
(2006) 12 PAT CK 0044
In the Patna High Court
Case No : CWJC No. 2717 of 2005

Jay Shanker Pd. Trivedi

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 04-12-2006

Acts Referred:

Citation : (2007) 1 PLJR 334

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

Bench : Single Bench

Advocate : Teg Bahadur Singh and Binay Kr. Singh, for the Appellant; A.K. Pandey and Madhukar Mishra For the State, for the Respondent

Final Decision : Dismissed

Judgement

V.N. Sinha, J.—Heard learned counsel for the petitioner and the State. Petitioner, who is a constable, has filed this writ application praying, inter alia, to quash the order dated 4.3.2002, passed by the Superintendent of Police, Railways, Muzaffarpur, Annexure-2, whereunder he has been discharged from the post of Constable after conclusion of the Departmental Proceeding No. 41/2001 in the light of the findings contained in the report of the Enquiry Officer dated 16.11.2001. Petitioner has also assailed the appellate order dated 6.5.2002 passed by the Deputy Inspector General of Police, Railways, Patna, Annexure-3 and the order passed on the memorial by the Director General-cum-inspector General of Police, Bihar, Patna, dated 8.10.2004, Annexure-5.

2. It appears, petitioner was served with the memo of charge bearing Memo No. 121 dated 23.1.2001, Annexure-1 alleging that on 11.12.2000 he alongwith constable 479, Om Prakash Singh was assigned the duty to escort Train No. 5217 Down Kurla Express and after performing the said duty on 11.12.2000 at about 1.15 A.M., both the petitioner and said Om Prakash Singh persuaded one lady, Munni Khaton to come to their barrack for illegal/ immoral purposes and even took her to their bed, but before their evil design could succeed, other constables came to the barrack and on confidential information, which was noted in the

station diary, even the Officer-in-charge came to the barrack and recovered said Munni Khatoon from the barrack in presence of the constables, present there and recorded the fardbeyan of the girl, Munni Khatoon, in which she categorically alleged that the petitioner and the other constable had persuaded her to come to the barrack.

3. During the inspection of the Sonapur Rail Police Station on 27.12.2000 the Deputy Superintendent of Police, Railways, Sonapur, Sri Bhudeo Tiwari noticed the confidential information recorded in the Station Diary Entry vide entry Nos. 243 and 244 dated 11.12.2000, namely, the confidential information on the basis of which the Officer-in-charge had gone to the barracks and had recovered Munni Khatoon and recorded her fardbeyan vide Station Diary Entry No. 244 dated 11.12.2000. The Deputy Superintendent of Police, Railways, Sonapur, Sri Bhudeo Tiwari further noticed the fact that in order to suppress the illegal/immoral act of the petitioner and constable 479, Om Prakash Singh, information regarding the entries made in the Station Diary bearing Nos. 243 and 244 dated 11.12.2000, were not forwarded either to his office or to the office of the Superintendent of Police, Railways, Muzaffarpur. The Deputy Superintendent of Police, Railways, Sonapur, Sri Bhudeo Tiwari, accordingly, under Memo No. 1181 of 2000 dated 27.12.2000, Annexure-F to the counter affidavit itself reported the matter to the Superintendent of Police Railways, Muzaffarpur, whereunder, copies of the Station Diary Entry Nos. 243 and 244 dated 11.12.2000 were also enclosed.

4. The Superintendent of Police, Railways, Muzaffarpur, having considered the report of the Deputy Superintendent of Police, Railways, Sonapur under Memo No. 1181 of 2000 dated 27.12.2000, Annexure-F to the counter affidavit and appreciating the contents of Station Diary Entry Nos. 243 and 244 dated 11.12.2000, initiated the departmental proceeding bearing Nos. 41 and 42 of 2000 against the petitioner and constable No. 479, Om Prakash Singh, whereafter petitioner was served with the memo of charge dated 23.1.2001, Annexure-1, perusal whereof indicates that the documents relied in support of the charge were Memo No. 1181 of 2000 dated 27.12.2000, Annexure-F to the counter affidavit and the Sonapur Rail Police Station Diary Entry Nos. 243 and 244 dated 11.12.2000, copy whereof was enclosed with the charge-sheet. Besides the aforesaid documents, the reporting officer Sri Bhudeo Tiwari, Deputy Superintendent of Police, Railways, Sonapur and six other constables, who were present at the time of recovery of Munni Khatoon from the barrack, were cited as witnesses in support of the charge.

