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Court : Central Administrative Tribunal CAT Delhi

Decided On : Jan-23-2008

Reported in : (2008)(98)SLJ343CAT

Judge : J A L.K., M Chhibber

Appellant : Kartar Singh and anr.

Respondent : Delhi Development Authority

Judgement :

1. This is a Transfer Petition, which has come from the Hon'ble Delhi High Court in view of Notification dated 25th July, 2007.

2. Since pleading in the case were complete, with the consent of both the parties, this T.A. is being disposed of at the admission stage itself.

3. Both the applicants in this case have challenged order dated 29.11.2006 whereby they have been dismissed from service in view of their conviction in a criminal case. They have also sought a direction to the respondent to allow them to join their duties forthwith with all consequential benefits. By way of amendment, they had also challenged Regulation 30 of the DDA Conduct, Disciplinary and Appeal Regulations, 1999 as being arbitrary, unreasonable and unconstitutional. However, at the time of argument, Counsel for applicants made a statement that he is not pressing the relief with regard to quashing of Regulation 30.

4. It is stated by Counsel for applicants that they were convicted by the Special Judge in a criminal case vide judgment dated 17.09.2004 after holding them guilty under the provisions of Prevention of Corruption Act (page 23-88). However, when said judgment was challenged by applicants by filing an Appeal before Hon'ble High Court of Delhi, initially only sentence was stayed vide order dated 06.01.2005 (page 89). Respondent thereafter issued Memorandum dated 12.05.2005 calling upon applicants to represent as to why they should not be dismissed from service in terms of Regulation 30 of DDA Conduct, Disciplinary and Appeal Regulations, 1999. At this stage, both the applicants moved Criminal Misc. Application before the Hon'ble High Court of Delhi stating all these facts and prayed that the order of conviction be also stayed and respondent be restrained from dismissing them from service on basis of conviction, which was subject matter of criminal appeal. It is also stated by the applicants that notice was issued to DDA in this application and after hearing the Counsel of DDA and CBI both Hon'ble High Court was also pleased to stay the operation of the finding of conviction dated 17.09.2004 (page 142). This order was communicated by applicants to the respondent vide their letter dated 12.12.2005 (page 136) but in spite of it, respondent issued orders dated 29.11.2006 whereby both applicants were dismissed from service (pages 19-22).

These orders have been challenged in the present application.

5. It is submitted by Counsel for applicants that since show cause notice as well as dismissal orders, both are based on the conviction and order of conviction had already been stayed by Hon'ble High Court of Delhi after recording all the facts, therefore, there was no justification for respondent to dismiss the applicants. He submitted that once conviction was stayed, there was nothing on the basis of which respondent could have dismissed the applicants. To substantiate his argument, he relied on the judgment given by Hon'ble High Court of Allahabad in the case of Kishan Gopal Sharma 2005 (2) ATJ 306. He also relied on 2007 (2) SCC 382 (to be checked) to buttress his argument that in the given circumstances, it is open to the Court to stay the conviction also.

6. Respondents, on the other hand, have submitted that CBI had filed Criminal Case against the applicants who were working as Assistant Collector Gr. II and Kanungo respectively with DDA. The allegations, briefly against both the officials were that on 23.8.93 both officials were arrested by CBI while demanding, accepting and obtaining Rs. 13,000 as bribe and were remanded to judicial custody till 7.9.1993.

CBI recommended suspension of the two officials. Both Shri Kartar Singh and Shri J.C. Verma were suspended vide orders dated 02.09.1993.

Sanction for prosecution of the two applicants was granted on 04.10.1993. Subsequently, Shri J.C. Verma was reinstated in service vide order dated 12.7.1999 while Shri Kartar Singh was reinstated vide order dated 21.7.1999. Both the officials were ultimately convicted vide judgment dated 17.09.2004 by Ld. Special Judge, Delhi and punished. Accordingly, show cause notices were issued on 12.5.2005.

Both applicants submitted their reply dated 1.6.2005 along with a copy of orders dated 22.09.2004 and 6.1.2005 of Hon'ble Delhi High Court in the Criminal Appeal. It was after considering all the facts that order of dismissal was passed, therefore, the petition may be dismissed.

