

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

D.A. No. : 140 of 1995.

T.A. No. :

DATE OF DECISION: 10-9-97

Sudhak Kumar

PETITIONER.

Shri K. C. Singh

Advocate for the

PETITIONER.

VENUE:

Union of India - A.o.s.

RESPONDENTS.

Shri N. B. Singh

Advocate for the

RESPONDENTS.

CHIEF JUDGE

The Hon'ble Mr. Justice B. C. Saksena, V.C.

The Hon'ble Mr. ~~Shri D. S. Bawaja~~ S. Das Gupta, Member(A)

1. Whether the orders of local papers may be allowed to
see the Judgement?

2. To be referred to the Reporter or not? Yes

3. Whether their Lordships wish to see the fair copy
of the Judgement?

4. Whether to be circulated to all other Bench?

B.C.

SIGNATURE

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CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE ¹⁵ DAY OF SEPTEMBER 1997

Original Application No. 140 of 1995

HON.MR.JUSTICE B.C.SAKSENA,V.C.

HON.MR.D.S.BAWEJA, MEMBER(A)

Sudhir Kumar, s/o Shri Kailash Chand
R/o G-9, Hathibarkala Estate,
Survey of India, Dehradun, at present working as
Typographer, Grade-II in the office of Additional
Surveyor General, Map Publication
Hathibarkala, Dehradun

... . . Applicant

(By Advocate Shri K.C. Sinha)

Versus

1. The Union of India represented through the Secretary to the Govt. of India Ministry of Science & Technology Technology Bhawan, New Mehrauli Road, New Delhi.
2. The Surveyor General of India Survey of India, Hathibarkala, Dehra Dun.
3. The Additional Surveyor General Map Publication, Survey of India, Hathibarkala, Dehra Dun.
4. The Director, Map Publication, Survey of India, Hathibarkala, Dehra Dun
5. Shri K.S. Panwar, Deputy Director (then Superintending Surveyor), Surveyor General's Office, Survey of India, Hathibarkala, Dehra Dun

... . . Respondents

(By Advocate Shri N.B. Singh)

O R D E R (Reserved)

JUSTICE B.C.SAKSENA,V.C.

The brief facts giving rise to the OA are as follows:

The applicant is working as a Typographer Gr.II in the office of the Addl. Surveyor General Map Publication Survey of India Dehradun. In respect of an alleged incident stated to have occurred on 6.1.92 in which respondent no.5 is alleged to have entered the house of the applicant and used indecent language to the wife of the applicant and allegedly tried to outrage her modesty in the absence of the applicant. *bd*

tried to outrage her modesty in the absence of the applicant. The wife of the applicant resisted the attempt of respondent no.5 and turned him out of the house. The applicant lodged a criminal complaint in the court of Ist Addl. Chief Judicial Magistrate Dehradun. The respondent no.5 it is stated on having learnt about the criminal complaint filed a petition before the Hon'ble High court u/s 482 Cr.p.c and in the said proceedings stay was granted staying the criminal proceedings.

2. It is further stated in the OA that respondent no.5 also lodged an FIR with the police and the police has submitted a charge sheet in the court of I A.C.J.M., Dehradun alleging that the applicant and his wife had beaten the respondent no.5 and thus they have committed offences punishable u/s 332, 323, 504 and 506 I.P.C. The said proceedings are at an advanced stage.

3. An order for suspension of the applicant w.e.f. 13.1.92 was issued but the same was subsequently revoked. Thereafter a charge sheet dated 10.4.92 has been issued against the applicant for holding an inquiry under rule 14 of the CCS(CCA) Rules 1964.

4. The applicant faced with the situation of disciplinary proceedings being simultaneously held while criminal proceedings were pending had earlier filed an OA which was registered as OA 1791/92 and had made a similar prayer as made in the present OA that the disciplinary proceedings be stayed during the pendency of the criminal proceedings. By an order dated 14.1.93 the said OA 1791/92 was decided and it was provided that the applicant may approach the authority concerned who instituted the disciplinary proceedings and in case there is any refusal by him he can agitate the matter.

5. The applicant then approached the authority and by confidential communication dated 25.1.95 the applicant had been informed that the Surveyor General of India had considered the request of the applicant to stay t'

departmental proceedings during the pendency of the criminal proceedings in the court of law but held that there is no bar to the departmental as well as criminal proceedings being started simultaneously and pendency of criminal proceedings does not bar the disciplinary authority from initiating or completing a disciplinary case. This order of the respondent no.2 has been challenged through this OA.

