

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A No.540/2014

New Delhi this the 18th day of May, 2016

**Hon'ble Mr. Justice M. S. Sullar, Member (J)
Hon'ble Mr. V.N. Gaur, Member (A)**

Vishesh Khokhar
SI (Ex.) in Delhi Police
PIS No.28061116
Aged about 29 years
S/o Shri Ramesh Chand Khokhar
R/o B-46, PC Bhajan Pura, Delhi-53. .. Applicant

(Argued by: Shri Anil Singal, Advocate)

Versus

1. Govt. of NCT of Delhi
Through Commissioner of Police,
Police Headquarters,
I.P. Estate, New Delhi.
2. D.C.P (East Distt)
PS Mandawali, Delhi
3. ACP Jai Kishan (E.O)
Vivek Vihar, Delhi. .. Respondents

(By Advocate: Mr. N.K. Singh for Mrs. Avnish Ahlawat)

ORDER (ORAL)

Justice M.S. Sullar, Member (J)

The challenge in this Original Application (OA), filed by SI (Exe.), Vishesh Khokhar, is to the impugned order dated 14.11.2013 (Annexure A-1), by virtue of which a regular Departmental Enquiry (DE) was ordered to be initiated against him under Delhi Police (Punishment & Appeal) Rules, 1980 (hereinafter to be referred as "D.P. Rules") by Deputy Commissioner of Police, summary of allegation (Annexure A-2)

and order dated 24.01.2014 (Annexure A-3) whereby his request to keep the DE in abeyance till finalization of the criminal case was rejected.

2. Tensely, the facts, which needs a necessary mention for a limited purpose of deciding the core controversy involved in the instant OA, and emanating from the record, is that applicant, repeatedly committed rape on and before 09.01.2011 on complainant, Ms. Swati (constable) in PCR, Delhi with a promise to marry her. She became pregnant twice, but applicant aborted her on both the occasions. Thus, the applicant was stated to have committed grave misconduct, during the course of his employment.

3. As a consequence thereof, a regular DE was initiated against him vide impugned order Annexure A-1. Accordingly, the following summary of allegations were served upon him:-

“SUMMARY OF ALLEGATIONS

It is alleged that a case vide FIR No. 228/13 dated 30.04.13 u/s 376/321/506/34 IPC PS Khazoori Khas was registered against you SI Vishesh Khokhar, No. D/4267 (PIS No. 28061116) on the complaint of Ms. Swati (a constable in Delhi Police) D/o. Sh. Ishwar Singh R/o. Qtr. No. N-3/1, Police Colony, PS Model Town-I, Delhi. In her complaint, she alleged against you that she came in your contact during duties in Commonwealth Games in 2010 and after that you started making friendship and visiting with her. On 09.01.2011, on the occasion of your birthday, you made sexual intercourse with her. She tried to stop you for this act but you continuously made physical sexual relation with her and allured her for marriage soon. Thereafter, you SI Vishesh Khokhar made physical sexual relation with her many times on the pretext of making marriage. She got pregnant twice but you aborted her on both the occasions. She got very weak and after that she did not allow you for making physical sexual relation with her and

put pressure on you for marriage but after passage of time, you refused to marry with her.

The above act on the part of you SI Vishesh Khokhar, No. D/4267 amounts to gross misconduct and unbecoming of a police person which renders you liable to be dealt with departmentally under the provision of Delhi Police (Punishment & Appeal) Rules, 1980.”

4. At the same time, a criminal case was also registered against the applicant on accusation of having committed the offences punishable under Section 376/506/34 IPC, by virtue of FIR No.228 dated 30.04.2013 (Annexure A-4), by the police of Police Station, Khajuri Khas, Delhi. After completion of the investigation, the police submitted the final police report (challan) under Section 173 of the Criminal Procedure Code (for short “Cr.PC”), 1973, against the applicant for commission of indicated offences in the court.

5. Thereafter, his request (Annexure A-5), to keep the DE proceedings in abeyance till the decision of criminal case, was declined being in violation of Central Civil Services (Conduct) Rules, 1964 [hereinafter to be referred as “CCS (Conduct) Rules”]. He was directed to co-operate in conducting the DE proceedings, by way of impugned order dated 24.01.2014 (Annexure A-3).

