

(2007) 05 DEL CK 0111

In the Delhi High Court

Case No : Writ Petition (C) No. 4471 of 1994

Shri Ramesh Kumar

APPELLANT

Vs

Delhi Transport Corporation

RESPONDENT

Date of Decision : 31-05-2007

Acts Referred:

Constitution of India, 1950 — Article 226
Delhi Road Transport Authority (Conditions of Appointment and Service) Regulations,
1952 — Section 15(2)
Industrial Disputes Act, 1947 — Section 15(2)

Citation : (2007) 141 DLT 457

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : B.K. Pal, for the Appellant; J.N. Aggarwal and Banamali Shukla, for the Respondent

Judgement

Kailash Gambhir, J.—By way of this writ petition the petitioner, a DTC driver of bus No. 15936, has sought to challenge the show cause notice dated 3.10.1994 whereby the petitioner was put to show cause as to why he be not punished with the order of dismissal from service pursuant to the chargesheet dated 25.3.1994 issued against him. During the course of pendency of the present writ petition, the inquiry against the petitioner was completed and the services of the petitioner were terminated. After the said order of dismissal, the petitioner amended this petition and also challenged his dismissal. The facts in brief which are relevant for deciding the present writ petition are that the petitioner at the relevant time was operating the bus from Delhi to Tanakpur and on the relevant date of 10.3.1994 while he was coming back from Tanakpur to Delhi, the said bus was apprehended near Banwasa Police Post by the customs officials. On checking the bus, the customs officials found that, in the tool box which was kept under the last seat of the bus, certain smuggled computer parts were found, which according to the customs officials were worth Rs. 70,000/-. The petitioner, Shri Rajinder Singh, conductor of the bus and one Mr. Ravindra Singh, a

commuter in the bus, were arrested on the spot and the bus was also taken in custody by the customs officials which was detained by them for a period of 14 days. The petitioner was released on bail but in the meantime he was placed under suspension with effect from 16.3.1994. The petitioner was charge-sheeted vide chargesheet No. S.162/94/364 dated 25.3.1994. The chargesheet as framed against the petitioner is reproduced as under:

Delhi Transport Corporation (A GOVT. OF INDIA UNDERTAKING) I.P. DEPOT, New Delhi. S.162/94/364 Date: 25-3-94

Shri Ramesh Kumar, Desig. Driver, B. No. : 15936 Through : S.P (T).

CHARGESHEET

This is to demand an Explanation from you as to why as per Delhi Road Transport rules and regulations 1972 read with Section 15(2) of the D.R.T.A./Appointment and Service Regulations, 1952 disciplinary action is not taken against you for the following reason:

On 9-3-94 your duty was on bus No. DHP-2689 plying on Delhi-Tanakpur route. On 10-3-94 when customs Officials checked your bus at Police Post Banwasa then in the tool box under the last seat smuggled goods (Computer) parts were found illegally which are worth of Rs. 70,000/- customs Officials have arrested you and took custody of the bus Along with the computer parts. The bus has been under the custody for 14-days due to which there considerable economic loss has accrued to the Corporation. Therefore by doing this you have caused economic loss to the Corporation as well as its reputation has also been damaged. As such you have committed misconduct as per para No. 19 (B) (F) and (M) of the standing orders governing the employees of Delhi Transport Corporation.

Your past service record shall be kept in view while taking action. The copy of the report No. 2694 83-84 is being enclosed which form the basis of the chargesheet. Your Explanation should reach within ten days of the receipt of the chargesheet. In case you want to inspect the record relating to the case you should report within 24-hours of the receipt of this chargesheet. If after this, you failed to submit your Explanation to the chargesheet within ten days then it will be presumed that you have not to give any Explanation and further action shall be taken against you without giving any notice in this regard as per rules.

