
(2003) 08 PAT CK 0038

In the Patna High Court

Case No : Letters Patent Appeal No. 501 of 1997

Dinbandhu Jha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 08-08-2003

Acts Referred:

Citation : (2003) 08 PAT CK 0038

Final Decision : Dismissed

Judgement

Shashank Kr. Singh, J.—The present letters patent appeal has been preferred against the judgment and order dated 21st March, 1997 passed in C.W.J.C. No. 8262 of 1994, whereby the learned writ Court upheld the order of dismissal dated 7.12.1993 passed by the Superintendent of Railway Police, Patna and the appellate order dated 25.8.1994 passed by the Deputy Inspector General of Police (Railway), Patna and the reversion order dated 26.3.1991 passed by the Superintendent of Railway Police. Patna.

2. The contention on behalf of the Appellant is that pursuant to a departmental proceeding, the Appellant has been found guilty and the order, which has been passed dismissing him from service was (sic)ad as the same has actually not appraised the evidence adduced by him before the enquiring officer. It has been con-tended that the Appellant who was a constable in the Bihar Police and was posted in Nalanda was sent for pension training in the year 1982 at the police headquarter, Fatna and after completion of successful training, he was posted in the office of the Superintendent of Railway on 2.5.1985 and was also promoted to officiate in the rank of Assistant Sub Inspector of Police (Pension) at Patna.

3. It has further been contended that on 18.2.1991, the Appellant was directed to disburse a sum of Rs. 1600/- being the amount payable to Smt. Phool Kumari wife of late Jitendra Pandey, Ex-constable and a sum of Rs. 4993/- was to be paid to Shri Shiv Mangal Bhagat, father of late constable Ganga Prasad of Gopalganj. The Appellant claims to have paid the aforesaid amount on 19.2.1991 to Sri Shiv Mangal Bhagat, who had acknowledged the same by giving a receipt,

which was submitted in the office on 26.2.1991 and the amount which was to be paid to Smt. Phool Kumari has also been acknowledged by receipt dated 20.2.1991. Both the receipts were deposited before the Sergeant Major.

4. However, it appears that subsequently, the Sergeant Major made a complaint to the higher authority on 18.3.1991 that Sheo Mangal Bhagat had complained that the Appellant had paid him, only Rs. 600/- in cash and deposited Rs. 100/- in a Bank Account in the name of Sheo Mangal Bhagat. The Sergeant Major further reported that an amount of Rs. 4000/- was paid to said Shri Sheo Mangal Bhagat on 16.3.1991. The Appellant vide order dated 23.3.1991 was put under suspension in contemplation of a departmental proceeding. Further enquiry was conducted and by Annexure-3 to the writ application the Petitioner-Appellant was also reverted from the post of the Assistant Sub Inspector of Police to that of a constable as it was contended that the aforesaid promotion was a temporary promotion only for the purpose of discharging the work of disbursing the pension and in view of the fact that as the Appellant was under suspension and not discharging the aforesaid duty, the said promotion was not required to be continued. After filing the show cause the departmental proceeding continued and the Appellant adduced evidence both oral as well as documentary and finally the enquiry report was submitted in which the Appellant was found guilty. The disciplinary authority passed the order of dismissal, as contained in Annexure-1 to the writ application. The Appellant preferred an appeal against the same, which was also dismissed.

5. The contention on behalf of the Appellant is that firstly he had already filed a receipt showing payment of the amount in question and secondly that the complainant had not filed the complaint on his own but on the direction of the Sergeant Major and, as such, the enquiring officer has erred in appraisal of the evidence. Therefore, any order of punishment passed on the said enquiry report is erroneous.

6. It has further been contended by the learned Counsel for the Appellant that in any view of the matter the aforesaid punishment is harsh and disproportionate to the allegation as alleged in the charges framed against the Appellant.

7. This Court after going through the impugned judgment is of the considered opinion that the writ Court had gone into entire aspect of the matter and relying on the judgment of the Constitution Bench in the case of State of Orissa Vs. Bidyabhushan Mohapatra, and in State of Tamil Nadu and another Vs. S. Subramaniam, had come to the correct conclusion that the High Court is not required to reappraise the evidence by the parties, rather it has to go into the legality and illegality of the same. The learned writ Court after taking the afore said judgments into consideration and discussing the above facts at length has come to the conclusion that the punishment awarded to the Appellant was not required to be interfered with and it has further been held that the order granting promotion to the Appellant to the rank of Assistant Sub-Inspector of Police has rightly been taken away, as the said promotion was purely temporary and was

operative the further orders only.

8. This Court does not find any error in the aforesaid judgment of the writ Court

9. The present Letters Patent Appeal fails and is, accordingly, dismissed.