5. During the departmental proceedings, the Deputy Superintendent of Police, Railways, Sonapur, Sri Bhudeo Tiwari and constable No. 573, Gautam Kumar, constable No. 534, Sunil Kumar, constable No. 339, Birendra Singh and constable No. 515, Anil Kumar Singh were examined in the proceedings. The Deputy Superintendent of Police, Railways, Sonapur, Sri Bhudeo Tiwari proved the contents of his Memo No. 1181 of 2000 dated 27.12.2000, Annexure-F to the counter affidavit as also the contents of Station Diary Entry Nos. 243 and 244

dated 11.12.2000.

6. The Enquiry Officer, having appreciated the contents of Memo No. 1181 of 2000 dated 27.12.2000, Annexure-F to the counter affidavit together with Station Diary Entry Nos. 243 and 244 dated 11.12.2000, deposition of the reporting officer, the Deputy Superintendent of Police, Railways, Sonapur, Sri Bhudeo Tiwari and the constables, present at the time of recovery of Munni Khatoon, concluded that petitioner alongwith Constable No. 479, Om Prakash Singh had persuaded Munni Khatoon to come to the barrack for illegal/immoral purposes and she was recovered in presence of the constables, who, in support of the said fact, had also put their signature on the fardbeyan of Munni Khatoon. The disciplinary authority, namely, the Superintendent of Police, Railways, Muzaffarpur, having considered the Enquiry Report, issued second show cause notice together with the Enquiry Report to the petitioner and after considering the show-cause reply, filed by the petitioner, passed the impugned discharge order dated 4.3.2002, Annexure-2, which was assailed by the petitioner by filing appeal and memorial before the Deputy Inspector General of Police, Railways, Bihar, Patna and the Director General-cum-inspector General of Police, Bihar, Patna and it appears, both the appeal and the memorial were dismissed under orders dated 6.5.2002, Annexure-3 and order dated 8.10.2004, Annexure-5.

7. Learned counsel for the petitioner has assailed the aforesaid three orders dated 4.3.2002, 6.5.2002 and 8.10.2004, Annexure-2, 3 and 5 respectively, on the ground that the victim lady, Munni Khatoon was not examined in support of the charge and further submitted that had she been examined in response to his request contained in his explanation dated 31.1.2001, Annexure-D to the counter affidavit, the allegation levelled against him would have been found to be false.

8. It appears from the explanation dated 31.1.2001, Annexure-D to the counter affidavit that the same was filed before the Superintendent of Police, Railways, Muzaffarpur but no request was made before the Enquiry Officer to examine Munni Khatoon as a defence witness in the enquiry proceeding. In the facts and circumstances of the case, I am not inclined to appreciate that petitioner was not given ample opportunity by the Enquiry Officer to examine the defence witnesses. If the petitioner desired to examine Munni Khatoon as a defence witness, he was required to have made a written request to that effect before the Enquiry Officer. He, having not made any such request, cannot be allowed to raise the submission that he was not given opportunity by the Enquiry Officer to examine Munni Khatoon as a defence witness. Having heard counsel for the parties, I am of the view that the Enquiry Officer has rightly appreciated the contents of Memo No. 1181 of 2000 dated 27.12.2000, Annexure-F to the counter affidavit and the Station Diary Entry Nos. 243 and 244 dated 11.12.2000 together with the deposition of the reporting officer, Sri Bhudeo Tiwari, Deputy Superintendent of Police, Railways, Sonapur and the constables present at the time of recovery of the girl and in recognition of the fact that the girl, Munni Khatoon recovered from the barrack in their presence, the constables also signed

the fardbeyan and having appreciated the contents of the fardbeyan together with the signature of the constables taken in token of the fact that they were present at the time of recovery and recording of the fardbeyan which fact is also evident from the deposition of the witnesses, the authorities have rightly concluded that the charge levelled against the petitioner has been proved. In the facts and circumstances of the case, I do not find any merit in the writ petition and the same is, accordingly, dismissed.