
(2007) 03 PAT CK 0068
In the Patna High Court
Case No : CWJC No. 9293 of 2005

Bhagirath Mahto

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 19-03-2007

Acts Referred:

Citation : (2007) 3 PLJR 346

Hon'ble Judges : Barin Ghosh, J

Bench : Single Bench

Advocate : D.K. Sinha and Virendra Kumar, for the Appellant; Piyush Lall, for the Respondent

Final Decision : Dismissed

Judgement

Barin Ghosh, J.—A chargesheet was issued against the petitioner wherein it was alleged that on a particular date a few of the persons including the petitioner went to the Sergeant Major and asked for grant of leave. The Sergeant Major granted leave to a few but refused leave, amongst others, to the petitioner. It was next alleged that after that the Sergeant Major closed his office and while returning home stopped by the side of a Public Call Office (PCO) when the petitioner and two other persons came and hackled the Sergeant Major while abusing him in the view of the public at large. It was alleged that this conduct on the part of the petitioner is so derogative that it has completely destroyed the reputation of the police force and accordingly why appropriate action shall not be taken against him. Initially in the charge-sheet it was shown that the Sergeant Major and one other person will be examined. Later on, five more persons were examined. It is an admitted position that while the Sergeant Major deposed he was cross-examined by the petitioner as would be evidenced from the reply to the second show-cause notice given by the petitioner. It was contended that the petitioner had no opportunity to cross-examine the second witness. Admittedly, one Mr. Thakur, a barber was examined and the petitioner refused to cross-examine him. The barber deposed that the Sergeant Major was on the spot on

the date and time, as was alleged in the charge-sheet, when some people came and they created a hue and cry. He had stated, however, that he did not see the persons who raised such hue and cry. The other four witnesses said that they have seen nothing. The Sergeant Major, however, narrated the entire incident and faced cross-examination but could not be shaken.

2. After the enquiry was completed, an enquiry report was submitted which was basically based on the deposition of the Sergeant Major. It was held that the charge stands proved. At that stage, the disciplinary authority directed the Enquiry Officer to re-examine few more witnesses at their home in presence of the petitioner and to re-submit his report. Such re-examination was done when, as aforesaid, each one of them said that they know nothing about the incident. The fact remains that the incident was narrated by the Sergeant Major and the fact that such an incident did take place was corroborated by the independent witness Mr. Thakur, a barber.

3. It is not the contention in the writ petition that in cross-examination the evidence of the Sergeant Major was shaken. On the basis of the collection of materials as above, the petitioner has been dismissed from services. The principal reason for the charge-sheet was that the action complained of is so derogatory that the same has lowered the estimation of the police force in the eyes of common public. If the fact that the Sergeant Major, a Senior Police Officer has been hackled in public view by his juniors or by one of his juniors is proved, it goes without saying that the charge that the action was derogatory to the discipline of the police force in public eyes also automatically stands proved. In such a situation, probably the disciplinary authority had no other option but to pass the order as has been passed in the instant case.

4. Before the charge-sheet was issued, this incident having been reported to the local police, a first information report was lodged, on the basis whereof investigation was completed and charge-sheet was filed. At the time when the enquiry proceeding was Continuing, the trial of the criminal case was concluded when the petitioner was absolved of the charge for the Court found that the evidence as brought on by the prosecution does not prove the charge.

5. The fact remains that while the disciplinary authority had before it the deposition recorded by the Sergeant Major after having had faced cross-examination by the petitioner, the criminal court did not have the same before it. Therefore, on the basis of evidence, as was available, before the criminal court it proceeded with the matter in the manner indicated above and, at the same time, on the basis of the evidence before the disciplinary authority it proceeded in the manner as it did, and I think it could only proceed in that manner and in no other manner at all.

6. The amount of evidence to be brought on record will depend upon the prosecution. While the prosecutor before the criminal court felt it not necessary to have the Sergeant Major as a witness before the criminal court, the prosecutor

before the Enquiry Officer felt that his evidence is necessary. The outcome of any proceeding will ultimately depend upon the quality of evidence before him while the disciplinary authority had the advantage of having the evidence of the Sergeant Major, the criminal court did not have the same. Furthermore, while the basic fact that the Sergeant Major was present at a particular place in public on a particular date and time when he was hackled, has been corroborated by an independent witness, who was not even cross-examined voluntarily by the petitioner. That the petitioner was a member of the unlawful gang which hackled the Sergeant Major was deposed only by the Sergeant Major. In disciplinary proceedings, the standard of proof is probability. The question is--why a Sergeant Major who had granted leave to many police personnel on the particular day and refused to grant leave, amongst others, to the petitioner could cast aspersions, that too of the nature, as was done in the instant case, against a junior colleague and would repeat the same before the Enquiry Officer knowing fully well that he would be cross-examined by the petitioner, unless the same had an element of truth? This aspect of the matter was required to be highlighted in the cross-examination. It should have been brought on record by the petitioner that the Sergeant Major was averse to the petitioner and had a grudge against him. Nothing to that effect was done. Subsequently while giving a reply to the second show cause notice, the petitioner purported to allege that before the General Secretary of the Association of the Police Force, the Sergeant Major accepted that the alleged incident did not take place. However, no attempt was made to establish this fact before the disciplinary authority. In the premises as aforesaid, there is no scope of interference. The writ petition fails and the same is dismissed.