

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

0A:958/92

Date of Decision:29.04.1993

Shri Bal Kishan

Applicant

Versus

Union of India

Respondents

Shri B.R. Saini

Counsel for the applicant

Shri D.N. Goburdan

Counsel for the respondents

CORAM: The Hon. Mr. N. V. KRISHNAN, Vice Chairman(A)

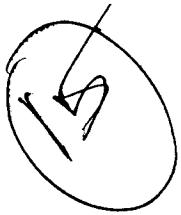
The Hon. Mr. G. L. Roy Member (1)

JUDGEMENT (Oral)

(delivered by Hon. Vice Chairman(A) Shri N. V. KRISHNAN)

The application is filed by the applicant who is a Constable under respondent No.2, against the disciplinary proceedings initiated against him by the Annexure A-1 order dated 5.3.92. His contention is that on the same facts, the applicant has already been charge sheeted of an offence under Section 411 IPC, as is evident from the Annexure A-3 document. The applicant further states that the case is fixed for prosecution evidence in the court of Shri Naipal Singh, learned Metropolitan Magistrate. Therefore, the prayer made in the application is to set aside the impugned Annexure A-1 order, by which, the disciplinary proceedings have been started and to restrain the respondents from holding the disciplinary proceedings on that basis.

2. The respondents have filed a reply before admission. It is admitted that a criminal case, as



mentioned above, has been registered against the applicant. The reply is, however, silent on the pendency of the proceedings in the court of learned Metropolitan Magistrate. It is stated that nothing prevents the Department from proceeding with the departmental proceedings. In support thereof, the learned counsel cites a decision of Punjab and Haryana High Court in B.S. Choudhri Vs. Punjab University, 1987(5) SLR 501 and a decision in OA 1743/92 of the Principal Bench rendered on 4.3.93.

3. We have heard the parties.

4. The impugned annexure A-1 order reads as follows:-

"Constable Bal Kishan No.306/Cr. while posted in Crime Branch was arrested in case FIR No.432 dated 28.10.88 u/s 380/411 IPC, P.S.I.P. Estate, New Delhi. The facts of the case were that he was found in possession of some registers stolen from the Eating House section of Licensing Branch, PHQ. Some of the stolen registers were sold to a Kabadi @ rs.3/- per kg. at the total cost of Rs.50/-. Since he was a smack addict as such he purchased smack of Rs.25/-. Accordingly Const.Bal Kishan No.306/Cr. was placed under suspension vide this office order No.12044-60/CR-C&R dated 4.11.88.

This act of Constable Bal Kishan No.306/Cr. amounted to gross misconduct with malafide intention and also dereliction on his part in the discharge of his official duties.

The above act of Const. Bal Kishan No.306/Cr. (under suspension) renders him liable for departmental action u/s 21 of Delhi Police Act, 1978. I, R. Tewari, DCP/C&R, therefore, hereby order that Const.Bal Kishan No.306/Cr. be dealt with departmentally under the provision of Sec.21 of Delhi Police Act, 1978 by Inspector Sukh ram D-1/377, Section-V/Crime & Rlys. on day today basis and submit his finding expeditiously."

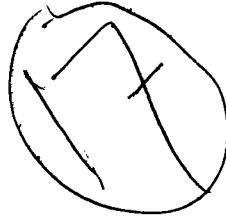
5. The language of Annexure A-1 order makes it clear beyond doubt that the departmental proceedings have been initiated on the very facts in respect of which, the

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criminal proceedings are pending on the basis of the Annexure A3 charge sheet. We are ~~of~~ of the view that while the disciplinary authority is competent to initiate disciplinary proceedings on the same charges as in a criminal case, it cannot proceed with disciplinary proceedings until the criminal proceedings ~~initiated~~ against the applicant have been concluded because, otherwise, the applicant will be certainly prejudiced in his defence in the trial court in respect of criminal case against him. Therefore, while the Annexure A-1 cannot be quashed, as prayed for by the applicant, a direction has to be issued to the respondents that they will have to keep this proceeding pending till trial of the criminal case is over.

6. As far as the judgement of the Punjab and Haryana High Court is concerned, we notice that it has been found even in that judgement that there is no bar in initiating a disciplinary proceeding on the same charges. ~~is held~~ It is no doubt, that the proceedings of the department proceedings are to be stayed only in exceptional cases where complicated questions of facts and law are involved and not as a matter of course. In this case, we are satisfied that in the departmental enquiry, the very facts on which the criminal proceeding has been initiated, has to be either proved or disproved and therefore, if the disciplinary proceedings are continued, it will certainly prejudice the applicant. Therefore, the disciplinary proceedings have to be stayed.

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7. The judgement of the Tribunal in OA 1743/92 is distinguishable on the facts because it is stated that, in that case, the criminal case has neither been proceeded with, nor has the applicant been even charged before the criminal court.

8. We, therefore, partly allow this application with a direction to the respondents not to proceed with the departmental proceedings initiated against the applicant by the annexure A2 order until the trial of the applicant in respect of the Annexure A-3 charge sheet pending in the Court of Shri Naipal Singh, Learned Metropolitan Magistrate is finally concluded.

9. The application is disposed of accordingly.

Just
(C.J. ROY)
MEMBER(J)
29.04.1993

Varma
(M.V. KRISHNAN)
VICE CHAIRMAN(A)
29.04.1993

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