

(2020) 02 PAT CK 0395

In the Patna High Court

Case No : Letters Patent Appeal No. 801 Of 2016, Civil Writ Jurisdiction Case No. 4042 Of 2015

Anil Kumar Singh

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 25-02-2020

Acts Referred:

Citation : (2020) 02 PAT CK 0395

Hon'ble Judges : Shivaji Pandey, J;Anjani Kumar Sharan, J

Bench : Division Bench

Advocate : Rupak Kumar, Shailender Kumar Singh, Md. Mamil Akhtar

Final Decision : Allowed

Judgement

1. Heard the learned counsel for the appellant and learned counsel for the Bihar State Food and Civil Supplies Corporation.

2. This case has a chequered history, as the matter had remanded back and whereafter, the final order has been passed which has been challenged unsuccessfully.

3. Eleven charges have been framed against the appellant, all are related to commission of a fraudulent act, thereby caused loss to the Respondent-Corporation. Charges, which have been levelled against the appellant, are as follows:-

(i) ???? ???? ???? ????'93 ?? ???' 95 ?? ???? ???? ???? , ???? (?????) ?? ???? ?
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???? ???? ???? ???? ???? ???? ???? ???? ???? 10 (????0??0??0??0) 93 ???? ?
19.4.94 ???? ???? 508-95-000 ???? ???? ???? ???? ???? ???? ?
???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ?

(ii) ???? ???? ???? ????' 93 ?? ???' 95 ?? ?? ???? ???? ???? ???? ?
???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ???? ?

????????? ??? ??? ????, ????? ?????? ??? ? ? ???? ?????? ? ? ???? ? ? ? ?
???? ????????? ??????

(x) ??? ?????????? ? ????????? 162 ????? 4.8.95 ????? ???? ? ? ???? ? ? ?
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2,57,445.55 ? ? ? ? ? ? ? ? ? ? 18: ? ? ? ? ? ? 95 ? ? ? ? ? ? ? ? 51,102.20 ? ?
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? ? ? ? 53,380.20 ?
2,57,445.55+51,102.20+53,380.20 =3,91,927.95 ? ?
0 ?

(xi) ??? ??????????
? ?

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5,34,814.05 ?
18% ?

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4. The appellant was served the charge sheet asked explanation from him which he has replied, vide his explanation dated 12.02.1997, where he has explained in what manner he cannot be held liable for any conduct which have been treated as misconduct, but pertaining to charge no.7, which is pertaining to auction sale of grain stored in the Depot, without following the proper procedure and in meagre rate, thereby caused loss to the Corporation. In reply, he has stated that the wheat was auctioned sold was rotten grain with the permission of the Block Development Officer but that money was kept by him, later on, he deposited.

5. From the record it appears that the witnesses have been examined from the side of the prosecution and complain has been made by the appellant that he was not allowed to cross examine the witnesses nor the relevant records were made available so that we could have an opportunity to examine that he was given an opportunity for effective cross examination but ultimately the enquiry report has been submitted against the appellant in turn he was served the second show cause, whereafter, the order of punishment of dismissal has been awarded. Ground has been taken by the appellant that the proper procedure which was required to be followed, has not been done, at the same time for same and similar charges, criminal case was also lodged against the appellant in which he has been acquitted and as such he cannot be proceeded nor he can be punished for the same charges in which he has been acquitted by the trial Court after full fledged trial and in support of submission, he has placed reliance on the

judgment reported in (2015) 2 SCC 365 para 25 and 26, S. Bhaskar Reddy and another v. Superintendent of Police and another, (2009) 2 SCC 570 para 14, Roop Singh Negi v. Punjab National Bank and others, (2010) 2 SCC 772, State of Uttar Pradesh and others vs. Saroj Kumar Sinha and (2011) 6 SCC 376 Commissioner of Police Delhi and others vs. Jai Bhagwan.

6. Before considering the matter about the applicability of the judgment, it has to be examined, the charges in the criminal case vis-a-vis departmental enquiry are identical or different, as in the present case, the appellant has been charge sheeted with eleven charges whereas the criminal case, it is related to one charge even though he has been acquitted in the criminal trial that does not mean that in all the charges he has been let off which was not subject matter of criminal case. In the departmental enquiry even one charge is proved against the appellant is of graver nature is sufficient for sustenance of the punishment. Reliance can be placed on the judgment reported in AIR 1963 SC 779 State of Orissa vs. Bidyabhushan Mohapatra in which the Hon'ble Supreme Court has held that even one charge is proved is sufficient for sustenance of the punishment.

