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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

O.A.479/92

Date of decision: 24.12.92.

Sh.Chand Singh

.. Applicant.

Versus

C.P.DELHI ETC.

.. Respondents

Sh.A.S.Grewal

.. Counsel for the applicant.

Sh.D.B.Gobardhan

.. Counsel for the respondents.

CORAM:

The Hon'ble Sh.Justice Ram Pal Singh, Vice Chairman(J).

The Hon'ble Sh.I.K. Rasgotra, Member (A)

J U D G E M E N T

(Delivered by Hon'ble Sh.Justice Ram Pal Singh, V.C.(J) ).

The applicant in this O.A. filed under Section 19 of the Administrative Tribunals Act of 1985, has prayed for the relief that the proceedings in the departmental enquiry which have been initiated by order dated 24.1.92 against the applicant should be quashed as they are parallel and simultaneous to the criminal prosecution. The applicant is a Police Constable who was under F.I.R. No.55 dated 7.3.86 was arrested for having committed an offence punishable under Section 147, 148, 149, 307, 302 Indian Penal Code in Police Station Sultan Puri, Delhi. Subsequently he was suspended and a criminal prosecution has been pending against the applicant in the Court of Additional ~~And~~ District and Sessions Judge, Delhi. Respondents, by order dated 24.1.92 initiated a departmental enquiry against the applicant and the applicant contends that the simultaneous departmental enquiry cannot be initiated by virtue of the provisions contained in Rule 12 of the Delhi Police (Punishment and Appeal Rules of 1980). The applicant filed a representation for dropping these proceedings but the same was rejected. He, therefore, prays that in view of the pending criminal prosecution, this departmental proceedings should be quashed.

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2. The respondents appeared on notice and contended that the applicant is not being proceeded in the departmental enquiry for the offences committed allegedly by him under the said F.I.R. They also contended that the applicant is being proceeded in the departmental enquiry for having left his place of posting and participated elsewhere in quarrel hence, the departmental enquiry was proceeding against him as he left the place of duty without obtaining prior permission.

3. Sh.A.S.Grewal, counsel for the applicant appeared and made his submissions. Learned counsel for the respondents, Sh.D.N.Gobardhan argued on behalf of the respondents. The sole prayer of the applicant is that simultaneous departmental proceedings cannot be permitted to continue when the criminal proceedings against the applicant are pending before the criminal court because according to the applicant he shall be prejudiced in his defence when the criminal trial takes place. He also contended that during the departmental enquiry he will have to disclose his difference which will ultimately result in prejudice to him during the trial. Ld. counsel for the applicant has also contended that in view of the provisions of Rule 12 of Delhi Police (Punishment & Appeal Rules, 1980) the departmental enquiry should be stayed. For convenience Rule 12 is reproduced hereinbelow:

"12. Action following judicial acquittal:

1. When a Police Officer has been tried and acquitted by a criminal court, he shall not be punished departmentally on the same charge or on a different charge upon the evidence cited in the criminal case, whether actually led or not unless:-

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- a) the criminal charge has failed on technical grounds, or
- b) in the option of the court, or on the Deputy Commissioner of Police, the prosecution witnesses have won over; or
- c) the court has held in its judgement that an offence was actually committed and that suspicion rests upon the Police Officer concerned; or
- d) the evidence cited in the criminal case discloses facts unconnected with the charge before the court which justify departmental proceedings on a different charge; or
- e) additional evidence for departmental proceedings is available".

4. The criminal case as yet is pending adjudication in the criminal court hence, the provisions of Rule 12 are not attracted. That stage is very far off, furthermore the summary of the allegations which have been served upon applicant during the departmental enquiry does not pertain to any of the ingredients under which the applicant is to be tried in the Sessions Court. Annexure 'C' dated 24.1.92 does not anywhere refer to the offences committed by the applicant but the departmental enquiry is only proceeding on the misconduct of the applicant because while detailed for hospital duty with Dr.B.D.Butta, Police, Dental Surgeon, Rajpur Road, Delhi he abstained himself from the duty and left the Headquarters without permission/information of the competent authority, which amounts to grave misconduct. Thus the departmental enquiry proposed against him concerns <sup>this</sup> ~~with~~ misconduct which he committed x during his performance of official duty. Nowhere in the xxxx allegation of charges it is alleged that he is said to xxxxxx

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have participated in a crime after forming an unlawful assembly whose common objection was to murder and to attempt to murder. In the departmental proceedings there are no allegations with regard to the commission of the crime on the part of the applicant, the departmental proceedings cannot be stayed.

5. A trial in the criminal court is governed by the provisions of Indian Evidence Act. In a criminal trial, the burden of proof lies upon the prosecution to prove its case against the accused beyond all reasonable doubts. The accused in the trial is given ample opportunity of cross-examination of every prosecution witness, while a departmental inquiry is quite different from that of a criminal trial. An accused is tried in a criminal court for having contravened the provisions of the Indian Penal Code and for having committed an offence punishable under that Act. Specific charges are framed and the trial begins against the accused. In a departmental inquiry, the delinquent is not tried for having committed an offence punishable under the Indian Penal Code, but he is inquired into for having committed a misconduct unbecoming of the post or office he holds. The employer has a right to keep in his employment a person of unblemished character and that is why, the provisions of the departmental inquiry under the Rules or under the Act have been framed. In a departmental inquiry, it is the misconduct which is the subject matter of inquiry and not the offence committed by the accused punishable under the Indian Penal Code. Thus, a departmental inquiry is quite different from the criminal trial. The misconduct which is inquired into by the employer in a depart-

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mental inquiry is adjudicated upon even on the smallest evidence, while in a criminal trial the crime alleged is required to be proved by the prosecution. The employer's right to hold a departmental inquiry for the misconduct cannot be circumvented because the employer is required to run a blemishless administration.

6. The law on this subject has been well settled by the Apex Court in the case of Kufeshwar Dubey Vs. Bharat Coking Coal Ltd. (AIR 1988 SC 2118 ) in the following words:-

"The view expressed in the 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 circumstances of a particular case as to whether 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".

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7. Earlier to this judgement some view was taken in the case of S.K.Bahadur Versus Union of India (1987 (4) SLJ CAT PB New Delhi p.51), Delhi Cloth and General Mills Ltd. Versus Kushal Bhan (AIR 1960 SC 806). In these cases also the Apex Court held that it is neither possible nor advisable to evolve a hard and fast straight jacket formula laid down for all the cases of general application with regard to the particularity of the individual situation. Thus each case has to be decided on its own facts and circumstances and then it has to be decided whether simultaneous proceedings in a criminal court and disciplinary proceedings should be permitted to go on or it should be stayed.

8. The subject matter of the departmental enquiry is completely different from that of the charges alleged in the criminal trial. We are, therefore, of the view that the prayer, as asked for in the O.A., cannot be granted to the applicant. This O.A., is therefore, dismissed with no order as to costs.

*I.K. Rasgotra*  
(I.K. RASGOTRA) 24/12/92  
MEMBER(A)

*Ram Pal Singh*  
(RAM PAL SINGH) 24.12.92  
VICE CHAIRMAN(J)