6. Surprisingly enough, instead of participating in, and to allow the DE to proceed smoothly, the applicant straightaway jumped to prefer the instant OA to challenge the impugned orders, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985.

7. The case set-up by the applicant, in brief, insofar relevant, is that since the charges before the criminal court as well as DE are the same, so the impugned order initiating the DE (Annexure A-1) and summary of allegations (Annexure A-2) are arbitrary and illegal. It was pleaded that the evidence in criminal case as well as DE would be same and if the applicant would cross-examine the witnesses in the DE, then it will prejudice his defence in criminal case.

8. According to the applicant that it is a case of sexual inter-course on the false promise of marriage. Even applicant wanted to marry the complainant Ms. Swati, but it was his family members who did not allow him to marry her. Moreover, it is private affair, the allegation would not amount to gross misconduct and unbecoming of a police personnel.

9. On the basis of the aforesaid grounds, the applicant sought quashing of the impugned orders. In the alternative, he has prayed that DE be kept in abeyance till the decision of the criminal case, in the manner indicated hereinabove.

10. The respondents, refuted the claim of the applicant and filed the reply, wherein factual matrix were acknowledged and it was alleged that the applicant has committed a serious offence/misconduct involving his moral turpitude. The similar application (Annexure A-5) filed by the applicant for dropping or keeping the DE in abeyance was rightly rejected by the competent authority vide (Annexure A-3). In all, according to

the respondents, no case either for quashing the impugned orders or keeping the DE in abeyance is made out. It will not be out of place to mention here that the respondents have stoutly denied all other allegations contained in the OA and prayed for its dismissal.

11. Moreover, Having heard the learned counsel for the parties, having gone through the record with their valuable help and after considering the entire matter, we are of the firm view that there is no merit and instant OA deserves to be dismissed for the reasons mentioned hereinbelow.

12. Ex-facie, the arguments of the learned counsel that similar complicated facts are involved in the criminal case and DE proceedings and since there is no evidence on record to prove the misconduct, so the impugned orders deserve to be set aside, is not only devoid of merit but misplaced as well.

13. As is evident from the record, that very grave and serious allegations are attributed to the applicant, that he repeatedly committed rape/sexually intercourse with complainant Ms. Swati, who was also a Constable in Delhi Police, on the pretext of performing marriage with her. She got pregnant twice and he (applicant) aborted her on both the occasions. Hence, it is a case of heinous offence of rape, leading to grave misconduct involving moral turpitude of the applicant.

14. Moreover, the prosecution has relied upon the statement of 6 (six) witnesses mentioned in the list of witnesses, besides copy of FIR, copy of statement of complainant Ms. Swati recorded under Section 164 Cr.PC, her medico legal examination report and copy of arrest memo of the applicant (documentary evidence). Meaning thereby, *prima facie*, there is more than sufficient evidence on record to prove the charge. Therefore, it cannot possibly be saith that there is no evidence on record to prove the grave misconduct of the applicant. Whether the evidence is sufficient or not and the question of its admissibility can only be decided by the Enquiry Officer (EO) & Disciplinary Authority (DA) after production of the evidence of the parties during the course of Disciplinary Enquiry and not by this Tribunal at this stage.

15. Sequelly, the next contention of the learned counsel that it was a private affair and will not constitute misconduct relatable to his official duty, so no DE can be initiated against the applicant, again has no force.

16. What cannot possibly be disputed here is that the applicant has committed the heinous offence of rape, leading to his misconduct involving his moral turpitude while working as a police officer. Section 24 of the Delhi Police Act, 1978, posits that every police officer not on leave or under suspension shall for all purposes of this Act be deemed to be always on duty. Therefore, a Police Officer of disciplined force

of Delhi, is always on duty and is not supposed to commit sexual intercourse with his colleague (lady constable) and then got her pregnancy terminated twice. This is really a very grave misconduct on the part of the applicant. It cannot possibly be termed to be a private affair, as urged on his behalf.

