

② **IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**
NEW DELHI

O.A. No. 144/93
T.A. No.

199

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DATE OF DECISION 22.7.93

Shri Abdul Hakim

Petitioner

Shri Shankar Raju

Advocate for the Petitioner(s)

Versus

Commissioner of Police, Delhi **Respondent**

Shri Virender Mehta

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. J.P.Sharma, Member (J)

The Hon'ble Mr. N.K.Verma, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

JUDGEMENT

(Hon'ble Shri N.K.Verma, Member (A))

In this O.A. the applicant Shri Abdul Hakim who is a police constable in the Crime Branch, P.S.Mandir Marg, New Delhi has assailed the impugned order dated 27-3-92 and the summary of allegations issued by Respondent No.1, Deputy Commissioner of Police for starting departmental proceedings against him or in the alternative with a prayer to direct the respondents to keep the said departmental enquiry in abeyance till the final disposal of criminal case filed in FIR No.294/91 under section 389 IPC. As an interim measure he has prayed that the respondents be restrained from proceeding with the departmental enquiry against him.

2. The facts of the case are that the applicant was posted in Crime Branch on 2-6-91 when he is alleged to have taken Rs.400/- and driving licence from one Shri Sushil Sharma under

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threat that he (Sushil Kumar) will be sent to jail for 10 years ~~under~~ the possession of charas which the applicant had allegedly planted in the dicky of his scooter. The applicant also asked the said Sushil Sharma to bring Rs.1000/- on 3-6-91 at 7-00 p.m. near an appointed bus stop. On 3-6-91 the applicant was arrested by patrolling police on the information given by Shri Sushil Sharma and a case was registered vide FIR No.294/91 dated 3-6-91 under section 389 IPC P.S.Tilak Marg, New Delhi. Because of this mis-conduct the applicant was placed under suspension on 4-6-91 and he has now been served with the impugned order for conducting an enquiry under the Delhi Police (Punishment & Appeal) Rules, 1980.

3. The applicant in his O.A. has averred that this kind of departmental enquiry is barred in accordance with the provisions of Rule 15(2) of the Delhi Police (Punishment & Appeal) Rules, 1980 according to which the Additional Commissioner of Police has the option of either instituting a departmental enquiry or filing a criminal case against the applicant. He could not exercise both the options at the same time and on the same grounds with the same set of witnesses. He has cited a number of judgements of the High Courts, Supreme Court and of this Tribunal which have ~~Stayed~~ ^{Stayed} set aside the departmental proceedings against a charged officer while the criminal case is being processed.

4. The respondents have quoted the standing order No.125/89 Delhi Police Manual under which there is no legal bar to the initiation of the departmental disciplinary action under the rules applicable to the delinquent public servant where criminal proceedings is already in progress. They have reiterated that the departmental enquiry is for the

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purpose of satisfying the disciplinary authority as to whether the applicant is guilty of any mis-conduct and delinquency and for reaching a conclusion whether the delinquent deserves to be retained in public service or to be reverted or to be reduced in rank or otherwise suitably dealt with for the delinquency concerned. They have refuted that there is a violation of the Delhi Police Rules, 1980.

5. We have heard the learned counsels for both the sides in this case. During the arguments the learned counsel for the applicant cited several pronouncements of this Tribunal as also the Hon'ble Supreme Court, especially the judgement in the case of Kusheshwar Dubey Vs. Bharat Cooking Coal Ltd. & Ors. (AIR 1988 SC 2118). Relevant observations of the Hon'ble Supreme Court are reproduced below:-

"The view expressed in the three cases of this 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 the 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 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 stay anything more, particularly when we do not intend to lay any general guidelines."

Further in para 7 it has been held:-

"In the instant case, the criminal action and the disciplinary proceedings are grounded upon the same set of facts. We are of the view that the disciplinary proceedings should have been stayed and the High Court was not right in interfering with the trial court's order of injunction which had been affirmed in appeal."

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6. In the light of that judgement this Tribunal in the case of Hawa Singh compared the contents of the FIR in the criminal case and the summary of allegations in the departmental proceedings and noted that the two were inter-connected and the witnesses were also the same. Accordingly the Tribunal in Hawa Singh case ordered the stayal of the departmental proceedings.

7. In the instant case also a comparison of the contents of FIR of the criminal case and the summary of allegations in the departmental enquiry indicate that they are grounded on the same set of facts. In both- the FIR as well as summary of allegations- it is stated that the applicant extorted/took Rs.400/- from one Sushil Sharma by putting a fear of accusation of having charas in the dicky of his scooter for which he could be punished with imprisonment for a term which may extend upto 10 years and thereby ~~and~~ thereby he has committed an offence under section 389 IPC. The mis-conduct of the official in the disciplinary case is also connected with this very alleged criminal offence. The list of witnesses in both the cases are almost identical. We are therefore of the view that if the disciplinary proceedings are allowed to continue, the defence of the applicant will be seriously jeopardised in the trial of the criminal offence in the court of law.

8. As a result we are of the view that the departmental proceedings under the impugned order should be kept in abeyance until the disposal of the criminal case FIR No.294/91. The question of quashing the impugned order initiating the disciplinary proceedings and the summary of allegations is

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not merited at this stage. The respondents are directed to keep the disciplinary proceedings in abeyance till the criminal case is finalised.

There would be no orders as to costs.

N.K.Verma 22.7.1993
(N.K.VERMA)
Member (A).

J.P.Sharma
(J.P.SHARMA)
Member (J)