Encl. Report. sd/- DEPOT MANAGER

2. After issuance of the said chargesheet, the petitioner vide his letter dated 31.3.1994, made a request to the respondents to supply the names of all the persons who checked the bus, copy of the statements of the persons and the copy of the FIR so as to enable him to reply to the said chargesheet dated 25.3.1994. In reply to this letter of the petitioner, the respondent vide their reply dated 15.4.1994 did not supply the said documents and the information as sought by the petitioner on the ground that the same were not available. The

petitioner sent various reminders dated 16.5.1994, 23.5.1994, 17.6.1994, 20.6.1994 and 16.8.1994 to the respondent for supplying the said documents and information, otherwise, to stop the inquiry proceedings. That despite the aforesaid letters, an Enquiry Committee was culminated and the enquiry proceedings commenced with effect from 10.6.1994 and completed on 26.9.1994. The petitioner also made request vide aforesaid letters stating that no inquiry should be held before the conclusion of the criminal proceedings. The petitioner's request was not paid any heed. The petitioner had attended the inquiry on 10.6.1994 on which date again, he reiterated his request for supplying the documents and thereafter, the inquiry proceedings continued on various dates without any due intimation to the petitioner. The inquiry proceedings were held on 24.7.1994, 4.8.1994, 16.8.1994 and 26.9.1994 and thereafter show cause notice dated 3.10.1994, proposing dismissal of the petitioner from the service was issued. The petitioner sent a reply to the said show cause notice vide letter dated 17.10.1994 but without considering the reply of the petitioner, the services of the petitioner were terminated by the respondent. In the meantime vide letter dated 30.12.1994, the Collector of Customs gave a finding that the involvement of the petitioner and the other members of the staff of the bus were not proved and thus the petitioner was discharged from the criminal charge. The petitioner has thus challenged the said show cause notice, chargesheet as well as dismissal on the ground that there is a serious violation of principles of natural justice as right from the beginning he had been seeking the said information so as to know the names of all the persons who were present and checked the bus as well as the statement of witnesses including a copy of the FIR but deliberately the respondents for no reason, whatsoever, did not supply the documents as well as the said information. The petitioner stated that in the absence of this vital information, he was not in a position to file his comprehensive reply to the show cause notice dated 3.10.1994. Counsel for the petitioner has contended that the charges as framed by the customs officials as well as by the Inquiry Officer are the same and the inquiry proceedings should not have continued before the conclusion of the criminal case as any reply, if submitted by him would have prejudiced his defense in the criminal case. Counsel for the petitioner further contended that since he has already been acquitted from the criminal case, Therefore, the same proved his innocence but for the same charges the department has held him guilty.

3. Counsel for the petitioner has contended that vide letter dated 31.3.1994, petitioner had specifically asked for supply of names of all the persons who checked the bus, copies of statement of the persons and copy of the FIR so as to enable him to give reply to the chargesheet but in reply thereto the respondent in utter violation of principles of natural justice refused to supply the information on the pretext of the same not being available with the respondent. The respondent in its reply dated 15.4.94 had stated that name of the persons who checked the bus and their statements, copy of the FIR as well as statement of witnesses were not available with them. Respondent had merely supplied copy of

the statement of the officer of the U.P. Roadways and copy of the order No. 101 of the year 1954. The petitioner vide another letter dated 16.5.94 again insisted for making those documents available as in the absence of the said documents he would not be able to give proper reply to the show cause notice issued by the respondent. Again the petitioner sent a letter dated 23.5.94 to the respondent for supply of copy of the FIR registered by the Customs Department along with list of witnesses and their names etc. The petitioner vide letters dated 17.6.94, 20.6.94 and 16.8.94 also made a request to the respondent for not proceeding with the enquiry till the documents as asked for, by him, were supplied to him. Based on the above letters and reminders sent by the petitioner, counsel for the petitioner has contended that the respondent proceeded with the enquiry without paying any heed to the said request of the petitioner and vide order dated 20.10.94 passed termination order in utter violation of the principles of natural justice and basic tenets of the law. The petitioner had also pleaded with the respondent not to proceed with the enquiry during the continuation of criminal proceedings as disclosure of defense by the petitioner would cause serious prejudice to his case in the enquiry proceedings.

