
(2011) 09 PAT CK 0088
In the Patna High Court
Case No : CWJC No. 3745 of 2007

Bhikhari Prasad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 26-09-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 34, 347, 384

Citation : (2012) 1 PLJR 157

Hon'ble Judges : V.N. Sinha, J

Bench : Single Bench

Judgement

V.N. Sinha, J.—Heard learned counsel for the petitioner and the State.

2. Petitioner at the relevant time served as Constable with the Government Railway Police, Patna. He has filed this writ petition assailing the order dated 7.3.2000, Annexure-8A passed by the Director General-cum-Inspector General of Police, Bihar, Patna (hereinafter referred to as D.G.-cum-I.G.) dismissing the petitioner from service in exercise of power under Rule 853A of the Bihar Police Manual, which empower the Inspector General to call for the file of any case and pass such order as he may deem fit within reasonable time. In the instant case, petitioner was punished by the Superintendent of Police, Railway, Patna (hereinafter referred to as the S.R.P.) under order dated 31.7.1997, Annexure-5 by withholding his two increments equivalent to imposition of three black marks differing with the enquiry report dated 30.7.1997, Annexure-4 submitted after conclusion of departmental proceeding no. 47/94. Perusal of the enquiry report, Annexure-4 would indicate that petitioner and two others, namely Sub-Inspector Satrugan Singh and Constable Parshuram Pal are alleged to have extorted Rs. 1 lac from retired Subedar Harbindar Singh and his two sons-in-law, namely, Kuldeep Singh and Sukhbinder Singh on 30.10.1994 while they boarded Himgiri Express, boggy no. S-2 berth nos. 49, 50 and 51 for going back to Amritsar from Patna. Petitioner and his accomplice are also alleged to have forced the retired Subedar, his two sons-in-law to detrain from Himgiri Express after pulling chain

in Danapur Railway Station-yard, forcibly brought and confined them in the retiring room at Patna Junction until they arranged and paid sum of Rs. 1 lac. Retired Subedar had Rs. 43,000/- in his bag from before and he arranged Rs. 57,000/- from the market by calling his friend. After payment of Rs.1 lac the retired Subedar and his two sons-in-law were released from the illegal confinement. Next morning retired Subedar and his two sons-in-law boarded Punjab Mail for going back to Amritsar. After reaching Amritsar they reported the matter to the office bearers of Nose Pin Association, who advised the retired Subedar to first lodge a criminal case at Patna Junction. In response to such advice, Patna G.R.P. Case No. 260 of 1994 dated 13.11.1994 was lodged by the retired Subedar against three unknown for the offence under Sections 347, 384/34 of the Indian Penal Code. On 14.11.1994 two persons approached the retired Subedar in the hotel where the three were staying and returned the sum of Rs. 1 lac. During investigation the case was supervised by the then S.R.P., Sri Alok Raj who examined the allegationist Subedar Harbinder Singh and his two sons-in-law on 13, 14 and 17.11.1994 and submitted supervision note under Memo No. 1528 dated 28.11.1994, wherefrom it appears that the allegationist had named the three culprits who extorted money from the allegationist on 30.10.1994 as Sub-Inspector Satrugan Singh, Constable Pal and Bhikhari.

3. In the light of the supervision note of the S.R.P. petitioner surrendered on 14.1.1995 and was put on Test Identification Parade on 24.2.1995 when Bijendar Lal who is said to have given loan of Rs. 57,000/- to the allegationist for securing his release did not identify the petitioner. Later petitioner was released from jail custody on 24.3.1995. During conduction of the departmental proceeding the allegationist and his two sons-in-law were examined in the proceeding on 20.4.1995 by the then Enquiry Officer, Sri Rapaz Chandra Kisku Chand but the allegationist and his sons-in-law did not name either the petitioner or his two accomplice as the one who extorted Rs. 1 lac from them on 30.10.1994 in the retiring room of Patna Junction. Subsequently, the Enquiry Officer was changed and the matter remained pending until submission of the enquiry report dated 30.7.1997, Annexure-4 whereunder the Enquiry Officer noted in the enquiry report dated 30.7.1997 that the only evidence available against the petitioner is the findings of the S.R.P. contained in supervision report bearing Memo No. 1528 dated 28.11.1994 and recommended that the petitioner having not been named by the allegationist and his two sons-in-law in their statement dated 20.4.1995 be exonerated from the proceeding. The Enquiry Officer, however, noted in the report dated 30.7.1997 that petitioner was not present during the conduction of the proceeding for cross-examining the allegationist and his two sons-in-law as he apprehended that the officials of the department may forcibly get him identified. S.R.P., Patna differing with the enquiry report dated 30.7.1997 passed order dated 31.7.1997, Annexure-5 and thereunder punished the petitioner with stoppage of two increments equivalent to three black marks. Petitioner accepted the aforesaid punishment without any demur. Later petitioner was served with Memo No. 2852 dated 18.12.1999, Annexure-6 at the instance of the D.G.-cum-

