

(2019) 01 PAT CK 0028

In the Patna High Court

Case No : Letters Patent Appeal No. 1360 Of 2018, Civil Writ Jurisdiction Case
No. 15823 Of 2010

Ashok Kumar Mandal

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 15-01-2019

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 165, 166, 225B, 466, 468, 471, 477
Classification, Control & Appeal) Rules, 1965 — Rule 14(x), 14(ix)

Citation : (2019) 1 PLJR 712

Hon'ble Judges : Amreshwar Pratap Sahi, CJ;Anjana Mishra, J

Bench : Division Bench

Advocate : Sunil Singh, Gyan Prakash Ojha, Piyush Lall

Final Decision : Dismissed

Judgement

ANJANA MISHRA

1. The present intra-Court appeal has been preferred against the judgment and order dated 18.08.2018 passed in C.W.J.C. No.15823 of 2010, whereby and whereunder the learned single Judge has affirmed the order dated 16.09.2008, issued by the District & Sessions Judge, Purnea, whereby the appellant/petitioner has been held guilty of the charges levelled against him, and as a consequence thereof, has imposed the punishment of compulsory retirement. The consequential order placing the appellant/petitioner under compulsory retirement dated 16.09.2008 is also the subject-matter of challenge in the writ application.

2. The appellant/petitioner, vide Memo No.443-45 dated 19.03.1996, issued under the signature of the District Judge, Purnea, was placed under suspension as he, while working as a Typist in the Civil Court, Purnea, was alleged to have committed forgery and practised fraud on the court by manipulating forged and fake bail order of the Hon'ble Supreme Court of India with respect to accused persons, namely, Chandeshwari Mandal, Cheddi Mandal, Anandi Mandal and Prabhu Mandal, in Sessions Trial No.166 of 1985, thereby getting them unlawfully

released on 19.06.1992. The allegation against the appellant/petitioner is that he had taken a sum of Rs.50,000/- from the accused Chandeshwari Mandal (since deceased) for manipulating the said order in his favour and facilitating his release.

3. Learned counsel for the appellant pointed out that for the same charge, a criminal case, bearing K. Hat P.S. Case No.14 of 1996, was instituted at Purnea on the direction of the Hon'ble Supreme Court of India as also District & Sessions Judge under Sections 165, 166, 468, 471, 477, 120B and 225B of the Indian Penal Code and the appellant and three of the aforementioned were made accused in the case. After investigation, the matter was sent up for trial, vide judgment dated 31.07.2000 passed in Trial No.1122 of 2000/G.R. Case No.62 of 1996, which finally ended in conviction of the two accused, namely, Cheddi Mandal and Anandi Mandal for the offences under Sections 466, 468, 120B and 225B of the IPC, whereas the appellant was held not guilty and was acquitted of the charge and was accordingly ordered to be released from custody.

4. Learned counsel for the appellant Shri Sunil Singh also pointed out that no sooner the criminal case was instituted, the appellant had been placed under suspension for the alleged involvement in committing forgery and practising fraud on the court, vide Memo No.443-45 dated 19.03.1996. However, soon after his acquittal, vide Order No.123 of 2000 dated 17.08.2000, the District & Sessions Judge, Purnea, ordered for initiation of departmental proceedings against the appellant/petitioner and charges were framed against him with a direction to the appellant/petitioner to file his show cause before the Enquiry Officer in the departmental proceedings instituted against him. The said departmental proceeding which was registered as Departmental Proceeding No.02 of 2000 and on 25.09.2000, the appellant/delinquent submitted his detailed explanation before the Enquiry Officer pleading total innocence and also stating that he had been acquitted in the trial by the Chief Judicial Magistrate, Purnea, in his judgment dated 31.07.2000 passed in G.R. No./Tr. No.1122 of 2000.