7. Counsel for respondent submitted that as both the applicants had been convicted under Prevention of Corruption Act by a competent Court of law, no departmental enquiry was necessary. The applicants had been issued show cause notice against the proposed punishment, which is the requirement of the regulation. The impugned orders were passed after due deliberation, application of mind and after taking all the facts into consideration. As far as stay of conviction is concerned, S.L.P.No. 407 of 2006 has already been filed by CBI in which notice has been issued.

8. Counsel for the respondent further submitted that in accordance with settled law, an employer is well within his right to take disciplinary action against an employee who stands convicted for an offence involving moral turpitude by a Court of Law. Moreover, in case of proved corruption, the normal punishment is

dismissal from service. In this case, the applicants were convicted for an offence under Prevention of Corruption Act for which punishment of imprisonment and fine was inflicted upon them. Mere fact that the criminal appeal of the applicants has been admitted by Hon'ble High Court or the sentence/conviction of imprisonment has been suspended, is of no consequence. It is sufficient to note that both the applicants were public servants, who had been convicted in a bribe case for taking illegal gratification. In the event, the applicants are exonerated in the Criminal Appeal filed by them, the matter will be re-examined and further action as deemed fit shall follow in accordance with law.

9. Counsel for respondent relied on judgment dated 10th January, 2003 passed by Hon'ble High Court of Delhi in another matter of DDA in Civil Writ Petition No. 1031 of 2003 (Harswaroop Verma v. Delhi Development Authority).

11. Perusal of judgment given by Special Judge on 17.9.2004 shows that both the applicants have been convicted after observing as follows: I am of the view that prosecution has been able to establish its case against both the accused persons beyond reasonable doubt by proving that both the accused persons in conspiracy with each other had demanded bribe from Shri Satbir Singh Khatri, the Court Clerk of Pragati Construction Company for showing official favour in respect of settlement of ground rent dispute and warrant of arrest issued against Shri D.R. Gupta, partner of Pragati Construction company and had gone to the office of the company on 23.8.93 to collect the bribe amount. Both of them were caught by the raid officer after they accepted Rs. 13,000 as bribe from the complainant which amount was subsequently recovered from the possession of accused No. 2, J.C. Verma. Hence, I hold both the accused persons guilty for the offences punishable under Section 120-B, IPC read with Sections 7, 13(2) read with 13(1)(d) of PC Act and also under Section 7 and Section 13(2) read with 13(1)(d) of PC Act and convict them accordingly.

It is thus clear that a finding has been returned by the Trial Court that both the applicants were found guilty of demanding and accepting illegal gratification in the form of money amounting to Rs. 13,000.

12. Respondents have dismissed both the applicants. It is necessary to note the relevant portion of show cause notice as well as the dismissal order. Vide Memorandum dated 12.5.2005 (page 90) it was observed as follows: AND WHEREAS the undersigned has carefully considered the grounds of conduct of Shri Kartar Singh, Asstt. Collector, which has led to his conviction as aforesaid and is of the opinion that because of the judgment of the Court, the circumstances of the case warrant the imposition of penalty of dismissal from service on Shri Kartar Singh, Asstt. Collector. It is therefore proposed to impose the said penalty on him in terms of Regulation 30 of DDA Conduct, Disciplinary and Appeal Regulations 1999.

Similarly, from the language used in the dismissal orders dated 29.11.06 (pages 19-22), it is observed that they had carefully considered the grounds of conduct of Shri Kartar Singh and Shri J.C.Verma, which led to their conviction and was of the opinion that because of the judgment of the Court, the circumstances of the case warrant the imposition of penalty of dismissal from service on both the officials in terms of Regulation 30 of DDA, Conduct, Disciplinary and Appeal Regulations, 1999.

13. Since both these orders have been passed under Regulation 30, it would be necessary to quote the relevant provision, i.e. Regulation 30 of DDA, Conduct, Disciplinary and Appeal Regulations, 1999, which reads as under: 30. Special procedure in certain cases--Notwithstanding anything contained in Regulations 25 or 26 or 27, 28 and 29, Disciplinary Authority may impose any of the penalties specified in Regulation 23 in any of the following circumstances: 1. The employee has been convicted on a criminal charge or on the strength of facts or conclusions arrived at by a judicial trial; or Provided the employee may be given an opportunity of making representation on the penalty proposed in (1) above before the penalty is imposed.