I.G., Bihar, Patna with reference to his power under Rule 853A of the Bihar Police Manual asking the petitioner to show cause as to why the punishment imposed on him in connection with departmental proceeding No. 47/94 be not enhanced. In response to the aforesaid show cause notice dated 18.12.1999, Annexure-6 petitioner submitted his reply dated 10.1.2000, Annexure-7 stating that power under Rule 853A of the Police Manual is required to be exercised within a reasonable time and not after more than two years of the imposition of the original punishment when petitioner has already undergone the punishment imposed under order dated 31.7.1997. In this connection, it was further pointed out in the show cause reply that the earlier punishment order dated 31.7.1997 was itself without jurisdiction as the same was passed without serving on the petitioner the reasons for differing with the findings/recommendations made in the enquiry report dated 30.7.1997 whereunder the Enquiry Officer recommended to exonerate the petitioner of the charges levelled against him. The D.G.-cum-I.G. considered the aforesaid show cause reply and passed the impugned order dated 7.3.2000, Annexure-8A enhancing the punishment from stoppage of two increments to dismissal from service. Perusal of impugned order, Annexure-8A indicates that thereunder petitioner has been dismissed from service considering the seriousness of the charge proved against him.

4. Learned counsel for the petitioner challenged the aforesaid order on the ground that the findings recorded by the D.G.-cum-I.G. under the impugned order that the charge proved against him is serious in nature is wholly incorrect as petitioner has not been held guilty in the enquiry report and before passing the earlier punishment order dated 31.7.1997 reasons for differing with the enquiry report recommending exoneration of the petitioner was never served on the petitioner and with reference to the said plea, it is submitted that the finding recorded in the impugned order that the charge proved against the petitioner is serious in nature is wholly incorrect. Learned counsel for the petitioner next submitted that another delinquent, namely, Parshuram Pal was also visited with similar punishment of dismissal by the D.G.-cum-I.G. under order bearing Memo No. 330 dated 18.1.2000 and he filed C.W.J.C. No. 2065 of 2000, which was disposed of by another Bench of this Court under order dated 1.2.2008, Annexure-9 and this Court speaking through Sheema Ali Khan, J., quashed the punishment order dated 18.1.2000 passed against Parshuram Pal, remitted the matter back to the S.R.P. for fresh consideration. In the light of the direction of this Court made under order dated 1.2.2008 said Parshuram Pal has been reinstated in service as Constable under order bearing Memo No. 1207 dated 19.4.2010 with effect from 15.4.2010 with further direction that during the period of dismissal he shall not receive any salary on the principle of no work no pay. It is submitted that similar order be passed in the case of petitioner as well.

5. Counsel for the State opposed the prayer and submitted that this Court may remit the matter back for fresh consideration by the D.G.-cum-I.G. but not to the S.R.P. as the impugned order of dismissal has been passed by the D.G.-cum-I.G.

6. Counsel for the petitioner in rejoinder submitted that in the case of Parshuram Pal also the impugned order dated 18.1.2000 was passed by the D.G.-cum-I.G. but this Court under order dated 1.2.2008 noticed the illegality made by the S.R.P. in the earlier punishment order passed in the case of Parshuram Pal that the same was passed without serving reasons for differing with the enquiry report and in appreciation of such illegality this Court remitted back the matter to the original authority i.e. S.R.P.

