

Ajay Kumar Bhardwaj Vs. Dtc and Ors

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Court : Delhi

Decided On : Mar-03-2015

Judge : I. S. Mehta

Appellant : Ajay Kumar Bhardwaj

Respondent : Dtc and Ors

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment delivered on: March 3, 2015 + % W.P.(C) No.7577/2012 AJAY KUMAR BHARDWAJ Petitioner Through: Dr. L.S. Chaudhary & Ms. Pratibha Gupta, Advs. versus DTC AND ORS Through: Respondents Mrs. Avnish Ahlawat, Adv. CORAM: HON'BLE MR. JUSTICE KAILASH GAMBHIR HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

I. S. MEHTA, J.

1. Aggrieved from the order of the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as Ld. CAT) dated 28.09.2012 in O.A. No.1167 of 2012, the petitioner has preferred the present writ petition under Articles 226 and 227 of the Constitution of India for setting aside the aforesaid order and for issuing necessary directions to the respondent.

2. The brief facts of the case are that the petitioner Sh. Ajay Kumar Bhardwaj was appointed at Delhi Transport Corporation (DTC) as Assistant Fitter on 11.04.1983. During the aforesaid employment of petitioner with respondent No.1 i.e. Delhi Transport Corporation, at Hari Nagar Depot, an FIR No.RC1A) /94, PS/CBI/ACB/ND was registered against the petitioner along-with other co-accused namely Lala Ram, Suresh Lata, S.P. Grover, Gulshan Rai, Sobhraj Jai Singhani, Amarnath, R.B. Dubey, Jai Prakash, Susheel Kumar, Sarwan Kumar and R.B. Chaubey wherein it was alleged that they were involved in a racket of cheating, and defrauding MTNL to the tune of Rs. 67,20,000/-. After the investigation, the charge-sheet against the petitioner along with the coaccused persons were filed before the concerned Court i.e. Court of Sh. Pradeep Chaddah, Special Judge (CBI-01), Delhi. The aforesaid Court after following the due process of law, convicted the petitioner and sentenced him to undergo RI for three years for substantive offence u/s 420 IPC along with a fine of Rs. 20,000/-. In case of default of payment of fine, he shall to undergo SI for a further period of one year. He was further sentenced to RI of two years and a fine of Rs. 10,000/- for substantive offence under section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act. In case of default of payment of fine, he shall to undergo SI for a further period of six months. He was also sentenced to RI of two years and a fine of Rs. 10,000/-. In case of default in payment of fine, he shall to undergo six-month SI for offence u/s 120-B of the IPC r/w 420 IPC and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

3. The petitioner aggrieved by the judgment dated 02.08.2010 and order of sentence dated 04.08.2010 filed a criminal appeal before the Bench dealing with the Criminal Jurisdiction (Crl. Appeal No.987/2010) challenging the conviction which is still pending before the aforesaid Bench. The aforementioned Bench declined to suspend the sentence of the petitioner during pendency of the Criminal Appeal. The petitioner thereafter approached the Honble Supreme Court for grant of bail and the Honble Supreme Court vide order dated 15.11.2010 granted him interim bail.

4. After securing his interim bail from the Honble Supreme Court, the petitioner sought permission from respondents to join his duty which was not allowed.

However, the respondents after issuing a show-cause notice dated 17.01.2011 dismissed the petitioner from service vide order dated 11.02.2011 which was passed by Respondent No.3 (The Depot Manager, Hari Nagar Depot). The petitioners appeal against his dismissal order was rejected vide order dated 04.05.2011 passed by Respondent No.2 (The Deputy C.G.M. (W), DTC Peera Garhi Depot). Aggrieved from the same, the petitioner filed an O.A No.1793/2011 before the learned Central Administrative Tribunal, Principal Bench, challenging the order of dismissal dated 04.05.2011. The Ld. CAT vide order dated 3.11.2011 directed the respondents to decide the petitioners appeal afresh within 3 months by a speaking and reasoned order taking into account the regulation 10(d)(4) of D.R.T.A. (Conditions of Appointment & Service) Regulation, 1952. Subsequently, Respondent No.2 vide order dated 24.02.2012 again dismissed the petitioners appeal. Aggrieved from the same, the petitioner filed a fresh O.A No.1167/2012 challenging the order dated 24.02.2012. The CAT vide order dated 28.09.2012 declined to grant him any relief and aggrieved from the same, the petitioner has filed the present writ-petition. We have heard the learned counsel of the parties at length.

5. The learned counsel for the petitioner is claiming the parity between the driver and assistant fitter vide Para 10(d)(4) of the of the Executive Instructions dated 05.08.1955 (No.ADMI-3(18)/53) issued by the Delhi Road Transport Authority. The learned counsel of the petitioner has submitted that the services of the petitioner cannot be terminated by the respondents as per the existing rules, till the outcome of the Criminal Appeal No 987/2010 is decided.