6. We have heard the learned counsels for the parties and have been taken through the pleadings on record. It would be relevant to indicate that when the OA came up for admission on 21.2.95 a Division Bench of this Tribunal felt satisfied about the submission made by the learned counsel for the applicant based on the Supreme court decision in the case of **Kusheshwar Dubey Vs. Bharat Cooking Coal Ltd** 1988 SCC(L&S) 950 and feeling satisfied that the charges of the departmental proceedings *prima facie* appear to be based on the similar facts as in the criminal proceedings. An interim order was granted which provided that no further action ~~be~~ be taken to the disciplinary proceedings. The said interim order is still operating.

7. The learned counsel for the applicant submitted that since the criminal proceedings and the disciplinary proceedings arise out of the same cause of action it would greatly prejudice the applicant in his defence in the criminal proceedings if the disciplinary proceedings are not stayed during the pendency of the criminal proceedings. He cited the decision **Kusheshwar Dubey Vs. Bharat Cooking Coal Ltd (Supra)** as also a decision of the Hon'ble Supreme court reported in 1997 SCC (L&S) pg 548 **Depot Manager A.P. State Road Transport Corporation Vs. Mohd. Yusuf Miya and others**

8. The learned counsel for the respondents on the other hand, sought to place reliance on the Supreme court decision in **State of Rajasthan Vs. B.K. Meena and ors** reported in 1996(8) S.C. 684 and

Nelson Motis Vs. Union of India reported in
A.I.R 1992 S.C. 1981.

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9. We may now proceed to analyse the decisions relied upon by the learned counsel. As a matter of fact the Hon'ble Supreme court in its decision in Depot Manager A.P.S.R.T.C Vs. Mohd. Yusuf Miya(Supra) has considered in detail its earlier decisions in Kusheshwar Dubey's case and State of Rajasthan Vs. B.K. Meena's case as also some other earlier decisions. The principles of law laid down in the said decisions have been detailed in Depot Manager A.P.S.R.T.C's case. In the said case against the respondent who was a driver with the Corporation disciplinary proceedings were initiated on the imputation that on 15.9.95 while driving the appellant's motor vehicle, due to lack of anticipation, he had caused an accident in which a cyclist died. Consequently action was initiated for misconduct and an inquiry was ordered under Rule 28(ix) of the Employees Conduct Rules, 1963. Further it appears that prosecution have been launched by the police against the respondent punishable under section 304 Part II I.P.C and u/s 338 I.P.C and they are pending trial. On a writ petition being filed by the respondent Mohd. Yusuf Miya departmental proceedings were stayed by the High court both by the Single Judge and by the D.B which confirmed the stay order. On behalf of the respondent the stay order passed by the High court was supported by placing reliance on the Supreme court judgment in Kusheshwar Dubey Vs. Bharat Cooking Coal Ltd and Food Corporation of India Vs. George Varghese 1991 SCC(L&S) 1474. In paragraph 7, their Lordships of the Hon'ble Supreme court observed that the rival contentions give rise to the question whether it would be right to stay the criminal proceedings pending departmental inquiry? and proceeded further to observe that in Meena's case the entire case law including Kusheshwar Dubey's case had been elaborately considered. Their Lordships proceeded to quote paragraphs 14 & 17 in Meena's case.

" It would be evident from the above

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decisions that each of them starts with the indisputable proposition that there is no legal bar for both proceedings to go on simultaneously and then say that in certain situations, it may not be 'desirable' 'advisable', or 'appropriate' to proceed with the disciplinary inquiry when a criminal case is pending on identical charges.

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 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. More over, '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.....

One of the contending considerations is that the disciplinary inquiry cannot be and should not be delayed unduly.....

The interests of administration and

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good government demand that these proceedings are concluded expeditiously.

It must be remembered that interests of administration demand that ^{un} desirable 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. "

10. The Hon'ble Supreme Court further highlighted the fact that the approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him under the Prevention of Corruption Act (and the Indian Penal Code, if any) are established and, if established, what sentence should be imposed upon him. It was also noted that the standard ^{of} proof, the mode of enquiry and the rules governing the inquiry and trial in both the cases are entirely distinct and different.

In fact the reasoning given out in the impugned order is in accord with the observation of the Hon'ble Supreme Court made in paragraph 8 in this case. In B.K. Meena's case a relevant

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observation had been made that even if the disciplinary proceedings are stayed at one stage the decision may require reconsideration if the criminal case gets unduly delayed.

11. In the light of the factors enumerated and laid down in Meena's case as also in Mohd. Yusuf Miya's case and considering the facts and circumstances of the present case we are satisfied that the OA deserves to be dismissed. It is accordingly dismissed. The interim order passed earlier is vacated.


MEMBER (A)


VICE CHAIRMAN

Dated: September 10th 1997

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