
(2013) 09 JH CK 0085

In the Jharkhand High Court

Case No : Writ Petition (S) No. 6210 of 2006

Ex. Constable Shri Awadh Kishore Singh

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 27-09-2013

Acts Referred:

Citation : (2013) 4 JLJR 503

Hon'ble Judges : Shree Chandrashekhar, J

Bench : Single Bench

Advocate : Prabhask Kumar, for the Appellant; Rakhi Rani, J.C. to Sr. S.C. II, for the Respondent

Judgement

Shree Chandrashekhar, J.—The petitioner has approached this Court challenging the penalty order dated 02.08.1986 and the appellate order dated 20.04.2005. The brief facts of the case as disclosed in the writ petition are that, the petitioner was initially appointed as a Constable and on 26.08.1986, a charge-memo was served upon the petitioner on the allegation that on 13.01.1986, he proceeded to distribute letters (dak) however, he remained absent from 05.03.1986 and got himself involved in a criminal case being Kashichak (Nawada) P.S. Case No. 11 of 1986 dated 25.02.1986 registered under Sections 147, 148, 149, 323, 307, 332, 333, 334, 341, 353, 188 of the I.P.C. and Sections 25(A) and 27 of the Arms Act.

2. The petitioner was put under suspension on 05.03.1986. A departmental enquiry was instituted and on conclusion of the enquiry, an enquiry report was submitted on 13.01.1989. The petitioner submitted his reply to the second show-cause notice on 29.12.1988 and the order of dismissal from the service was passed on 02.08.1986. The petitioner approached this Court by filing C.W.J.C. No. 2592 of 1990 (R) which was allowed by order dated 26.06.1991, directing the appellate authority to take a fresh decision. However, the appeal of the petitioner was not decided by the appellate authority and in the meantime, the petitioner was acquitted in the criminal case by order dated 20.07.2004 and therefore, the petitioner approached this court again in W.P. (S) No. 307 of 2005,

which was disposed of by directing the appellate authority to decide the appeal of the petitioner considering the order of acquittal passed in the Criminal case. The appellate authority again affirmed the order of dismissal from service by order dated 20.04.2005 and therefore, the petitioner has again approached this Court by filing the present writ petition.

3. A counter-affidavit has been filed by the respondents stating as under:

5. That the statements made in paragraph-1 of the writ petition is the prayer made by the petitioner has no merit and hence is liable to be dismissed in limine. However, it is humbly stated and submitted that a departmental proceeding being Dhanbad District Departmental Proceeding No. 63/2006 was initiated against the petitioner and after conducting the enquiry, the petitioner was found guilty of charges and as such he was dismissed from the service by the respondent No. 3.

6. That it is further humbly stated that the petitioner's appeal was also dismissed on 17.05.1990 by the then D.I.G., Coal Range. The petitioner had challenged the legality of departmental proceeding as well as the order passed in appeal. The Hon'ble High Court was pleased to direct the respondent No. 2 to pass a fresh order after considering each points raised in appeal. In the light of order passed by the Hon'ble High Court, it appears from the record that the then D.I.G., Coal Range again passed a fresh order dated 22.09.1991 on appeal dismissing the same.

7. That it is further stated that the petitioner again moved to the Hon'ble High Court in W.P. (S) No. 307/2005 and the Hon'ble High Court has been pleased to direct the respondent No. 2 to dispose of the appeal within two months of receipt of production of the order, if the same has not been disposed off. The respondent No. 2 was also directed to consider the judgment of acquittal passed in criminal case. Hence in the light of aforesaid order, the respondent No. 2 again considering the direction of the Hon'ble Court passed an order dated 20.04.2005, dismissing the appeal of the petitioner.

8. That it is humbly stated and submitted that the respondent No. 2 has passed a reasoned and speaking order and the relevant points raised in appeal especially acquittal of criminal case, has been dealt with, the respondent No. 2 has been pleased to base its order of dismissal of appeal also in the earlier order passed by the Hon'ble Court. Hence considering the entire facts and circumstances, the instant writ application of the petitioner has no merit.

9. That the statements made in paragraph-2, 3 and 4 of the writ petition are matters of record.

10. That the averments made in paragraphs - 5, 6, 7 and 8 are not correct. It is being respectfully stated that the petitioner has submitted his preliminary explanation as well as second explanation after the departmental proceeding was over. Further, the petitioner filed an appeal against the order of dismissal. All this

shows that the petitioner did have information or knowledge of departmental proceeding. It also appears from record that the petitioner was given information/notice time to time through Sergeant Major by the Enquiry Officer. Further the Enquiry Officer had also gone to his house/police station but he evaded to meet him.

4. Heard learned counsel appearing for the parties and perused the documents on record.

5. Learned counsel appearing for the petitioner has submitted that the specific charge against the petitioner is that he remained absent from duty and got himself involved in a criminal case. Since the petitioner has been acquitted by the competent Criminal Court from the charges levelled against him, the petitioner is entitled for reinstatement in the service.

6. Learned counsel for the respondents has submitted that it is settled law that criminal proceeding as well as departmental enquiry can proceed simultaneously. The penalty order passed in the departmental enquiry is legal and merely because petitioner has been acquitted from the criminal charge in the criminal case, it would not affect the decision taken in the departmental enquiry.