17. Now adhering to the last argument of the learned counsel that the DE should be kept in abeyance till the decision of the criminal case. In this regard, it may be mentioned that there is no legal bar in conducting the DE proceedings during the pendency of the criminal case against the applicant. This matter is no more res integra and is now well settled.

18. An identical question came to be decided by Hon'ble Apex Court in the case of ***State of Rajasthan Vs. B.K. Meena JT 1996 (8) SC 684*** wherein it was ruled that there is no bar for initiation of simultaneous criminal proceedings as well as disciplinary proceedings as the criminal cases are dragged endlessly and unduly delayed and in that event the interest of administration demands expeditious disposal of the DE proceedings.

19. The same view was again reiterated by Hon'ble Supreme Court in ***Depot Manager, Andhra Pradesh State Road Transport Corporation Vs. Mohd. Yousuf Miya, etc. (1997) 2 SCC 699, State Bank of India and Others Vs. R.B. Sharma AIR 2004 SC 4144 and Capt. M. Paul***

Anthony Vs. Bharat Gold Mines Ltd. and Another (1999)**3 SCC 679.**

20. Not only that, similar question was decided by the Full Bench judgment of this Tribunal in **OA No.2816/2008** decided on 18.02.2011 titled as **Sukhdev Singh and Another Vs. Govt. of NCT of Delhi and Others** wherein in para 9 it was held as under:-

“9. In view of the discussion made above, we hold that there is no bar, express or implied, in the Rules of 1980 for holding simultaneous criminal and departmental proceedings. However, in case departmental proceedings may culminate into an order of punishment earlier in point of time than that of the verdict of the criminal case, and the acquittal is such that departmental proceedings cannot be held for the reasons as mentioned in Rule 12, the order of punishment shall be revisited. The judicial verdict would have precedence over decision in departmental proceedings and the subordinate rank would be restored to his status with consequential reliefs”.

21. Not only that, even Commissioner of Police has issued direction contained in Circular dated 22.09.2009 informing all the subordinate police officers that DE proceedings can be continued against the delinquent police officials who are also facing criminal charges.

23. Thus, it would be seen that DE proceedings can legally be continued during the pendency of criminal case against the applicant.

24. There is yet another aspect of the matter, which can be viewed entirely from a different angle. The applicant, instead of participating in the enquiry proceedings, considerably delayed the matter by filing application (Annexure A-5) to

drop the proceedings which was rejected. Now he has filed the present OA to quash the charge at preliminary stage. It is now well settled principle of law that in case of charges framed in a DE, the Tribunal or Court can interfere only if on the charges framed (read with imputation or particulars of the charges) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this preliminary stage, the Tribunal has no jurisdiction to go into the correctness or truth of the charges. The Tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges, is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the Disciplinary Authority or the Appellate Authority as the case may be. The reliance in this regard can be placed on a celebrated judgment of the Hon'ble Apex Court in the case of ***Union of India V/s. Upendra Singh (1994) 3 SCC 357.***

25. Therefore, it is held that the OA challenging the impugned order of initiation of DE and summary of allegations is not maintainable at this stage. No extraordinary ground to entertain this OA at this preliminary stage is made out, in view of the law by the Hon'ble Apex

Court in the cases of **S.S. Rathore Vs. State of Madhya Pradesh (1989) 4 SCC 582** and **The Govt. of A.P. and Others Vs. P. Chandra Mouli and Another (2009) 13 SCC 272**. Hence, the contrary arguments of the applicant that the OA is liable to be allowed at this stage *stricto-sensu* deserves to be and are hereby repelled.

26. No other point, worth consideration, has been urged or pressed by learned counsel for the parties.

27. In the light of the aforesaid reason and without commenting further anything on merit, lest it may prejudice the case of either side during the course of departmental proceeding, as there is no merit, the instant OA is hereby dismissed in the obtaining circumstances of the case.

28. Needless to mention that nothing observed herein above, would reflect in any manner on the merits of the case in any manner, during the departmental proceedings, as the same has been so recorded for a limited purpose for deciding the present OA at this preliminary stage. No costs.

(V.N. GAUR)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)

Rakesh