

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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O.A. NO.3284/92

Date of Decision : 04.03.93

Constable Paramjeet Singh ...Applicant

Vs.

Commissioner of Police & Ors. ...Respondents

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Hon'ble Shri J.P. Sharma, Member (J)

Hon'ble Shri S.R. Adige, Member (A)

For the Applicant

...Shri Shankar Raju, counsel

For the Respondents

...Ms. Maninder Kaur, counsel

JUDGEMENT

(Delivered by Hon'ble Shri J.P. Sharma, Member (J))

The applicant is working as Constable in Delhi Police and is under suspension from the date of his arrest on 20.8.1992 on account of his involvement in a case under Section 392/34 IPC registered as FIR No. 258/92 dt. 20/21-8-1992 at P.S. Lodhi Colony, New Delhi.

The applicant was arrested and was bailed out on 27.10.1992.

A disciplinary enquiry was ordered to be conducted against the applicant by the order dt. 2.12.1992 for his gross misconduct/criminal bent of mind, mala fide intention, criminal activities, concealing of the facts and dereliction of duties on his part in the discharge of his official duty as a policeman. A summary of allegations has been served on the applicant which is as follows :-

"On 20.8.1992 at about 10.45 PM, Const. Premjeet Singh No. 570/Comn. alongwith one Bedi Kazana s/o Shri Jai Singh r/o 2193, Lodhi Road Complex, employed with Cabinet Secretariat (RAW) as Record Attendant at

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RAW Building, C.G.O. Complex Lodhi Road while posted at RR Station, North Bldg., Delhi assaulted and robbed S/Shri Mohd. Azhar s/o Shri Mohd Hussain r/o B-474, Rajiv Gandhi Camp, Lodhi Colony, New Delhi and his neighbour Mohd. Hussain, workers of a ready made garments at village Mohd. pur while they were on their way to their residence after finishing their work in their factory near gate No. 5 of CGO Complex, Lodhi Road, New Delhi and took 5 pieces of lady Chiffen with cash Rs. 2000/- from them and vanished from the place of occurrence on bullet motor cycle No. DHN-2080. In this connection, a case FIR No. 258/92 dt. 20/11-8-92 u/s 392/34 IPC was registered at P.S. Lodhi Colony, New Delhi.

2. The above act of Const. Pramjeet Singh No. 570/Comm amounts to gross misconduct, criminal bent of mind, malafide intentions, criminal activities, concealing of facts and dereliction of duty on his part in the discharge of his official duty being an enrolled police officer. He is liable to be dealt u/s 21 of Delhi Police Act, 1978."

Along with the summary of allegations, list of documents to be relied upon along with the list of witnesses to be examined in the departmental enquiry has also been furnished.

2. In this application, the applicant has assailed the order dt. 2.12.1992 for instituting departmental proceedings against the applicant under Section 21 of the Delhi Police Act, 1978. The applicant has also assailed the summary of allegations issued by the Enquiry Officer dt. 8.12.1992.

3. The applicant has prayed for the following reliefs :-

- (i) To direct the respondent to keep the departmental enquiry initiated vide Annexure A-3 and A-4 in abeyance till the final disposal of the Criminal Case FIR No. 258/92 u/section 392/34 IPC P.S. Lodhi Colony pending in the court of Shri Sukhdev Singh M.M. Patiala House, New Delhi.
- (ii) Any other relief as deemed just and proper be also passed in favour of the applicant.

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4. The applicant has also prayed for an interim order that pending final decision on the application, the respondents be directed not to proceed with the departmental enquiry against the applicant.

5. Since the pleadings of the case are complete and the learned counsel for the applicant stated that he is not going to file the rejoinder to the reply filed by the respondents, so with the consent of both the counsel of the parties, the matter has been taken for final disposal at the admission stage itself. This is also in view of the fact that the applicant has also prayed for the stay of the departmental proceedings against him which are in progress.

6. We have heard the learned counsel for both the parties at length and perused the record. The contention of the learned counsel for the applicant is that the allegations against the applicant in the criminal case are of robbery as detailed in FIR No. 258/92 dt. 20/21.8.1992 registered at P.S. Lodhi Colony, New Delhi. In the said FIR, the applicant has been accused of robbing Mohd. Azhar and Mohd. Hussain at about 10.40 p.m. on 20.8.1992, while both of them were on their way to their residence after finishing the work in the factory of ready made garments at Mohammedpur village. The applicant is said to be along with one Bedi Kazana. As a consequence of this FIR, the