6. We are afraid of accepting the contentions put forth by the learned counsel of the petitioners. The rule relied upon by the petitioners i.e. Para 10(d)(4) of the of the Executive Instructions dated 05.08.1955 (No.ADMI-3(18)/53) is reproduced herein under:

The provisions of Paras (4) and (5) of the Office Order No.201 dated the 24th November, 1954 in regard to the procedure for dismissal cases in which the D.T.S. employees are prosecuted while on duty, should be strictly followed. The provisions are reproduced below for ready reference:

4. The question of taking departmental action against an employee convicted by Court, will be taken up only after the employees appeal has been decided by the Appellate Court. In cases where the employee does not file an appeal, the question of taking departmental question will be considered on the expiry of the period fixed for filing an appeal. If an employee, who has been convicted by a Court, desires to perform duty in this Organisation during the period between the decision of Lower Court and the Appellate Court, he will be put on such duties as might be considered suitably by the General Manager. If during this period he is unable to attend duty on account of lock-up etc., or otherwise desires to take leave he will be granted such leave including leave without pay as may be due to him, in accordance with the provisions of DRTA (Conditions of Appointment & Service) Regulations, 1952. (5) The serious departmental action of termination of service will not be taken against a driver if he convicted by the Court for an offence which is committed by him for the first time during his service in this Organisation. This conviction will, however, be taken into action while deciding the nature of departmental action to be taken against him for a subsequent offence. No departmental action will be taken against a driver, who is convicted in an offence which is due to some defect or lack of some equipments in a bus.

Further the Executive Order 201 (No.ADMI-8/(1)54 dated 24.11.1954 is also reproduced hereinunder: DELHI ROAD TRANSPORT AUTHORITY SCINDIA HOUSE, NEW DELHI ANNEXURE P-3 No.ADMI-8 (1)/54 Dated the 24th November, 54 Office Order No.201 Sub:- Procedure for disposal of cases in which D.T.S employees are prescribed while on duty. (Underlining Supplied) The following instructions are issued for the information and guidance of staff:(1) Legal defence will continue to be provided by the Management in all cases up to the Lower Court in accordance with the practice as at present.

(2) In cases where drivers are challaned on account of some defects or absence of some equipments in buses, legal defence will be provided upto and including the appeal stage. Where a driver is merely fined in such cases, it will be within the discretion of the management to allow the employee to go to the Higher Court or not.

(3) Fines imposed upon drivers in challan cases on account of some defects or lack of some equipments in buses, will be paid on the spot by the Management through the Traffic Superintendent or Traffic Inspectors.

(4) The question of taking departmental action against an employee convicted by Court, will be taken up only after the employees appeal has been decided by the Appellate Court. In cases where the employee does not file an appeal, the question of taking departmental question will be considered on the expiry of the period fixed for filing an appeal. If an employee, who has been convicted by a Court, desires to perform duty in this Organisation during the period between the decision of Lower Court and the Appellate Court, he will be put on such duties as might be considered suitably by the General Manager. If during this period he is unable to attend duty on account of lock-up etc., or otherwise desires to take leave he will be granted such leave including leave without pay as may be due to him, in accordance with the provisions of DRTA (Conditions of Appointment & Service) Regulations, 1952. (Emphasis Supplied)

(5) The serious departmental action of termination of service will not be taken against a driver if he convicted by the Court for an offence which is committed by him for the first time during his service in this Organisation. This conviction will, however, be taken into action while deciding the nature of departmental action to be taken against him for a subsequent offence. No departmental action will be taken against a driver, who is convicted in an offence which is due to some defect or lack of some equipments in a bus.

Sd/B.K. LALL GENERAL MANAGER⁷ The above Para 10(d)(4) of the aforesaid Executive Instructions have been incorporated verbatim from Para 4 of the Office Order No.201 (No.ADMI-8(1)/54) dated 24.11.1954 issued by the Delhi Road Transport Authority. The aforesaid provisions deal with the acts of employee while on duty. The question that arises in the present case is what the phrase - while on duty denotes. While on duty means an employee who is discharging his official duty as per permissible rules by which he is regulated under the employment of the respondents. Therefore, the whole dispute in the present case hinges around, whether the act of the petitioner for the conviction under u/s 120-B r/w 420 of the

Indian Penal Code, 1861, section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 was committed while on duty.