Perusal of above regulation shows that the authorities could have given any of the penalties irrespective of procedure laid down under Regulations 25 to 29, namely (a) if an employee has been convicted on a criminal charge; or (b) on the strength of facts; or (c) conclusion arrived at by a judicial trial, meaning thereby that it could

either be based on conviction or even on the strength of facts or conclusions arrived at by a judicial trial. The only requirement is that the employee has to be given an opportunity of making representation on the penalty proposed before actually imposing the penalty. It is admitted position that opportunity was given by the respondent to the applicants on the proposed penalty, therefore, as far as procedure is concerned, the same cannot be faulted with.

14. The only question that has been raised and disputed by applicants is, whether in these circumstances when the conviction itself was stayed, respondent could have still dismissed the applicants? As has been mentioned above, Sub-rule 1 of Regulation 30 is divided in to three components regarding imposition of penalty viz. it could either be on the basis of conviction or on the strength of facts or conclusions arrived at by a judicial trial. As can be seen from the language used in the show cause notice and the dismissal orders, it is clear that show cause notice and dismissal order were not based only on the conviction, as has been suggested by Counsel for applicant. On the contrary, it was specifically stated that the Competent Authority has considered the grounds of conduct of the applicants, which has led to their conviction and it was on the basis of the judgment of the Court and the circumstances of the case that penalty of dismissal was imposed on both the applicants. It is thus clear that dismissal order was not based ultimately on the judgment of Trial Court only but on the conduct which led to conviction.

15. The moot question that would next arise is, as to what would be the effect, if conviction is stayed. Before going on the question of effect of stay of the conviction, it would be necessary to know the difference between stay and quashing of the order. This need not detain us for long because it has already been explained by Hon'ble Supreme Court in the case of Shree Chamundi Mopeds Ltd. v. Church of South Indian Trust Assn. CSI Cinod Secretariat, Madras, wherein it was observed as under: While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order.

Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of

an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence.

From the above judgment, it is clear that even if operation of an order is stayed, it would not mean that the said order has been wiped out from existence. In other words, the order would still be in existence, but would not be operated upon for the time till it is stayed.

16. In this backdrop, it would be relevant to quote from the judgment of Hon'ble Supreme Court in the case of K.C. Sareen v. CBI, Chandigarh 2001 (6) SC 584. In the said case, the appellant therein was convicted by Special Judge under Section 13(2) of the Prevention of Corruption Act. His appeal before the Hon'ble High Court was admitted and the sentence was suspended. In the meantime, disciplinary proceedings were initiated against him on the strength of conviction recorded by the Trial Court. The Bank authorities dismissed him from service. Appellant moved Hon'ble High Court for suspending the conviction as well, but the application was dismissed. Appellant moved yet another application before Hon'ble High Court for suspension of conviction on the ground that it might take years to decide the case and unless his conviction is stayed, it would defeat the ends of justice because he would continue to be dismissed. His request was again rejected by the Hon'ble High Court. It was in those circumstances, appellant therein had moved Hon'ble Supreme Court. It was in those circumstances that Hon'ble Supreme Court posed a question to itself as to what should be the position when a pubic servant is convicted of an offence under the Prevention of Corruption Act? It was held by Hon'ble Supreme Court as under: 11. xxxxxxx No doubt when the Appellate Court admits the appeal filed in challenge of the conviction and sentence for the offence under the PC Act, the superior Court should normally suspend the sentence of imprisonment until disposal of the appeal, because refusal thereof would render the very appeal otiose such appeal could be heard soon after the filing of the appeal. But suspension of conviction of the offence under the PC Act, dehors the sentence of imprisonment as a sequel thereto, is a different matter.

