

(2006) 08 JH CK 0131
In the Jharkhand High Court

Bidiya Uraon

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 29-08-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 307, 326, 452

Citation : (2007) 1 JCR 125

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Judgement

Permod Kohli, J.—Petitioner was working as a Constable in the Police Department. An F.I.R. was lodged against him by one Satish Kumar, an A.S.I, at about 8.20 P.M. on 23.04.2001 and Chandwa Police Station Case No. 27 of 2001 was registered on 23rd of April, 2001 under Sections 302, 307, 326 and 452 of the Indian Penal Code and 27 of the Arms Act. Petitioner was accused of killing one Driver Kailson Tirkey and injuring one Mess Servant Binod Kumar Singh. He was taken into custody and placed under suspension by the Superintendent of Police, Latehar under the District Order No. 1180 of 2001 with effect from 23rd of April, 2001. Later a departmental proceeding was initiated against him being a Departmental Proceeding No. 2 of 2001. On completion of investigations, charge sheet was filed in the Court of the Additional District & Sessions Judge; Fast Track Court, Latehar by the Police for trial of the petitioner registered as S.T. Case No. 316 of 2001. A show cause notice was issued to the petitioner vide order dated 24th of April, 2005 asking him to show cause why he be not terminated from service. The reply was submitted by the petitioner. He not only denied the allegations but also submitted that he is being tried for the criminal offence for the same set of charges. In the meanwhile, petitioner was acquitted of the charges vide judgment dated 25th of January, 2003 passed by the Additional District and Sessions Judge, F.T.C., Latehar. The Respondents, however, passed order dated 04.07.2005 for dismissal of the petitioner from service on the ground that the charges against the petitioner have been proved. Petitioner has, accordingly, challenged the aforesaid termination order primarily

on the ground that he has been acquitted of the criminal charges on the same set of circumstances/charges and thus his dismissal in the disciplinary proceedings is illegal and contrary to law.

2. I have considered the charge sheet served upon the petitioner. It appears that the disciplinary proceedings were initiated against the petitioner for the killing of the Driver, namely, Kailson Tirkey and causing injury to Binod Kumar Singh. I have also perused the judgment dated 25th of June, 2003 passed by the Additional District and Sessions Judge, F.T.C., Latehar. Criminal as well as disciplinary proceedings are based upon the same set of circumstances.

3. The Hon'ble Supreme Court in the case of G.M. Tank Vs. State of Gujarat and Another, held as under:

30. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a departmental case against the appellant and the charge before the criminal court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge-sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts, namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer Mr. V.B. Raval and other departmental witnesses were the only witnesses examined by the enquiry officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by its judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed that the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

31. In our opinion, such facts and evidence in the departmental as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though the finding recorded in the domestic enquiry was found to be valid by the courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony case¹ will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed.

4. The ratio of the aforesaid judgment of the apex Court squarely covers the case of the petitioner. The termination order dated 04.07.2005 is not sustainable in law and I, accordingly, quash the impugned order. As a consequence of quashment of the impugned order, petitioner shall be reinstated forthwith and will be deemed to be in continuous service. He will be paid all emoluments from the date of his rejoining of his service with all consequential benefits except the salary for the period, he remained out of service on account of dismissal. This period shall, however count for seniority, promotion and other pensionary purposes.

5. This writ petition stands disposed of with the aforesaid observations and directions.