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applicant was arrested and sent to judicial lock up. The contention of the learned counsel for the applicant is that in the FIR aforesaid, registered under Section 392/34 IPC, the allegations against the applicant as an accused are the same as are in the summary of allegations dt.8.12.1992 served upon him by the Enquiry Officer and as such, the departmental enquiry should be stayed in view of a number of authorities* referred to in the application itself. The learned counsel for the applicant has also referred to the order dt.27.7.1989 (Annexure A7) where the Deputy Commissioner of Police Headquarter has issued a memo on the subject that where a criminal case against an individual is still pending trial in the court, no departmental enquiry is ~~is~~ contemplated at this stage on the same charge. On the other hand, the learned counsel for the respondents argued that the departmental enquiry is proceeding against the applicant also on other misconduct committed by the applicant that the applicant even after his arrest did not intimate the department about his involvement in the criminal case regarding his absence from duty. It is also argued that the departmental enquiry and the criminal case are totally on different footings. The departmental enquiry is for misconduct, criminal bent of mind, mala fide intention, concealing of facts and dereliction of duties whereas the criminal case

- (a) R.Rajamanar Vs. UOI, 1992 (1) ATJ CAT 595
- (b) Kushe shwar Dubey Vs. Bharat Co.Ltd., 1989 (2) ATLT SC463
- (c) Jai Parkash Vs. UOI, 1991(1) SLJ CAT 362
- (d) O.A. No.1435/89-Kashmir Lal Vs. Commissioner of Police, decided on 16.1.1992.
- (e) O.A..No.593/90 in RE: Jagtar Kaur Vs. Commissioner of Police, decided on 22.8.1990.

under trial in the court was registered for robbing the factory workers. Thus it is argued that the allegations in the departmental enquiry and the acquisitions in the criminal case are not identical one. In the departmental enquiry, other evidence also is to be tended by the administration.

7. The law is well settled on this question. There is no bar for holding disciplinary proceedings on misconduct merely because in respect of the same conduct, the person concerned is also being prosecuted in a criminal court. It will not come in the way of the authorities conducting disciplinary proceedings in respect of the misconduct by the delinquent official. The law with regard to the subject in hand has been settled by the Apex Court in the case of Kushehwar Dubey Vs. Bharat Coaking Coal Ltd. (AIR 1988 SC 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 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 guidelines."

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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 for all cases and for general application. Every case differs in facts and these principles have to be applied in the facts and circumstances of the case only. The same principle of law has been laid down by the Hon'ble Supreme Court in the case of Delhi Cloth and General Mills Ltd. Vs. Kushal Bhan (AIR 1960 SC 806).

8. Coming to the case in hand besides robbing the factory workers in the summary of allegations, it is expressly mentioned that there is criminal bent of mind of the applicant with mala fide intentions, criminal activities, concealing of facts and dereliction of duties on his part on discharge of his duties being as an enrolled police officer. This summary of allegations do go to show that the department wants to proceed against the applicant on the above misconduct. The contention of the learned counsel for the applicant ^{is} that he has been falsely implicated in the robbery case and the misconduct alleged against him is consequent to the involvement in the robbery case which has to be tried by the criminal court. Firstly, no challan has yet been submitted in the criminal case and it is not known whether the witnesses examined in those cases would be the same. The departmental enquiry has been initiated for which the department has a right to discipline the police force. In fact the summary of allegations against the applicant do go to show that the applicant should be

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tried departmentally for the misconduct as he has utterly failed to inform the department regarding his detention on the basis of a criminal case in judicial lock-up and subsequent release on bail. A police officer is expected to be fair and the main duty assigned to the police force is to maintain law and order as well as to give security to general public. If any police officer is said to have committed any misconduct and is oblivious of discharge of his duties and as such, commits dereliction of duties, then the respondents have a right to proceed against him rather than await the result of the criminal case. The learned counsel for the applicant, of course, has relied on a number of authorities, but all those authorities are based on different set of facts. In view of the authority of the Hon'ble Supreme Court in the case of Kusheshwar Dubey, the respondents cannot be at fault in proceeding against the applicant in the departmental proceedings. We are also of the view that the stay of the departmental proceedings will harm the discipline of the police force.

9. The next contention of the learned counsel for the applicant is that if he opens his defence, then he will be prejudiced in the criminal trial. For this a safeguard can be made with an observation that any defence given by the applicant in the departmental proceedings shall not be considered in the criminal court to his prejudice.

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10. In view of the above facts and circumstances and the explicit position of law, we do not find that a case for interference is there with the impugned order of proceeding against the applicant departmentally. The present application is, therefore, totally devoid of merit and is dismissed as such leaving the parties to bear their own costs.

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H. J. D. G.
(S.R. ADIGE)
MEMBER (A)

J. P. Sharma,
4.3.93
(J.P. SHARMA)
MEMBER (J)