

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No. 25 of 1993

New Delhi, dated this the 11th AUGUST 1998

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Shri G.K. Sharma,
S/o Shri M.R. Sharma,
R/o Block O/28, Sector-12,
NOIDA.

.... APPLICANT

(By Advocate: Mrs. Meera Chhibber)

Versus

1. Commissioner of Police,
Police Headquarters,
M.S.O. Building, I.P. Estate,
New Delhi-110002.

2. Dy. Commisisoner of Police (Security),
Delhi Police,
Main Security Line,
Copernicus Marg, Mandi House,
New Delhi-110001.

..... RESPONDENTS

(By Advocate: Shri Vijay Pandita)

JUDGMENT

BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

Applicant seeks a direction to respondents not to proceed with the D.E. against him and to await the decision of the criminal case vide FIR No. 252/92 dated 28.10.92 u/s 420/468/471 IPC P.S. Tughlaq Road, New Delhi.

2. Applicant along with Const. Virender Kumar were suspended on 3.11.92 and ordered to be proceeded against departmentally on 4.11.92 on the allegation that on 30.8.92 a pistol along with cartridges was issued to Const. Virender Kumar against a slip of his, for duty at the residence of one Mrs. Rekha Malhotra, but the pistol was not deposited back the same day, and was shown as

pending against the recipients's name in the register. When the pistol was not returned for a considerable time, the officer in charge made inquiries but to no avail. Later, upon questioning Constable Vinod Kumar, he is said to have admitted that he had prepared the particular slip with malafide intention, forged the signature of the duty officer on 30.8.92 and collected the aforesaid pistol and six cartridges, and erasing the number on the pistol, handed over the same along with the cartridges to the applicant. Consequently the aforesaid FIR was got registered against both constables, they were suspended and a DE was initiated against both of them.

3. We have heard applicant's counsel Mrs. Chhibber and respondents' counsel Shri Vijay Pandita.

4. Mrs. Chibber has asserted that the charge in the criminal case of fraudulently concealing a pistol and some cartridges which was Govt. property and which was recovered from his possession on 28.10.92 is the same as that contained in the statement of allegations dated 13.11.92 in the D.E., and the witnesses are also common to both the criminal case and the charge sheet. It is argued that if the D.E. is continued and applicant is compelled to disclose his defence therein, it will prejudice him in the criminal case. Reliance is placed on the Hon'ble

Supreme Court's judgments in Kusheshwar Dubey Vs. BCCL (1988) 4 SCC 319 as well as Depot Manager, APSRTC Vs. M.Y. Miya (1997) 2 SCC 699 wherein it has been held that while no, inflexible guidelines can be laid down and each case is required to be considered in its own facts and circumstances. Further their Lordships have observed:

"What is required to be seen is whether the D.E. would seriously prejudice the delinquent in his defence".

5. On the other hand Shri Pandita has asserted during hearing that Constable Virender Kumar had also filed an O.A. against the D.E. instituted against him, which was dismissed, which assertion is not controverted by Mrs. Chibber and reliance is also placed by Shri Pandita on the Hon'ble Supreme Court's judgment in State of Rajasthan Vs. B.K. Meena (1996) 6 SCC 417 (which has been elaborately discussed in Miya's case (Supra) in favour of continuance of the D.E.).

6. We have given the matter our careful consideration.

7. In Miya's case (Supra) those portions of B.K. Meena's case (Supra) have been quoted with approval wherein it has been held

".....The staying of disciplinary proceedings, it is emphasised, is a matter to be determined having regard to the facts and circumstances of a given

case and that no hard and fast rules can be enunciated in that behalf. The only ground suggested in the above decisions as constituting a valid ground for staying the disciplinary proceedings is that 'that the defence of the employee in the criminal case may not be prejudiced'. This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law. In our respectful opinion, it means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, 'advisability', 'desirability', or 'propriety', as the case may be, has to be determined in each case taking into consideration all the facts and circumstances of the case. The ground indicated in D.C.M. and Tata Oil Mills is also not an invariable rule. It is only a factor which will go into the scales while judging the advisability or desirability of staying the disciplinary proceedings. One of the contending considerations is that the disciplinary enquiry cannot be -- and should not be -- delayed unduly. So far as criminal cases are concerned, it is well known that they drag on endlessly where high officials or persons holding high public offices are involved. They get bogged down on one or the other ground. They hardly even reach a prompt conclusion. That is the reality in spite of repeated advice and admonitions from this Court and the High Courts. If a criminal case is unduly delayed that may itself be a good ground for going ahead with the disciplinary enquiry even where the disciplinary proceedings are held over at an earlier stage. The interests of administration and good government demand that these proceedings are concluded expeditiously. It must be remembered that interests of administration demand that undesirable elements are thrown out and any charge of misdemeanour is enquired into promptly. The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. The interest of the delinquent officer also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges, his honour should be vindicated at the earliest possible moment and if he is guilty, he should be dealt with promptly according to law. It is not also in the interest of administration that persons accused of serious misdemeanour should be continued in office indefinitely, i.e. for long

periods awaiting the result of criminal proceedings. It is not in the interest of administration. It only serves the interest of the guilty and dishonest."

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8. In our view the present case is a straight forward one and does not involve complicated questions of law and fact. The other factors noticed in the aforementioned extracts are also in favour of an expeditious disposal of this D.E. Further more when the O.A. filed by the other delinquent namely Const. Virender Kumar was dismissed, and the D.E. allowed to proceed without any prejudice being caused to his defence in the criminal case, we see no reason why a different yardstick should be adopted in applicant's case.

9. In the result we see no reason to interfere in this matter. The O.A. is dismissed. Interim orders are vacated. No costs.

A. Veda Valli

(DR. A. VEDAVALLI)
Member (J)

S. R. Adige

(S.R. ADIGE)
Vice Chairman (A)

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