7. Having heard counsel for the parties and having appreciated their submission, I am of the view that the illegality made by the S.R.P. in passing the order dated 31.7.1997 is not at all required to be noticed at this belated stage for the simple reason that when the said order was served on the petitioner he never questioned the illegality made in the said order and readily accepted the punishment of withholding of two increments equivalent to imposition of three black marks. Having accepted the illegality made in the said order on 31.7.1997, in my opinion, petitioner is stopped from raising any submission about the illegality made in the order dated 31.7.1997. Petitioner, however, is justified in questioning the illegality made in the impugned order dated 7.3.2000 passed by the D.G.-cum-I.G. It is submitted on his behalf that by passing the impugned order after more than two years of the earlier punishment order dated 31.7.1997 the D.G.-cum-I.G. has exercised power under Rule 853A of the Police Manual belatedly after passage of reasonable time under notice dated 18.12.1999, Annexure-6 and the final order dated 7.3.2000, Annexure-8A after more than two years of the first punishment order, that too after petitioner has already undergone the punishment of withholding of two increments. Submission that the notice to enhance the punishment by exercising the power under Rule 853A of the Police Manual was issued after more than two years of the passing of the first punishment order and is beyond the range of reasonable time appears to be misconceived in view of the fact that the Rule itself provides the D.G.-cum-I.G. reasonable time to enhance the punishment imposed on any delinquent. Assessment of reasonable time may vary from case to case depending upon the time taken by the D.G.-cum-I.G. in knowing about the inadequacy of punishment. In the instant case, inadequacy of punishment imposed on the petitioner was brought to the notice of the D.G.-cum-I.G. by the Assistant Inspector General (Inspection) under Memo No. 6795/P2 dated 9.11.1999 and soon thereafter notice dated 18.12.1999, Annexure-6 was issued to the petitioner at the instance of the D.G.-cum-I.G. for enhancing his punishment. In the light of the said memo, I am of the view that in the instant case there has been no delay by the D.G.-cum-I.G. in enhancing the punishment of the petitioner. During the period of two years petitioner continued to serve as Constable without any impediment, as such, he cannot have any complaint about the delay of more than two years in enhancing the punishment under the impugned order dated 7.3.2000. Counsel for the petitioner then submitted that even if it is assumed that by accepting the earlier punishment order dated 31.7.1997 petitioner accepted his guilt, yet his case is required to be considered

on the lines of the case of Parshuram Pal who also accepted the earlier punishment order withholding his increments but the matter was remitted back by this Court under order dated 1.2.2008, Annexure-9 and he has been reinstated in service under order dated 19.4.2010, Annexure-10 with effect from 15.4.2010 and similar treatment be allowed to the petitioner as well. Perusal of the order dated 19.4.2010 indicates that thereunder while reinstating Parshuram Pal reliance has been placed on the omission of the Investigating Officer to comply the direction of the then S.R.P. Sri Alok Raj to put Parshuram Pal on Test Identification Parade as also on the subsequent acquittal of Parshuram Pal by the criminal court. While passing the said order dated 19.4.2010, in my opinion, the S.R.P. has not considered the enquiry report dated 30.7.1997, Annexure-4 whereunder the Enquiry Officer has considered the earlier supervision note of the then S.R.P. Sri Alok Raj bearing Memo No. 1528 dated 28.11.1994 holding Parshuram Pal, petitioner and S.I. Satrugan Singh guilty. Reliance placed by the S.R.P. under order dated 19.4.2010 over the acquittal of Parshuram Pal in the criminal trial is also misplaced as the standard of proof in criminal trial is beyond reasonable doubt, whereas standard of proof in departmental proceeding is probability of the circumstances appearing against the delinquent.

8. In view of my findings aforesaid, while setting aside the impugned order dated 7.3.2000, Annexure-8A, I remit back the matter to the D.G.-cum-I.G., Bihar, Patna to reconsider the matter in the light of the supervision note of the then S.R.P. Alok Raj and if deemed necessary to allow the petitioner opportunity to cross-examine Sri Raj about the contents of the supervision note by further remand of the matter to the Enquiry Officer to be appointed by the D.G.-cum-I.G. but the matter be considered in the light of the findings contained in supervision note. As I have set aside the order passed by the D.G.-cum-I.G., petitioner should be reinstated in service but appropriate order in compliance of my order considering the supervision note and the contents of cross-examination of Sri Raj be passed by the appropriate authority as early as possible, in any case within two months from the date of receipt/production of a copy of this order before the D.G.-cum-I.G. Petitioner shall be entitled for salary from the date of his reinstatement. Salary for the earlier period i.e. between the date of dismissal from 7.3.2000 till the date of passing of my order shall depend upon the contents of the order passed by the D.G. and I.G. or appropriate authority as the case may be.

9. The writ application is, accordingly, disposed of.