5. In the said departmental proceeding, the Enquiry Officer had after holding enquiry submitted a report dated 14.08.2006, finding the petitioner guilty for the allegation of committing forgery and practising fraud on the court by creating forged and fabricated bail order of the Hon'ble Supreme Court and on the basis of the said bail order, accused Chandeshwari Mandal, Cheddi Mandal, Anandi Mandal and Prabhu Mandal were unlawfully released from the judicial custody on 19.06.1992. For the said purpose, the allegation of having taken a sum of Rs.50,000/- was found to be true. Thereafter, a second show cause notice was issued to the appellant/petitioner and he was called upon to appear for hearing before the disciplinary authority on 08.05.2007 on the question of inflicting punishment on him. On his appearance on 08.05.2007, he requested for an enquiry report from the authority, which was duly supplied to him on 09.05.2007 and after due hearing, the disciplinary authority, while agreeing with the finding

of the enquiry officer, inflicted the punishment of compulsory retirement on the petitioner, vide his order dated 16.09.2008.

6. The case of the appellant was a total denial of the allegations of accepting any amount as illegal gratification for fabricating forged bail order and as also he never manufactured any bail order to help and facilitate release of the convicts from jail. Learned counsel for the appellant further submitted that on account of criminal prosecution launched against the appellant/petitioner, he was taken into custody on 19.03.1996 and could be released only after his acquittal in Trial No.1122 of 2000 and thus he had been adequately punished by his incarceration on account of the alleged charges. Moreover, soon after initiation of criminal case the appellant was placed under suspension and after facing the charges levelled against him in the departmental proceedings, ultimately the punishment of compulsory retirement was imposed. It was submitted that though the petitioner was acquitted in the criminal trial, the departmental Enquiry Officer, on the same and similar charges, should have exonerated the delinquent in the departmental proceedings, but strangely enough, basing its finding on erroneous materials and misconceived legal notions, the appellant/petitioner was placed under compulsory retirement. It was further submitted by the learned counsel in the case before the learned single Judge that while imposing punishment, no second show cause notice was given to the petitioner and, therefore, for the said reason also, the order of punishment stood vitiated was fit to be set aside.

7. It was further contended by the learned counsel for the appellant that strangely enough, at the enquiry, convicts Cheddi Mandal and Anandi Mandal were examined as prosecution witnesses, though they were incompetent to be examined and they are said to have supported the allegation of the appellant approaching Chandeshwari Mandal son of Cheddi Mandal for arranging money and accordingly, wife of Cheddi Mandal was asked to arrange for money, who made the necessary arrangements and provided the same to be paid to the appellant, who accepted the same and got the forged bail order for securing their release from custody.

8. It was submitted by the learned counsel for the appellant that the wife of Cheddi Mandal was also examined in the enquiry where she refused/denied of passing of the alleged sum of Rs.50,000/- to the appellant. However, the Enquiry Officer ignored the evidence of Uma Devi, wife of Cheddi Mandal, and on the basis of the evidences of accused Cheddi Mandal and Anandi Mandal came to a finding and held the appellant guilty of the charge and committing forgery and practising fraud on the court by manipulating forged and fake bail order of the Hon'ble Supreme Court of India for the purpose of securing the release of the convicts of Trial Nos.166 of 1985 and 266 of 1987 after taking a gratification of Rs.50,000/-.

9. Having found the appellant/delinquent guilty, Enquiry Officer submitted his report to the disciplinary authority-District & Sessions Judge, Purnea. The Registrar-in-Charge, Civil Court, Purnea, vide notice dated 02.05.2007, directed

the appellant to appear before the Sessions Judge, Purnea on 08.05.2007 at 7:00 A.M. in his chambers for hearing on the point of punishment. A copy of the Enquiry Report was also supplied to the appellant/petitioner on 09.05.2007 and thereafter the hearing was held before finally inflicting the punishment of compulsory retirement.

10. It was thus submitted by the learned counsel for the appellant that the entire proceeding, including the order of punishment, stands vitiated on account of the fact that the same was arrived at by examining incompetent witnesses and ignoring the crucial prosecution witness Uma Devi, who is said to have retracted from her earlier statement. It is thus submitted that the Enquiry Officer has ignored the finding of the trial court and has indicted the appellant/petitioner on the basis of conjectures and surmises and thus the punishment order stands vitiated and is fit to be set aside.

