
(2008) 12 PAT CK 0054
In the Patna High Court
Case No : LPA No. 1048 of 2002

Birendra Thakur

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 03-12-2008

Acts Referred:

Citation : (2008) 12 PAT CK 0054

Final Decision : Dismissed

Judgement

1. This letters patent appeal is directed against the order dated 21st August, 2002, whereby the Single Judge dismissed the writ petition filed by the appellant for quashing the order of removal dated 1st November, 2000 passed by the disciplinary authority and the order dated 18th June, 2002 passed by the appellate authority affirming the order of the disciplinary authority.

2. We shall refer the parties as referred in the writ petition. The petitioner, prior to his removal from service, was employed as a Police Constable. While he was posted as Constable Driver at Police Headquarters, Sitamarhi, the departmental proceedings were instituted against him for having committed grave mis-conduct of indiscipline, doubtful - character, lack of devotion in duty, and immoral work by carrying contraband arms and ammunitions to help a particular political party on the election day. It was alleged that in the intervening night of 1st/2nd March, 1985, the Station House Officer, Sitamarhi along with armed constabulary were conducting search of vehicles in Sitamarhi Bazar. A police trekker bearing registration No. B.P.P. 7154 driven by the petitioner did not stop for checking; the petitioner drove the vehicle very fast from Sitamarhi Bazar to Mahsol Chowk while proceeding for Bathnaha. Having got suspicious the Station House Officer, Sitamarhi followed the police trekker and stopped that vehicle at Mohanpur village; the Station House Officer recognized the delinquent who was driving the vehicle and two other persons sitting therein. Four unknown persons ran away. In that police trakker, a hold-all was found. During search of the said hold-all, few rifles, pistols and ammunitions were found. The arms and ammunitions were

seized and seizure memo was prepared. A criminal case was registered against the offenders including the delinquent for the offences punishable under Sections 25A, 26 and 35 of the Arms Act. In the departmental charge-sheet in the backdrop of aforesaid facts, it was alleged that the delinquent (driver) was carrying illegal arms and ammunitions in the vehicle to help a particular political party as on 2nd March, 1985, there was an assembly election in Bathnaha Assembly Constituency. It was also alleged that the vehicle was misused and it was taken outside the headquarters without permission.

3. In the disciplinary proceedings, the department examined (1) Ashok kumar Gupta, Police Superintendent, Sitamarhi; (2) Havildar Saleh Hind, Driver of Police Jeep No. 4942; (3) Assistant police Sub-Inspector Krishna Choudhary; (4) Sub-Inspector of Police Raghvendra Narayan Singh and (5) Havildar Ratandeo Singh. The department produced diverse documents. The delinquent Birendra Thakaur examined himself; he admitted that Ram Suresh Singh alias Bauaji was stopped with hold-all and at that time he came to know that hold-all contained the illegal arms and he also saw those arms and ammunitions. The disciplinary authority held the charges proved and passed an order of removal on 1st November, 2000. The petitioner preferred the departmental appeal against the order of removal. The said appeal came to be dismissed by the appellate authority on 5th June, 2002. As indicated above, the writ petition preferred by the petitioner challenging these two orders has been dismissed by the single judge vide order dated 21st August, 2002.

4. As noticed earlier, the petitioner was prosecuted for the offences punishable under Sections 25A, 26 & 35 of the Arms Act on account of having illegal possession of arms and ammunitions in contravention of the said Act along with Rambeyas Prasad Singh and Ram Suresh Singh alias Bauaji in trial No. 610 of 1994 in the court of Sub-divisional Judicial Magistrate, Sitamarhi, Sadar. The Sub-divisional Judicial Magistrate, Sitamarhi, Sadar, convicted the petitioner and two other accused persons vide judgment dated 7th September, 1994.

5. Aggrieved by the judgment of conviction and sentence passed by the Sub-divisional Judicial Officer, Sitamarhi, Sadar, the petitioner preferred an appeal being Cr. Appl. No. 64 of 1994. The other two accused persons who were also convicted along with the petitioner preferred separate criminal appeals. All these criminal appeals were heard by the Second Additional Sessions Judge, Sitamarhi and vide his judgment dated 18th May, 1995, the appeals were allowed and the judgment and order of conviction and sentence was set aside. That the said judgment has attained finality is not in dispute.

6. Mr. Shivaji Pandey, senior counsel for the appellant contended that in the present case the departmental proceedings and the criminal case were based on identical and similar set of facts; charge against the petitioner in the departmental case and the charge before the criminal court are also one and the same and since in the criminal case the petitioner has been honourably acquitted and it has been held therein that the conscious possession of arms and

ammunitions could not be attributed to the petitioner, in the departmental proceedings, the delinquent could not have been punished. The senior counsel in this regard placed reliance upon the judgment of the Supreme Court in the case of G.M. Tank Vs. State of Gujarat and Another, He also placed reliance upon a Division Bench judgment of this Court in the case of Krishna Ram Vs. The State of Bihar and Others,

7. The question that falls for our consideration is: whether in view of the petitioner's acquittal by the criminal court vide judgment of the Second Additional Sessions Judge, Sitamarhi in criminal appeal on 18th May, 1995, the order of punishment in the departmental proceeding is rendered bad in law?