12. Corruption by public servants has now reached a monstrous dimension in India. Its tentacles have started grappling even the institutions created for the protection of the republic. Unless those tentacles are intercepted and impeded from gripping the normal and orderly functioning of the public offices, through strong legislative, executive as well as judicial exercises the corrupt public servants could even paralyse the functioning of such institutions and thereby hinder the democratic polity. Proliferation of corrupt public servants could garner momentum to cripple the social order if such men are allowed to continue to manage and operate public institutions. When a public servant was found guilty of corruption after a judicial adjudicatory process conducted by a Court of law, judiciousness demands that he should be treated as corrupt until he is exonerated by a superior Court. The mere fact that an appellate or revisional forum has decided to entertain his challenge and to go into the issues and findings made against such public servants once again should not even temporarily absolve him from such findings. If such a public servant becomes entitled to hold public office and to continue to do official acts until he is judicially absolved from such findings by reason of suspension of the order of conviction it is public interest which suffers and sometimes even irreparably. When 'a public servant who is convicted of corruption is allowed to continue to hold public office it would impair the morale of the other persons manning such office, and consequently that would erode the already shrunk confidence of the people in such public institutions besides demoralising the other honest public servants who would either be the colleagues or subordinates of the convicted person. If honest public servants are compelled to take orders from proclaimed corrupt officers on account of the suspension of the conviction the fall out would be one of shaking the system itself. Hence, it is necessary that the Court should not aid the public servant who stands convicted for corruption charges to hold only public office until he is exonerated after conducting a judicial adjudication at the appellate or revisional level, xxxxxx.

Their Lordships also took into consideration the earlier judgments given by the Hon'ble Supreme Court on the subject, viz. Dy. Director of Collegiate Education (Admn.) v. S. Nagoor Meera The more appropriate course in all such cases is to take action under Clause (a) of the second provision to Article 311(2) once a Government servant is convicted of a criminal charge and not to wait for the

appeal or revision, as the case may be. If, however, the Government servant-accused is acquitted on appeal or other proceeding, the order can always be revised and if the Government servant is reinstated, he will be entitled to all the benefits to which he would have been entitled to, had he continued in service.

The other course suggested, viz., to wait till the appeal, revision and other remedies are over, would not be advisable since it would mean continuing in serving as person who has been convicted of serious offence by a criminal Court.

17. Similarly, a view was taken by the Hon'ble Supreme Court in yet another judgment in the case of Union of India and Ors. v. Ramesh Kumar . Of course, this was a case where in an appeal before the Hon'ble High Court only the sentence was suspended. It is being referred to because in the said case also, it was held that conviction continues till it is set aside. Disciplinary action initiated based on such conviction would also stand unpaired during the pendencey of the appeal. It was observed that rules also do not provide the Disciplinary Authority to await disposal of the appeal by the Appellate Court filed by a Govt. servant for taking action against him on the ground of misconduct which has led to his conviction by a Competent Court of law.

It was thus held that having regard to the provisions of the rules, the order dismissing the respondent from service on the ground of misconduct leading to his conviction by a Competent Court of law has not lost its sting merely because a criminal appeal was filed by the respondent against his conviction. In another case appellant was found guilty and convicted for an offence under Section 406 of the IPC. In appeal, Sessions Court upheld the conviction but set aside the sentence and the appellant was released on probation under Probation of Offenders Act, 1958. Hon'ble Supreme Court held that even such a person could be dismissed from service in view of his conviction (Harichand v.Director of School Education
18. From the above judgments, it is clear that Hon'ble Supreme Court has consistently taken a view that it is the conduct, which has led to the conviction in a criminal charge, which is relevant for these kinds of cases and so long as authorities come to the conclusion that on the basis of such conduct it is not desirable to keep such a person in service and if such persons are dismissed, it

cannot be found fault with. Conviction can be said to be wiped out only if the judgment of the Court below by which a person is convicted is quashed and set aside. Mere stay of the judgment would not wipe out the conviction as held by Hon'ble Supreme Court in the case of M/s Shree Chamundi Mopeds Ltd. (supra).