7. A perusal of the documents on record, more particularly, the charge framed against the petitioner would disclose that the specific charge against the petitioner was that he got himself involved in the criminal case during the period he remained absent from duty. Now, by order dated 20.07.2004 the petitioner has been acquitted from the charges levelled against him and such acquittal is not an acquittal by default, rather, it would appear from order dated 20.07.2004 that the order of acquittal has been recorded after considering the materials on record. Moreover, by order dated 03.02.2005 passed in W.P.(S) No. 307 of 2005, this court specifically directed the appellate authority to consider the acquittal of the petitioner from the criminal charges before passing an order in the appeal preferred by the petitioner.

8. With respect to the misconduct relating to unauthorized absence from duty, the learned counsel for the petitioner submitted that the petitioner remained absent from duty because he was falsely implicated in the criminal case and he was arrested and sent to judicial custody. He has further submitted that the absence from duty was due to the reason beyond the control of the petitioner and it was not deliberate. Learned counsel for the petitioner relies on the judgment in *Krushnakant B. Parmar Vs. Union of India (UOI)* and Another, wherein the Hon"ble Supreme Court has observed as under:

16. In the case of the appellant referring to unauthorised absence the disciplinary authority alleged that he failed to maintain devotion to duty and his behavior was unbecoming of a government servant. The question whether "unauthorised absence from duty" amounts to failure of devotion to duty or behavior unbecoming of a government servant cannot be decided without deciding the question whether absence is willful or because of compelling

circumstances.

17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be willful. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean willful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalisation, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behavior unbecoming of a government servant.

18. In a departmental proceeding, if allegation of unauthorised absence from duty is made, the disciplinary authority is required to prove that the absence is willful, in the absence of such finding, the absence will not amount to misconduct.

9. Replying to the contention raised by the petitioner, the counsel for the respondents has relied on decisions reported in Commissioner of Police, New Delhi Vs. Narender Singh, , Secretary, Ministry of Home Affairs and Another Vs. Tahir Ali Khan Tyagi, and The State of Jharkhand and Others Vs. Radhey Shyam Prasad Singh, wherein it has been held by the Hon''ble Supreme Court that mere acquittal in the criminal case is not sufficient for taking a contrary decision in the departmental proceeding.

10. In Commissioner of Police, New Delhi Vs. Narender Singh, it has been held that,

12. It is not in dispute that the standard of proof required in recording a finding of conviction in a criminal case and in a departmental proceeding are distinct and different. Whereas in a criminal case, it is essential to prove a charge beyond all reasonable doubt, in a departmental proceeding preponderance of probability would serve the purpose.

13. It is now well-settled by reason of a catena of decisions of this Court that if an employee has been acquitted of a criminal charge, the same by itself would not be a ground not to initiate a departmental proceeding against him or to drop the same in the event an order of acquittal is passed.

14. In Manager, R.B.I., Bangalore Vs. S. Mani and Others, this Court held:

It is trite that a judgment of acquittal passed in favour of the employees by giving benefit of doubt per se would not be binding upon the employer.....

11. In Secretary, Ministry of Home Affairs and Another Vs. Tahir Ali Khan Tyagi, it has been held that,

6. Departmental proceeding and criminal proceeding can run simultaneously and departmental proceeding can also be initiated even after acquittal in a criminal proceeding particularly when the standard of proof in a criminal proceeding is completely different from the standard of proof that is required to prove the delinquency of a government servant in a departmental proceeding, the former

being one of proof beyond reasonable doubt, whereas the latter being one of preponderance of probability.

12. In *The State of Jharkhand and Others Vs. Radhey Shyam Prasad Singh*, it is held that,

6. The orders of both the learned Single Judge and the Division Bench suffer from several infirmities. First and foremost, mere acquittal in a criminal case does not have the effect of nullifying the decision taken in the departmental proceedings. They operate in different areas of considerations. This position was recently highlighted by a three-Judge Bench of this Court in *Noida Entrepreneurs' Association vs. Noida and Ors.* [W.P. (C) No. 150 of 1997 with W.P. (C) 529 of 1998 decided on 15.1.2007].

13. I find that the law on the subject is well settled by a catena of judgments of the Hon'ble Supreme Court. In "*Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another*", the Hon'ble Supreme Court has considered this aspect of the matter and clearly held that though it is permissible for the departmental authorities to proceed simultaneously with the criminal case, however, if the departmental enquiry and criminal proceeding were based on identical set of facts and evidence and if the delinquent employee has been acquitted from the criminal charge, the employee would be entitled for reinstatement in the service and the order passed in the departmental enquiry is liable to be quashed.

14. In *G.M. Tank Vs. State of Gujarat and Another*, the Hon'ble Supreme Court has considered the case of the employee who, after his dismissal from service had approached the court seeking reinstatement in service on the ground of his acquittal in the criminal case and the Hon'ble Supreme Court has held that the employee was entitled for reinstatement in the service.

15. Adverting to the facts of the case again, I find that the only charge against the petitioner was that he remained absent unauthorizedly from duty and during the period of absence he was involved in a criminal case and on that ground alone the petitioner has been dismissed from service. All the witnesses who have been examined in support of the charge framed against the petitioner, are witness on the point of absence from duty and registration of the criminal case against the petitioner. Admittedly, a case was instituted not at the instance of the employer and therefore, after the acquittal from the criminal charge, the petitioner is entitled for reinstatement in service from the date of acquittal, that is, from 20.07.2004. However, since the another charge relates to absence from duty, it would be open to the departmental authority to take appropriate action. Accordingly, the impugned orders dated 02.08.1986 and 20.04.2005 are quashed. The case is remitted back to the departmental authority for taking a decision afresh insofar as the charge for unauthorized absence is concerned.