

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

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Regn.No. OA-390/92

Date of decision: 18.12.1992

Shri Rajbir Singh

.... Applicant

Versus

Commissioner of Police, Respondents
Delhi and Others.

For the Applicant Shri Shyam Babu, Advocate

For the Respondents Shri C.N. Trishal, Advocate

CORAM:

The Hon'ble Mr. P.K. Kartha, Vice Chairman(J)

The Hon'ble Mr. B.N. Dhoundiyal, Administrative Member

1. To be referred to the Reporters or not? *Y*

JUDGMENT

(of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice Chairman(J))

The grievance of the applicant in this case is two-fold: One, he is being placed under suspension by the impugned order dated 18.3.1991, and the other, by the initiation of departmental enquiry by the impugned order dated 19.6.1991 during the pendency of a criminal case against him. *b*

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2. On 14.2.1992, when the application was admitted, the Tribunal passed an interim order directing the respondents not to proceed with the departmental enquiry initiated against the applicant. The interim order has been continued till the case was finally heard on 4.12.92 and orders reserved thereon.

3. We have gone through the records of the case carefully and have heard the learned counsel for both the parties. The applicant was appointed as a Constable in the Delhi Police in 1962 and thereafter, was promoted as Sub-Inspector. While working at Police Station Vasant Vihar, he was arrested in case FIR No.83/91 dated 17.3.1991 under Sections 143/148/323/427/452/149 I.P.C., P.S. Okhla Industrial Area, Phase I, South District, New Delhi, and was placed under suspension by the impugned order dated 18.3.1991. On 19.6.1991, during the pendency of the criminal case, the respondents ordered a departmental enquiry against him. The allegation against him is that while posted to Police Station Vasant Vihar, he was directed by S.H.O., Vasant Vihar on 17.3.1991 to produce case files pending investigation with him. He did not do so. He left the Police Station without any information or permission from senior officers and an entry to this effect was made by S.H.O., Vasant Vihar in the Daily Diary of P.S. Vasant Vihar on 17.3.1991. The applicant,

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along with 15/16 other persons, went to Flat No. J-11 Block, Gupta Colony, Sangam Vihar, New Delhi, in a Maruti Van, attacked one, Raja Ram and his wife with lathis and dandas, caused injuries on their persons, ^{break} locked them in a room, beat the wife of one, Ram Raj and threw away the household goods from the room. It was further alleged that the applicant had threatened Ram Raj, son of Faquiy, one of the tenants to vacate the room occupied by him for the last 5-6 years. Accordingly, the Case FIR No. 83 dated 17.3.1991, was registered at Police Station, Okhla and the applicant was also arrested in this case.

4. The applicant has contended that the criminal case as well as the departmental enquiry initiated against him are grounded upon the same set of facts. In the ground to the application, he has stated that the witnesses in the criminal case as well as in the departmental enquiry are the same and in case, the departmental enquiry is continued, it would cause a serious prejudice to his defence sought to be taken in the criminal case. The respondents have not controverted this in the counter-affidavit filed by them. According to the respondents, there is no bar to initiate departmental enquiry during the pendency of the criminal prosecution. The ingredients of the delinquency/misconduct in criminal prosecution and departmental proceedings as well

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as the quantum of proof required in both the cases are not identical.

5. The learned counsel for the respondents relied upon the judgement of this Tribunal dated 10.11.1992 in CA-2080/92 (Shri Ramesh Kumar Vs. Delhi Administration and Others), while the learned counsel for the applicant relied upon the judgement of this Tribunal dated 12.12.90 (Hawa Singh Vs. Commissioner of Police) ² in CA-1910/90 in support of their respective contentions.

6. In Kusheshwar Dubey Vs. Bharat Coking Coal Ltd., A.I.R. 1988 SC 2118, the Supreme Court has held that while there can be no legal bar for simultaneous proceedings being taken, yet there may be cases where it would be appropriate to defer the disciplinary proceedings awaiting disposal of the criminal case. Whether, in the facts and circumstances of a particular case there should or should not be simultaneity of the proceedings, would depend upon the given circumstances of a particular case. In that case, the criminal action and the disciplinary proceedings were grounded upon the same set of facts. Therefore, the Supreme Court held that the disciplinary proceedings should have been stayed.

7. We respectfully follow the aforesaid view. In the instant case also, the criminal prosecution as well as the departmental enquiry are grounded upon the same set of

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facts and consequently, this is a fit case in which a direction should be issued to the respondents not to proceed with the departmental enquiry during the pendency of the criminal prosecution.

8. At the same time, we are of the opinion that there is no justification for setting aside and quashing the impugned order of suspension dated 18.3.1991 which has been issued in view of the pendency of the criminal case against the applicant. Rule 7 (viii) of the Delhi Police (Punishment and Appeal) Rules, 1980, provides that suspension pending enquiry into conduct, will not amount to a penalty.

9. In the light of the above, the application is partly allowed. We see no legal infirmity in the impugned order of suspension dated 18.3.1991. However, we set aside and quash the impugned order dated 19.6.1991, whereby the respondents have initiated a departmental enquiry against the applicant. The interim order passed on 14.2.1992 is hereby made absolute.

10. We make it clear that after the criminal court delivers its judgement, it will be open to the respondents to consider the matter afresh in the light of the outcome of the criminal case. There will be no order as to costs.

R. N. Dholiyal
(R.N. Dholiyal) 18/12/92
Administrative Member

arrest
18/12/92
(P.K. Kartha)
Vice-Chairman (Judl.)