

(2009) 01 PAT CK 0034
In the Patna High Court
Case No : CWJC No. 4462 of 2001

Anand Lal Mahto	Vs	APPELLANT
The Human Rights Commission and Others		RESPONDENT

Date of Decision : 21-01-2009

Acts Referred:

Citation : (2009) 3 PLJR 160

Hon'ble Judges : Mihir Kr. Jha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mihir Kr. Jha, J.—Heard counsel for the petitioner. The grievance of the petitioner against Annexures-7 and 8, seeking to realize Rs. 1 lac for payment of compensation in terms of some direction of the National Human Rights Commission on the face of record cannot be sustained, inasmuch as for that very charge the petitioner was earlier departmentally proceeded and in the departmental proceeding the petitioner was fully exonerated. Once the petitioner was not found to be guilty in any respect for the death in question said to have taken place in custody, at least the petitioner could not have been made scapegoat for partly compensating the compensation amount paid by the Government in terms of the direction of the National Human Rights Commission.

2. The law in this respect is well settled that a Government servant can definitely be subjected to an order for recovery of loss caused to the Government exchequer, but then for that purpose a proceeding has to be drawn in keeping with the requirement of Discipline and Control Rules. As a matter of fact in the present case a proceeding was drawn against the petitioner to determine the allegation of basic misconduct as to whether such death in custody had taken place on account of any negligence/misconduct on the part of the petitioner but then both the enquiry officer and the disciplinary authority in such enquiry had gone to hold that such custodial death had not taken place on account of any negligence or misconduct on the part of the petitioner. The order of the

departmental proceeding having become final the authorities could not have penalized the petitioner for the same misconduct in the name of there being a direction of the National Human Rights Commission to pay the compensation to the family members of the deceased person dying in custody.

3. True it is that the petitioner was a Police Officer in whose area of control and jurisdiction such an incident of custodial death had taken place but that alone will not make him liable unless his personal involvement and liability is determined in accordance with law.

4. In fact in the counter affidavit which has been filed by respondent No. 4, S.D.P.O., Hilsa, he too has admitted virtually each and every fact stated in the writ application but has only taken a plea that the impugned order for recovery of Rs. 1 lac by way of compensation was passed on the direction of the State Government. The State Government however has not filed its counter affidavit so as to throw light on the personal liability of the petitioner.

5. That being so. this Court, on the basis of materials on record, is left with no other option but to hold, that the impugned orders as contained Annexures-7 and 8 to this writ application are absolutely illegal and perfunctory and they are hereby quashed. This writ application is accordingly allowed.