19. In view of above, we can easily conclude that even if operation of conviction is stayed in the case of applicants by the Hon'ble High Court of Delhi, it cannot be said that their con viction is wiped out altogether nor would it enable them to seek a direction from the Court to reinstate them in service. In the case of K.C. Sareen v. CBI, Chandigarh (supra), Hon'ble Supreme Court has held that when a public servant has been found guilty of corruption after a judicial adjudicatory process conducted by a Court of law, judiciousness demands that he should be treated as corrupt, until he is exonerated by a superior Court. If such a public servant becomes entitled to hold public office and to continue to do official acts until he is judicially absolved from such findings by reason of suspension of the order of conviction, it if public interest which suffers and sometimes, even irreparably. It was specifically observed that it is necessary that the Court should not take the public servant who stands convicted for corruption charges to hold any public office until he is exonerated after conducting judicial adjudication at the appellate or revisional level. The intention of Hon'ble Supreme Court is absolutely clear from the above observations, viz., that unless conviction is set aside by a higher Court such a person who has been found to be guilty of corruption should not be allowed to hold any public office.

20. We are not only bound by the observations made by the Hon'ble Supreme Court under Article 141 of the Constitution but we fully agree with the above views. It is correct that while deciding applicants' Criminal Case, Hon'ble High Court of Delhi had noted the above judgments, but that was for the purpose whether Hon'ble High Court had the power to stay the conviction or not. The question before us is whether we can give direction to re-instate such person when the conviction still stands and is not wiped out. Answer is already given in the above judgment so we have to follow the Hon'ble Supreme Court.

In any case, it is an admitted position that against the said order, CBI has already filed S.L.P. before the Hon'ble Supreme Court of India in which notice has already been issued, meaning, thereby that the matter is already subjudice. The very fact that notice has been issued by Hon'ble Supreme Court shows that prima facie Hon'ble Supreme Court was satisfied that there is some merit in the petition, otherwise it would have been dismissed at the admission stage itself.

21. In view of above facts, there are two options before us either to await for the outcome of the final orders to be passed in the S.L.P., as mentioned above, or to follow the judgments of Hon'ble Supreme Court as already quoted above because the position has already been explained in extenso. We had specifically asked the Counsel as to what is the next date in the S.L.P., but none of the parties was able to give the exact date. We are therefore of the opinion that this matter may be decided on the basis of law as already laid down. It goes without saying that ultimately whatever is decided by the Hon'ble High Court in Criminal Appeal or Hon'ble Supreme Court would be binding on both the parties.

22. It is relevant to note that respondents have specifically stated that ultimately if applicants are exonerated in the criminal appeal, they would pass appropriate orders in accordance with law. This, according to us, is sufficient to take care of applicants' interest.

Moreover, this view has been taken by Hon'ble Supreme Court also in the case of Dy. Director of Collegiate Education (Admn.) v. S. Nagoor Meera (supra). Even otherwise while dealing with the same question in the other case namely W.P. (C) No. 6622/2003 (S.S. Chowdhary v. MCD), relating to DDA, decided on 10.1.2003 observed as follows: I find no merit in the petitions. It may be that sentence/conviction has been suspended pending the disposal of the petitions appeals.

The respondent is nevertheless have the power to dismiss the petitioners.

23. In this backdrop it is relevant to note that while staying the conviction even, Hon'ble High Court had specifically observed as follows: Though having regard to the nature and scope of the present proceeding before this Court, it does not seen

possible to give any direction to respondent No. 2 DDA not to proceed with the memorandum dated 12.5.2005 or restrain them from imposing any penalty on the applicants, but this Court certainly has the power and discretion to suspend the order of conviction dated 17.9.2004 passed by the learned Special Judge.

It is thus clear that neither memorandum dated 12.5.2005 was stayed nor any direction was given to the respondents not to impose the penalty obviously because that was not within the scope of criminal appeal.

24. We would be failing in our duties if we do not refer to the judgment of Kishan Gopal Sharma (supra) relied upon by the Counsel for applicant since Hon'ble Supreme Court has already laid down the law, which is binding on all subordinate Courts. If any contrary view is taken by any other Hon'ble Court, we would have to follow Hon'ble Supreme Court. In view of above, the relief as sought by the applicants cannot be given. However, it is clarified that ultimately if applicants are exonerated in the criminal appeal and copy of judgment is served upon respondents, they would be required to pass appropriate orders at that stage in accordance with law. With above observations, O.A/T.A.stands disposed of. No order as to costs.

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