11. Learned counsel appearing on behalf of the State in the Appeal has submitted that the charge stood substantiated in the enquiry conducted before the departmental Enquiry Officer and after due consideration of all facts and circumstances, including the depositions of the witnesses, which had come in the trial and which had been marked as evidence in the departmental enquiry, without demur by the delinquent, it was not open to the writ petitioner to assail the finding of guilt and consequential punishment and, therefore, the case is fit to be dismissed. It was further submitted that both the witnesses in the trial, namely, Cheddi Mandal and Anandi Mandal, have categorically stated in the evidence that the information was sent to the witness Uma Devi, wife of Cheddi Mandal, to bring the money, which was duly brought by her and deposited with her son and that the said amount was paid to Ashok Kumar Mandal (the delinquent) under the eyes of Cheddi Mandal at the jail gate. This finding by the departmental Enquiry Officer was based on the depositions and it was the delinquent himself who chose to close the prosecution witnesses. Furthermore, after the submission of the report vide letter dated 02.05.2007, the Registrar-in-Charge, Civil Court, Purnea directed the delinquent to appear before him to answer on the point of punishment. Thus, before inflicting the order of punishment, a full-fledged hearing was given to the petitioner, which is evident from the order dated 16.09.2008. The said order of the District & Sessions Judge, Purnea has categorically noted that a second show cause notice of hearing on the point of punishment was issued to the petitioner on 02.05.2007 and after hearing, the record was produced in which after due examination of all facts and circumstances and after considering the submissions put forward by the delinquent, he was found guilty in the departmental proceedings by the departmental Enquiry Officer and hence, since it was a case of gratification, it was deemed fit and proper not to continue him in service and for the ends of justice, instead of inflicting the petitioner with the punishment of dismissal from service under Rule 14(ix) and (x), the petitioner was awarded the punishment of compulsory retirement. Thus, the appellant/writ petitioner could not substantiate or find fault with the proceeding and the order of punishment was fit to be

upheld.

12. Having heard learned counsel for the appellant and learned counsel appearing on behalf of the State at length and having gone through the records of the case, including the written submission of the appellant, we find that the appellant has not been able to demonstrate as to how the departmental proceedings stood faulted, inasmuch as he had duly participated in the departmental proceedings and had been duly represented by a Counsel who had demonstrated in detail the facts and circumstances of the case.

13. So far as the allegation that there are contradictions in the depositions of the witnesses, which has formed the basis of the finding in the departmental proceedings, we have also gone through the evidences, which have been placed on record by the respondent in G.R. Case No 62 of 1996, which amply demonstrate that the appellant/petitioner had accepted a gratification of illegally drawing up a bail order to secure their release. The wife of accused Chhedi Mandal and the mother of deceased Chandeshwari Mandal, namely, Uma Devi, has categorically stated in her deposition in G.R. case that the money was provided by her in jail to the accused persons. Her retraction stating that she had not given any gratification to the appellant/petitioner, would be of no avail to him in view of her earlier submission in Court which forms part of Annexure E series brought on record by the respondent-State. Thus, the statement of the appellant that there were inherent contradictions in the evidence of the said Uma Devi and as such the same could not form the basis of the conviction arrived at, is not worthy of credence and cannot be accepted. The Enquiry Officer has clearly found the charge levelled against the petitioner to have been conclusively proved during the course of disciplinary enquiry on the basis of the evidence of two convicts, namely, Cheddi Mandal and Anandi Mandal, who are in jail and who had categorically stated in their evidences which was led before the Enquiry Officer that a sum of Rs.50,000/- had been given to the petitioner in their presence at the jail gate and thereafter, they were released from the jail on the basis of said forged bail order of the Hon'ble Supreme Court of India. The statements of the deceased accused Chandeshwari Mandal in G.R. No.62 of 1996 and that of Uma Devi clearly show that money had exchange hands and thereafter they were released on bail on the basis of forged bail order of the Hon'ble Supreme Court of India. Thus, we find and hold that the imposition of punishment/penalty can only be interfered with if the findings are such that it shocks the conscience of the High Court, necessitating moulding of the relief. Thus, in the wake of such evidence available on record, the departmental Enquiry Officer and the disciplinary authority, weighing the same on the principle of preponderance of probability have rightly passed the order of punishment of compulsory retirement as there was findings of substantial misdemeanour.

