
(2003) 09 JH CK 0146
In the Jharkhand High Court
Case No : CWJC No. 3318 of 1995 (R)

Baidyanath Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 22-09-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 2 JCR 286

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : M.M. Banerjee, for the Appellant; Pradeep Modi, G.P.-I, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—The petitioner was working as Assistant Manager of Shahpur Government Godown under respondent No. 3 Deputy Commissioner, Palamau. During his posting a theft was committed in the said godown and the matter was reported to the senior officers. On verification of the godown shortage of huge amount of foodgrains was found. Consequently a criminal case was instituted against the petitioner u/s 409 of the IPC and Section 5(2) of the Prevention of Corruption Act. The petitioner was also charge sheeted and a departmental proceeding was initiated against him. On proof of charges, in the departmental proceeding, final order of punishment was passed whereby the petitioner was dismissed from service on 25.08.1977. Against the said order the petitioner preferred departmental appeal which was also dismissed. In the mean time, the petitioner was acquitted in the criminal case by the judgment dated 26.07.1989. After acquittal the petitioner filed representation before the respondents for reinstating him in service. Thereafter the petitioner moved this Court by filing CWJC No. 2553 of 1992 (R). The writ petition was disposed of on 3.11.1992 with a direction to the respondents to consider the representation of the petitioner and take final decision in accordance with law. The representation of the

petitioner was considered and it was finally rejected on the ground that in the criminal case the petitioner was acquitted because no evidence from the side of the prosecution was adduced.

2. Mr. M.M. Banerjee, learned counsel appearing on behalf of the petitioner submitted that once the delinquent is exonerated from the charges in a criminal case by judgment of acquittal he is entitled to be reinstated in service after reviewing the order passed in the departmental proceeding. According to the learned counsel it is a case of clean acquittal and therefore the order passed in the departmental proceeding cannot be sustained in law. I do not find much force in the submission of the learned counsel. As a matter of fact in the criminal case no prosecution witness was examined and therefore the criminal Court had no option but to acquit the petitioner for want of evidence.

3. It would be useful to refer paragraph 6 of the judgment passed in the criminal case being G.R. Case No. 194/73 which reads as under :

"6. After the case was remanded back, the charge was framed against the accused on 24.3.1986 which was amended on 17.3.1988. Thereafter several adjournments were granted to the Addl. P.P. Ram Bilas Singh but he could not produce even a single witness. Several steps were taken by the Court through S.P. Palamau and D.C. Palamau but no service report was sent by the said officers. In view of the fact that the case was of the year 1973 and after lapse of sixteen years, the record passed through several lacunae and ultimately the case is ending in fiasco hence the prosecution case was closed. As none of the charge sheeted witness could be examined by the prosecution, the accused cannot be held guilt of criminal breach of trust of about Rs. 18,000/-."

4. From bare perusal of the aforesaid paragraph quoted hereinabove it appears that the evidence of the prosecution was closed as none of the charge sheet witnesses could be examined by the prosecution. For that reason the petitioner was acquitted. In such circumstance the departmental proceeding and the order of punishment cannot be vitiated in law.

5. Recently in the case of Secretary, Ministry of Home Affairs and Anr. v. Tahir Ali Khan Tyagi reported in 2002 (6) SC 274 the Supreme Court, holding that the acquittal in a criminal case cannot be a ground to quash the departmental proceeding on the same charge, observed as follows :

"7. That apart, the second part of Rule 12 of the Rules, unequivocally indicates that a departmental proceeding could be initiated if the opinion of the Court, the prosecution witnesses are found to be won over. In the case in hand, the prosecution witnesses did not support the prosecution in the criminal proceeding on account of which the public prosecutor cross-examined them and therefore, in such a case, in terms of Rule 12, a departmental proceeding could be initiated. In this view of the matter, we are of the considered opinion that the Tribunal committed error in interfering with initiation of a departmental proceeding and the High Court committed error in dismissing the writ petition filed. We,

therefore, set aside the impugned judgment of the High Court as well as that of the Tribunal and direct that the departmental proceeding be concluded as expeditiously as possible."

6. Taking into consideration, the facts and circumstances of the case and the ratio decided by the Supreme Court I do not find any merit in this writ application which dismissed accordingly.