8. The Office Order 201 (No.ADMI-8 (1)/54) dated 24.11.1954 dealing with situations where the D.T.S employees are prosecuted while on duty is further clarified by the subsequent Office Order (No.ADMI-3 (18)/53) dated 05.08.1955. The Office Order 201 and the subsequent Office Order dated 05.08.1955 are not distinct rather, both the provisions are interlinked and applicable in cases where a DTS employee is convicted by the Lower Court while on duty. The bare perusal of Office Order 201 dated 24.11.1954 makes it clear that it lays down procedure to be followed in dealing with situations where drivers met with an accident during discharge of his/their duties. The aforesaid Office Order does not relate to a situation where an employee is on official duty and doing criminal acts which is without the preview of its official duty. While taking a glance of the aforesaid Office Orders, it is crystal clear that the orders were framed for dealing with the employees who were prosecuted while on duty and it has nothing to do with any kind of the criminal acts which may be undertaken by the employees beyond the scope of their official duties. Admittedly, the present petitioner is not a driver/employee and acts committed by him which led to his conviction were neither connected with his official business nor were his acts arising out of his official discharge of duties. The allegation, though not attained finality between the parties against the petitioner is that he entered into conspiracy with other coaccused persons and succeeded in committing cheating thereby defrauding MTNL. This criminal act has nothing to do with his official duty therefore it cannot be said that his said criminal act was arising out of his official duty. Reliance in this regard may be placed on the decision of the Privy Council in the case of H.H.B. Gill and Anr. v. The King, AIR 1948 PC128 The relevant part of the Para 30 is reproduced below:

A public servant can only be said to act or to purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty. Thus a Judge neither acts nor purports to act as a Judge in receiving a bribe, though the judgment which he delivers may be such an act: nor does a Government medical officer act or purport to act as a public servant in picking the pocket of a patient

whom he is examining, though the examination itself may be such an act. The test may well be whether the public servant, if challenged, can reasonably claim that, what he does, he does in virtue of his office.

9. The petitioner was convicted on 02.08.2010 and sentenced vide order dated 04.08.2010 to undergo RI for three years for substantive offence u/s 420 IPC along with a fine of Rs. 20,000/-. In case of default of payment of fine, he shall undergo SI for a further period of one year. He was further sentenced to RI of two years and a fine of Rs. 10,000/- for substantive offence under section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act. In case of default of payment of fine, he shall undergo SI for a further period of six months. He was also sentenced to RI of two years and a fine of Rs. 10,000/-. In case of default in payment of fine, he shall undergo six-month SI for offence u/s 120 -B of the IPC r/w 420 IPC and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. The petitioner was admitted to interim bail by the Lower Court to enable him to file an appeal before the Bench dealing with criminal jurisdiction within one month from the date of passing of the order. The petitioner preferred an appeal being Criminal Appeal No.987/2010 before this Court's Bench dealing with Criminal Jurisdiction and the aforementioned Bench declined to suspend the sentence of the petitioner during pendency of the aforesaid criminal appeal and the petitioner was sent to receive the sentence for the above-mentioned offence. As per the petitioner, he was subsequently released on interim bail by the Honble Supreme Court of India which does not ipso facto give him any right to claim his innocence. Here, we are of the considered view that the conviction of the petitioner's sentence shall not be obliterated irrespective of whether the Appellate Court grants him interim bail. The order of conviction shall continue unless it is set aside by the Appellate Court. Any action taken against the government servant for misconduct which led to his conviction does not cease to be effective on granting of interim bail. Reliance may be placed on judgment in the case titled as Union of India v. Ramesh Kumar, AIR 1997 SC3531. It is not out of place to mention here that the conviction and order on sentence has not been obliterated by mere granting of the bail by the Honble Supreme Court unless his conviction is set aside. Therefore, it does not give the petitioner any right to resume his duties as he wishes.

10. Instance is the case of petitioner/convict where the petitioner is trying to seek the benefit of the aforementioned Office Order 201 (ADMI8 (1)/54) dated 24.11.1954 and Office Order dated 05.08.1955 ignoring the Article 311 (2) of the Constitution of India which definitely would not be help to the petitioner/convict. Article 311 (2) of the Constitution of India is reproduced hereinunder:

Article 311- Dismissal, removal, or reduction in rank of persons employed in civil capacities under the Union of a State....(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges: [Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed: Provided further that this clause shall not apply]. (a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge;...

The aforesaid Office Order (Supra) is a beneficial executive order only pertaining, at best, to an employee on such duty, in bona fide discharge of which, he is vulnerable to criminal charges and not to an employee who commits an offence not connected with discharge of his official duties in any manner.

11. Therefore, the benefit of the Executive Instruction dated 05.08.1955 cannot be given to the petitioner. Accordingly, we find no infirmity with the order dated 28.09.2012 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi in O.A. 1167/2012 and the same is accordingly upheld. Consequently, the writ-petition is dismissed.

12. There shall be no order as to costs. I.S.MEHTA, J KAILASH GAMBHIR, J
MARCH3, 2015 aj

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