8. The courts have time and again held that the degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. While in a criminal case, the proof of charge has to be beyond reasonable doubt, in the departmental proceeding, the degree of proof is based on preponderance of probability. The rule relating to appreciation of evidence in the two proceedings is also not similar.

9. It is also to be kept in mind that the departmental inquiry and the criminal prosecution are different and distinct. Criminal Prosecution is launched for violation of a duty, the offender owes to the society. In other words, crime is an act of commission or violation of law for omission of public duty. The object of disciplinary proceedings is to maintain discipline in the service. It is in this background of legal position, the Courts have held that ordinarily acquittal by a criminal court does not absolve the delinquent from the disciplinary liability.

10. We shall immediately turn to the judgment of the Supreme Court in the case of G.M. Tank upon which strong reliance has been placed by the senior counsel. The Supreme Court in the case of G.M. Tank surveyed large number of decisions, namely, Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, ; Union of India (UOI) and Others Vs. Jaipal Singh, ; Commissioner of Police, New Delhi Vs. Narender Singh, ; R.P. Kapur Vs. Union of India (UOI) and Another, ; Corporation of the City of Nagpur, Civil Lines, Nagpur and another Vs. Ramchandra and others, ; Ajit Kumar Nag Vs. General Manager (P.J.), Indian Oil Corporation Ltd., Haldia and Others, ; Depot Manager, Andhra Pradesh State Road Transport Corporation Vs. Mohd. Yousuf Miya, etc., ; State of Andhra Pradesh Vs. Sree Rama Rao, and Management of Krishnakali Tea Estate Vs. Akhil Bharatiya Chah Mazdoor Sangh and Another, .

11. It was held in G.M. Tank that where the departmental proceedings and criminal case are based on identical and similar set of facts and the charges in a departmental case against the delinquent and the charge before the criminal court are one and the same, it would be unjust and unfair to sustain the findings in the departmental proceedings. The Apex Court held in paragraph - 30 thus:

The judgments relied on by the learned Counsel appearing for the respondents are distinguishable on facts and on law. 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.

12. In so far as the present case is concerned, it is true that the departmental proceedings and criminal case are founded on broadly similar set of facts and that most of the witnesses who were examined in the disciplinary proceedings were prosecution witnesses in the criminal case but it cannot be said that the evidence before the criminal case and the disciplinary proceeding is exactly same. As a matter of fact, in the departmental proceedings, the delinquent admitted that Ram Suresh Singh alias Bauaji was stopped with hold all and at that time he came to know that hold-all contained the illegal arms and ammunitions and he also saw those arms and ammunitions. In these circumstances, when the vehicles were being checked by the police checking party in Sitamarhi Bazar, the petitioner who was driving the police vehicle (police trekker BPP - 7154) ought to have stopped the vehicle for checking by the police checking party in Sitamarhi Bazar and told them that the hold-all contained arms and ammunitions but instead he drove the said vehicle fast while passing through Sitamarhi Bazar to Mahsol Chowk and then towards Bathnaha. It was only when the police trakker driven by the petitioner was chased and search made, the arms and ammunitions were detected from the hold-all. As a matter of fact, the delinquency is established by the admission of the delinquent in the departmental proceedings. There is no such admission of the petitioner in the criminal case (we are not on admissibility of such admission in criminal case). It, therefore, cannot be said that the evidence in the departmental proceedings is exactly same as that in the criminal case.

13. More over, the perusal of the judgment dated 18th May, 1995 passed by the appellate court setting aside the conviction of the petitioner and acquitting him would show that diverse technical aspects weighed in the mind of the court. The criminal appeal court held that the sanction to prosecute the accused persons for offence u/s 26 of the Arms Act was essential but nothing could be shown to the court that prosecution had obtained sanction before prosecuting the accused, rather, the criminal appeal court observed that no sanction order from the competent authority had been produced. The criminal appeal court also held that the seizure memo has not been validly proved. In the backdrop of the aforesaid findings and upon consideration of the evidence of the prosecution witnesses, the criminal appeal court held that there was no evidence that the appellants were real owners of the hold-all which contained fire arms and ammunitions and, therefore, the conscious possession or knowledge of storage of arms and ammunitions could not be attributed to him. We are afraid, in what we have discussed above, the decision of the Supreme Court in the case of G.M. Tank does not apply to the present fact situation.

14. The Division Bench judgment of this Court in the case of Bhagirath Mahto also turned on its own facts. This would be apparent from paragraph - 13 of the report which reads thus:

As we have noticed above, in the present case having perused the order of acquittal, we find that there is positive finding that no occurrence like alleged incident took place by the criminal court, in which the person who is alleged to have been assaulted, was himself a witness, by discarding his evidence.

15. In the facts and circumstances of the case, we have no hesitation in holding that the delinquency of the petitioner is established in the departmental proceedings and merely because he has been acquitted in the criminal case, for the reasons which we have already indicated above, cannot be exonerated of the charges in the disciplinary proceedings.

16. We, accordingly, find no merit in the appeal. It is dismissed. No order as to costs.