dubey Vs.M/s.Bharat Coking Coal Ltd. and Ors.(AIR 1988 SC 2118). Their lordship of the Supreme Court in the case of Kusheshwar Dubey (supra) 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 without regard to the particularities of the individual situation. " In respect of cases/ situations where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case, the court will decide in the given circumstances of a particular case as to whether the disciplinary proceedings should be interdicted,pending criminal trial. The applicants have contended that the witnesses in the criminal case as well the departmental enquiry are the same. However, this contention is not substantiated

C.

12

after going through the list of the witnesses cited by the prosecution in the criminal case and the list of the witnesses cited by the department in the departmental proceedings. In the criminal case, 9 witnesses are cited. In the departmental proceedings 8 witnesses are cited. Only 4 of the witnesses cited in the criminal case are also cited in the disciplinary proceedings. Further, a perusal of the summary of the allegations served on the applicants in the departmental enquiry shows that the allegations against the applicants in the departmental enquiry and those in the criminal case are neither identical nor the same, inasmuch as in the departmental enquiry the applicants are also alleged to have committed the offences under Section 365/384/34 IPC in the jurisdiction of Police Station Kotwali while they were sent to the area of P.S.Lahori Gate/P.P.Church Mission Road for patrolling duty. In the High Court of Karnataka in the case of Kalyani Vs. Superintending Engineer (1989) 1 LLJ 245) held as below:-

" There is no bar for holding disciplinary proceedings during the pendency of a criminal trial though the basis or subject matter of the charge in both the proceedings is one and the same. The Full Bench in T.V.Gauda v.State of Mysore has held that there is no bar for holding disciplinary proceedings even after acquittal on a charge by the criminal court. This view has been confirmed by Supreme Court in Corporation of City of Nagpur v.R.G.Modak."

Ce.

" The Supreme Court has clearly held in Delhi Cloth Mills case that the principles of natural justice do not require that an employer must atleast wait for the decision of the criminal trial court. Having stated that, the Supreme Court has observed that in case of a grave nature it is advisable for the employer to wait the decision of the trial court so that the defence of the employee in the criminal case may not be prejudiced. It would be difficult to hold that when departmental enquiry is not barred even after acquittal, the same is barred before acquittal. Therefore, all that can be said is that it is ~~for~~ for the disciplinary authority to decide as to whether in a given case it should keep the domestic enquiry pending till the outcome of the criminal trial or not."

It cannot be said that the criminal case against the applicants is of grave nature or involves complex or complicated facts.

7. In the case of B.Rajamony Vs.Senior Administrative Officer, Vikram Sarbhai (1989 (3) SLJ(CAT) 642) decided by the Madras Bench Bench of the C.A.T., it was held as under:-

" It is trite that departmental proceedings and criminal proceedings, though based on the same incident, are in distinct and different realms. In the departmental proceedings, the question that arises is whether there has been misconduct on the part of the employee, and a finding is arrived at after holding an enquiry wherein strict rules of evidence to be observed by the criminal court and the standard of proof to sustain the charge before the criminal court, are not applicable."

14

It is also well known that the element of mensrea in a criminal case is not involved in the disciplinary enquiry. Similarly, in the case of Jitendra Nath Srivastava Vs. Union of India and Ors. (S.L.J. 1990 (3) (CAT) 463, decided by the Allahabad Bench of the C.A.T. it was held that "there is no bar for holding disciplinary proceedings during the pendency of the criminal trial, though the basis of the criminal case and subject matter of the charge in both the proceedings is one and the same." We have already stated above that in the case before us, neither the allegations in the two proceedings are identical nor the same nor all the witnesses are the same.

7. Another ground taken by the applicants is that in case the departmental enquiry is allowed to continue, the defence to be taken by them in the criminal case would be exposed whereby there would be prejudice. It is further stated that the Judicial Officer presiding over the criminal case is more adept in the appreciation and assessment of evidence in an objective manner and his decision based upon such evidence is always reasonable, just and in accordance with the principles of natural justice as compared to the decision to be taken by the Enquiry Officer who does not possess these advantages and plays the role of a prosecutor, administrator and semi-judicial authority. It is also stated that the complications would arise in case the same evidence is believed by one and disbelieved by another and particularly when contradictory verdicts are delivered by them and in that eventuality the contradictory verdicts

15

would be violative of the principles of natural justice. We have already <sup>stated</sup> above that the principles of natural justice do not come into play in a situation where the disciplinary proceedings are simultaneously taken during the pendency of the criminal case. We have also stated above that the standards of proof required in such proceedings are to be in two different forums. The departmental action is initiated to enable the employee to explain his position with regard to the alleged misconduct while prosecution for the alleged criminal offence is initiated under the law of the land. A decision in the disciplinary proceedings is not binding on the court for deciding a criminal case. The admissibility and relevance of evidence in a criminal case are also determined by specifically laid down provisions of law of evidence. In the disciplinary proceedings, a delinquent employee is required to be given reasonable opportunity of defending himself. If there is any contradiction in the evidence of a person who is a witness in both the proceedings, the applicants are free under law to take advantage of the same during their ~~their~~ trial in the criminal offence. However, it would be in the interest of justice, on the facts and in the circumstances of the case, if the respondents are directed not to use the defence taken by the applicants in the departmental proceedings to their detriment in the trial of the criminal case.

8. In the light of the foregoing discussion, the reliefs prayed for by the applicants in this

OA, cannot be granted to them. Accordingly, the respondents would be free to proceed with the departmental enquiry initiated against them in accordance with the prescribed procedure but they shall not use the defence taken by the applicants in the disciplinary proceedings against them in the criminal trial. The OA is disposed of accordingly, leaving the parties to bear their own costs.

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

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

SNS