14. The main ground urged by the learned counsel for the appellant is that the appellant having been exonerated in the criminal trial, the decision of the disciplinary authority to proceed under C.C.A. Rules and pass the order of

compulsory retirement does not stand test to reason and thus such an order cannot be sustained. It has been further urged that the learned single Judge has failed to appreciate this aspect of the matter and, therefore, this court may consider that the appellant, having been acquitted in the criminal trial, may not be proceeded against departmentally leading to an order of punishment of compulsory retirement. In this context, we cannot be swayed as there are a catena of judgments, wherein the Apex Court has considered the matter while dealing with the question as to whether a person with doubtful integrity ought to be allowed work in a Government department. The Apex Court in the case of Commissioner of Police, New Delhi and Anr. Vs. Mehar Singh [(2013) 7 SCC 685] held that while the standard of proof in a criminal case is the proof beyond all reasonable doubt, the proof in a departmental proceeding is merely the preponderance of probabilities. In this case, it was observed that quite often criminal cases ended in acquittal because witnesses turned hostile and, therefore, such acquittals are not acquittals on merit. An acquittal based on benefit of doubt would not stand on par with a clean acquittal on merit after a full-fledged trial. This view has been long-standing since law on the subject was settled by this court in R.P. Kapur Vs. Union of India, reported in AIR 1964 SC 787, wherein it has been held that departmental proceedings can proceed even though a person is acquitted.

15. This aspect of the matter was settled way back in the case of K.L. Shinde Vs. State of Mysore (AIR 1976 Supreme Court 1080), in paragraph 9 whereof, it has been held as follows:

"9. Regarding the appellant's contention that there was no evidence to substantiate the charge against him, it may be observed that neither the High Court nor this Court can re-examine and re-assess the evidence in writ proceedings. Whether or not there is sufficient evidence against a delinquent to justify his dismissal from service is a matter on which this court cannot embark. It may also be observed that departmental proceedings do not stand on the same footing as criminal prosecutions in which high degree of proof is required."

16. The aforementioned decision is based on much earlier decisions of the Apex Court in the case of State of Mysore Vs. Shivabasappa (AIR 1963 SC 375) where it was held as follows:

"Domestic tribunals exercising quasi-judicial functions are not courts and therefore, they are not bound to follow the procedure prescribed for trial of actions in courts nor are they bound by strict rules of evidence. They can, unlike courts, obtain all information material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedure which govern proceedings in court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against whom it is to be used and give him a fair opportunity to explain it. What is a fair opportunity must depend on the facts and circumstances of each case, but where such an opportunity has been given, the

proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in courts."

17. A similar view was also taken by the Apex Court in the case of State of U.P. Vs. Om Prakash (AIR 1970 SC 679), where it has been held that an enquiry is not vitiated if the statements taken at the preliminary stage of the enquiry are made available to the delinquent officer and he is given an opportunity to cross-examine the witnesses in respect of those statements.

18. In the present case too, the evidences of the witnesses were placed before the delinquent who himself chose to close the prosecution witnesses and though he was given an opportunity to examine them, he did not opt to do so.

19. In the present case, we find that considering the gravity of offence which is said to have been committed, the order imposing compulsory retirement is an appropriate punishment, which is having cogent reasons in support thereof. Moreover, it is well settled law that imposition of penalty is the right of the disciplinary authority consistent with the magnitude and misconduct imputed and Enquiry Officer has not only found the petitioner/delinquent of having accepted the gratification but also procuring and fabricating the order of the Supreme Court of India. This in itself, in our considered opinion, is enough for us to reject any review of such decision, which has been arrived at by the disciplinary authority and rightly upheld by the learned single Judge.

20. Thus, considering the facts and circumstances in its entirety and having deep consideration to the legal propositions, we are of the considered opinion that the present appeal is devoid of any merit. The order passed by the disciplinary authority and ratified by the learned single Judge are upheld.

21. The appeal stands dismissed.