4. On the other hand counsel for the respondent contended that there was no violation of the principles of natural justice on the part of the respondent as whatever documents which were available with the respondent were supplied to the petitioner. Mr. Aggarwal counsel for the respondent further contended that the petitioner deliberately avoided to participate in the enquiry proceedings despite number of opportunities granted to him and Therefore, the petitioner cannot put any sort of blame on the respondent for his willful, deliberate and intentional avoidance in not participating in the enquiry proceedings. Counsel for the respondent also contended that the decision of the respondent to proceed with the enquiry proceedings during the continuation of the criminal proceedings was also correct as there was no legal bar in the continuation of both the proceedings at the same time. Counsel for the respondent has contended that in the departmental proceedings, the department was primarily concerned with the financial loss as well as loss of reputation which the respondent had suffered due to impounding of the bus for a period of 14 days. Counsel for the respondent says that had the petitioner remained diligent in discharging his duties, the said incident of storage of contraband in the tool box of the bus would not have occurred. In support of his arguments that there is clear violation of principles of natural justice on the part of the respondent counsel for the petitioner has cited the judgment of the Supreme Court in Bhupinder Pal Singh Vs. Director General of Civil Aviation and Others, , where the issue of grant of no opportunity for cross-examination was discussed. Counsel for the petitioner also relied upon the judgment of Supreme Court in Sher Bahadur Vs. Union of India (UOI) and Others, , wherein the expression "sufficiency of evidence" has been explained. Counsel for the petitioner stated that the Supreme Court in State Bank of India Vs. Tarun Kumar Banerjee and Others, has dealt with the issue of withholding of some evidence during domestic enquiry.

5. The above cited judgments may be of no help to the petitioner as the same do not exactly deal with the point in issue in the circumstances of the present case. The petitioner has also relied upon the judgment of the Supreme Court in *Kusheshwar Dubey Vs. Bharat Coking Coal Ltd. and Others*, in support of his arguments of stay of departmental proceedings where criminal action was also based on same set of facts. Relevant paras of the said judgment are reproduced as under:

7. The view expressed in the three cases of this Court seem to support the position that while there could be no legal bar for simultaneous proceedings being taken, yet, there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case. In the latter class of cases it would be open to the delinquent employee to seek such an order of stay or injunction from the court. Whether in the facts and circumstances of a particular case there should or should not be such simultaneity of the proceedings would then receive judicial consideration and the court will decide in the given circumstances of a particular case as to whether the disciplinary proceedings should be interdicted, pending criminal trial. As we have already stated that it is neither possible nor advisable to evolve a hard and fast, strait-jacket formula valid for all cases and of general application without regard to the particularities of the individual situation. For the disposal of the present case, we do not think it necessary to say anything more, particularly when we do not intend to lay down any general guideline.

8. In the instant case, the criminal action and the disciplinary proceedings are grounded upon the same set of facts. We are of the view that the disciplinary proceedings should have been stayed and the High Court was not right in interfering with the trial court's order of injunction which had been affirmed in appeal.

6. The counsel for the respondent on the other hand, has relied upon the judgment cited in JT 2006 (1) SC 444, *Chairman-cum-M.D., T.N.C.S. Corporation Ltd. and Ors. v. K. Meerabai*, wherein it is held that a disciplinary authority can hold an enquiry parallel to the criminal proceedings as the respondent therein was proceeded against for quite different charges and on different sets of facts before the Court of Chief Judicial Magistrate, on the one hand, and before the departmental enquiry on the other. In *Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another*, , the Supreme Court has given following observations in Para 22 relating to conduct of disciplinary proceedings parallel to the criminal proceedings which is as under:

22. The conclusions which are deducible from various decisions of this Court referred to above are:

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest.

7. I do not find any force and substance in the arguments of the counsel for the respondent as the economic loss due to detention of the bus for 14 days and loss of reputation of respondent is consequential to the registration of the case by the customs officials who found existence of smuggled goods worth Rs. 70,000/- in the tool box of the bus. Had such case not been registered by the customs officials the bus could not have been impounded and no question could have arisen for the loss of reputation. The impounding of the bus and loss of reputation thus cannot be separated from the said criminal offence of storage of smuggled goods in the bus. Therefore, in such a case where the charges against the delinquent official are totally inter- dependant on the nature of charges in a criminal case, it would have been desirable for the respondent to have stayed the departmental proceedings till the conclusion of the criminal case. However, since in the present matter, the departmental enquiry has already taken place against the petitioner as the respondent/department felt that there prime concern was not the culpability of the petitioner in committing the crime but the economic loss and loss of reputation of the respondent due to the existence of smuggled goods in the bus. Consequently, let the present matter be examined considering the decision of the respondent to conduct disciplinary enquiry as appropriate. To examine this aspect, one is required to see as to whether during the departmental enquiry any evidence was produced by the respondent to establish involvement of the petitioner in permitting the storage of contraband items in the tool box of the bus and if there was any evidence to this effect, then, only the action of the respondent terminating the petitioner from his service can be said to be justified. It is an admitted case that the involvement of the petitioner or