7. Apart from that, from perusal of the judgment passed in the criminal case it appears that he has been acquitted on the ground that the prosecution has failed to bring the original record for proving the charges against the appellant, degree of proving the charges in a criminal case is in different scale whereas in proving charge in the departmental proceeding in a different manner, as in a departmental enquiry, the strict rule of evidence act does not apply even photocopy, which has not been challenged, can be used as an evidence whereas the criminal case, the charges would be proved by the original record, another principle is that in the departmental proceeding, the degree of proof is based on the principle of preponderance of probability whereas in a criminal trial, charge is to be proved beyond reasonable doubt. So degree of proving of charges in a criminal case is quite different that to the departmental proceeding. Looking to this principle in the judgment of Bhaskar Reddy case (supra), the fact was quite different, as it was related to the one charge in which the acquittal was recorded on merit, but the fact was not that they have failed to bring the original record, that led to an acquittal. So it amounts to an acquittal on technical ground that cannot be a basis for not proceeding in the departmental proceeding.

8. The judgment relating to State of Uttar Pradesh and others vs. Saroj Kumar Sinha, reported in (2010) 2 SCC 772, is not related to acquittal in criminal case, but related, the manner procedure of departmental enquiry is to be followed. The basic plank of the judgment of Hon'ble Supreme Court is that the natural justice is to be followed and the charges have to be proved through the witnesses. If the charges have not been proved through the witnesses itself is a ground for interference, the same principle applies in the case of Roop Singh Negi case (supra) in which the question arose, the charges have to be proved by the witnesses, as in that case, the statement, which the delinquent has made before the police, he has resiled from the earlier version that and on that account, the

Hon'ble Supreme Court has held that when the delinquent has withdrawn his statement which he has made before the police, in such circumstances, the duty of the prosecution to prove the charges through the witness. So far the scope of judicial review in the departmental enquiry, it has been said in the case of B.C. Chaturvedi vs. Union of India and others, reported in AIR 1996 SC 484, the court, while exercising the jurisdiction under judicial review, has to see whether the decision making process has been followed properly or the findings are perverse or the material, which is not required to be looked into, has been taken into consideration and the records which were essential have been left out. So these are the guidelines have been prescribed in B.C.Chaturvedi case (supra) to hold enquiry while dealing with the issue of scope of judicial review. On this score, we have to hold enquiry with respect to the fairness departmental enquiry. The order sheet shows that the witnesses have been examined, but the record does not disclose that the evidence of witnesses were recorded as the counsel for the Corporation has failed to produce us evidence of prosecution witnesses, but he has only submitted that as the appellant has accepted the charge so there was no need to prove the charge through oral and documentary evidence, in that context, it is apparent that he, in explanation has said that the grain was rotten and on the permission by the Block Development Officer he had held the auction sale of the grain, but the counsel for the Corporation submits that the proper procedure for the auction was not followed, even in case of rotten grain the Block Development Officer does not have a jurisdiction or right or duty to give any permission but authority attached to the B.S.F.C. would give permission to auction sale of the rotten grain. The record does not reflect this fact was brought for consideration nor the document showing the standard procedure for auction has been brought to show in what manner, the grain found to be rotten to be disposed of. As a prima facie it appears that the Corporation while conducting the departmental proceeding has not followed the proper procedure in the sense that order sheet discloses the recording of evidence of witness but such oral evidence is not in record. The view of this Court is that decision making process, is perfunctory in nature as they have not followed the settled principle of natural justice as well as the facts which are required to be proved for bringing the charge at home has not been done.

9. In such view of the matter, the order of Appellate Authority and Revisional Authority are set aside and the matter is remanded back from the stage of producing evidence by the prosecution and if the appellant so sanguine calling some records, he must file an application before the Enquiry Officer and the Enquiry Officer is supposed to supply only relevant records through competent authority, not all records as may be demanded by the delinquent. It is also directed to the appellant to cooperate in completion of the proceeding without any exception within the period of six months.

10. Let a new Enquiry Officer be appointed by the Corporation and the entire process be completed within six months from the date of receipt of this order on the day to day basis. If the appellant files an application to examine his witness,

the Enquiry Officer will be obliged to allow the appellant to examine his witness in support of his case.

11. Records produced by the Corporation be returned to him.

12. Accordingly, this appeal is allowed to the aforesaid extent.