any other member of the staff of the bus was not proved and vide order dated 30.12.94 the customs department exonerated the petitioner by clearly holding that his involvement could not be proved. Once such a finding has already come into existence, may be after the decision of the departmental enquiry, Therefore, the only test which has to be applied in the present facts of the case is to see as to whether in the departmental enquiry any evidence was led or documents proved to pin-point the involvement of the petitioner in allowing any kind of storage of contraband items in the bus as already stated above. The impounding of the bus is consequential to the interception of the bus by the customs officials who had found existence of contraband items in the tool box of the bus and Therefore, the department through some independent evidence had to prove the involvement of the petitioner in permitting the storage of the contraband items in the tool box of the bus. The only witness which was produced in the departmental proceeding was one Mr. Sunder Lal who was neither an eye-witness nor a passenger in the bus but an officer of the respondent who was deputed to obtain the report from the customs officials about the incident. The testimony of Mr. Sunder Lal which is based on the report of the customs officials cannot inspire any confidence, more particularly, when the customs officials themselves did not find involvement of the petitioner in the said criminal case. Counsel for the respondent has failed to point out as to how in the departmental proceedings misconduct on the part of the petitioner has been proved except on the basis of the sole testimony of Sunder Lal and his report dated 14.3.94 in the aforesaid incident. Even no Explanation has been given by the counsel for the respondent as to why the documents which were asked for by the petitioner were not supplied to him despite repeated letters and reminders sent by the petitioner. Once in the chargesheet the respondent itself has relied upon the case registered by the customs official then it was obligatory on the part of the respondent to supply him the necessary documents as well as statements recorded by the customs department so as to give complete opportunity to the petitioner to meet his case during the course of enquiry proceedings. The department could not have found fault with the petitioner or could not have proved misconduct on the part of the petitioner merely by stating that the bus in question was impounded for a period of 14 days and the same has resulted in financial loss and loss of reputation, indisputably this impounding of the bus is a consequence of raid by the customs officials after the contraband items were found by them in the bus. If both these acts are considered independently then the alleged act of misconduct of causing financial loss and loss of reputation shatters down completely once the petitioner was not found involved in the criminal offence and if both the acts are considered as inter-dependent and inter-woven then the first act of involvement of the petitioner in allowing storage of the contraband items had to be proved by the respondent through some evidence and admittedly, no such evidence was led by the respondent during the enquiry proceedings Therefore, the findings of the enquiry officer stood vitiated as being totally perverse and untenable in the eyes of law. Normally in such cases one must exhaust the equally efficacious remedy as available under the Industrial Disputes

Act, but keeping in view the peculiar facts and circumstances of the instant case, I deem it fit to exercise writ jurisdiction under Article 226 of the Constitution of India. The exceptional circumstances warranting interference under Article 226 of the Constitution of India, without relegating the petitioner to the statutory Tribunal under the ID Act, are that, first the petition was filed by the petitioner at the stage of show cause notice in the year 1994 and later on challenge was made to dismissal order during the pendency of the present proceedings; secondly the respondent at no stage had taken the objection of jurisdiction even till the final hearing; thirdly this matter is pending before this Court for the last about more than 13 years and at this stage to send the matter for retrial will be agonizing for both the petitioner as well as the respondent. Even otherwise this Court while exercising jurisdiction under Article 226 of the Constitution has very wide powers to do complete justice between the parties.

8. The petitioner had joined the service of the respondent as a driver in the year 1985 and was dismissed from his service vide order dated 20.10.94. In case the petitioner has not yet reached the age of superannuation, the respondent is directed to reinstate the petitioner on the same post of driver, subject to his being medically fit to drive the vehicle. The petitioner cannot be awarded any back wages as this Court has not gone into this question. However, since the termination of the petitioner has been held as illegal, Therefore, the petitioner shall be treated in deemed service for this past period and except the back wages the petitioner shall be given all consequential benefits arising from this order directing reinstatement of the petitioner. With these directions the show cause notice dated 3.10.1994 and dismissal order are hereby quashed.

9. The Rule is made absolute.