
(1999) 11 PAT CK 0016
In the Patna High Court
Case No : C.W.J.C. No. 3304 of 1998

Mani Ram Yadav

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 29-11-1999

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 302

Citation : (2000) 1 PLJR 239

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Aftab Alam, J.—These two cases arise from an identical set of facts and circumstances; the two petitioners challenge similar orders of their dismissal from service and they seek the same relief. These two writ petitions were, therefore, heard together and are being disposed of by this common order. Mani Ram Yadav (Petitioner in CWJC No. 3304/1998) and Lallan Prasad Singh (Petitioner in CWJC No. 3340/1998) were constables in the Railways Protection Force. They were accused of committing murder of another constable RK/Jagdish Chandra of D.Coy 3 B.M.P. while on duty at Garhara yard in an occurrence giving rise to Barauni PS Case No. 49/1985 dated 24.3.1985. In that case the two petitioners alongwith some other co-accused were tried for offences punishable under sections 302/120B of the Penal Code. They were convicted and sentenced to undergo life imprisonment by judgment and order, dated 18.12.1989 passed by the 3rd Addl. Sessions Judge, Begusarai in Sessions Trial No. 476/1986. Following their conviction, they were dismissed from service w.e.f. 18.12.1989 by an order passed by the Divisional Security Commissioner, Eastern Railway Danapur under rule 161.1 of the Railway Protection Force Rules, 1987. The order of their dismissal was communicated to the petitioners under divisional order nos. 224/1990 and 225/1990 respectively both, dated 21.3.1990 (copies at Annexure 1 in each of the two writ petitions).

2. Against the judgment and order passed by the trial court the two petitioners preferred appeal before this court. The appeal of the petitioners was registered in this court as Cr. Appeal No. 550/1989 which was heard along with its analogous appeal being Cr. Appeal No. 9/1990. This court by judgment and order dated 1.10.1997 allowed the aforesaid two appeals, set aside the judgment of conviction and order of sentence passed by the trial court and acquitted the two petitioners of the charges.

3. The petitioners then preferred a departmental appeal against the order of their dismissal. The petitioners' appeal was rejected by a brief order which reads as follows:

I have gone through the representation of Mani Ram Yadav, Ex.Hd. Const. 1997 and Lallan Prasad Ex. Const. 2342 and I find that there is no fresh fact or point that need to be considered. The petitioner was removed from service for his involvement in a criminal case and he was convicted and sentenced for murder u/s 302 IPC by the trial court. Now on appeal the appellate court has set aside the conviction and on this the above petition has been preferred.

There is no other fresh material that warrants consideration. Under the above circumstances the appeal against removal stands rejected.

(emphasis added)

4. I do not even follow what the appellate authority meant by observing that there was no other fresh material that merited consideration. The judgment passed by this court, allowing the Criminal Appeal filed by the two petitioners was the most important fresh material and it was incumbent upon the appellate authority not only to take it into consideration but to follow it. This Court's judgment had taken away the very basis on which the order of dismissal was founded. The very basis on which the order of dismissal was passed against the petitioners, thus, having been removed, I fail to see how the appellate authority could refuse to allow the appeal.

5. It may be noted at this stage that rule 153 of the Railway Protection Force Rules lays down a detailed procedure for imposing major punishments. Rule 156 provides that the punishment of dismissal would be appropriate where the delinquent is convicted by a criminal court. Rule 162 provides for the procedure to be followed in case of conviction by a criminal court. Rule 161 lays down the special procedure in certain cases and it is as follows :

161. Special Procedure in certain cases.?Notwithstanding anything contained anywhere in these rules?

(i) where any punishment is imposed on an enrolled member of the Force on the ground of conduct which has led to his conviction on a criminal charge; or

(ii) where the authority competent to impose the punishment is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold

an inquiry in the manner provided in these rules;

(iii) where the President is satisfied that in the interest of security of State and in the maintenance of integrity in the Force, it is not expedient to hold any inquiry in the manner provided in these rules;

the authority competent to impose the punishment may consider the circumstances of the case and make such orders thereon as it deems fit.

6. It may be noted here that no proceeding under rule 153 of the Rules was initiated against the petitioners and further that after their conviction by the trial court the provisions of rule 162 were not followed. But the disciplinary authority, in his discretion, decided to proceed under the special procedure of rule 161 of the Rules. In that circumstance the disciplinary authority/appellate authority was bound to review and recall its decision once the conviction of the petitioners was set aside by the appellate court inasmuch as the judgment passed by the appellate court, acquitting the petitioners of the charges, removed the very basis and the pre-condition for the exercise of power under rule 161.1 of the Rules. The impugned orders, dated 17.3.1998 passed by the appellate authority are, therefore, clearly unsustainable in law and the orders, dated 17.3.1998 passed against the two petitioners are accordingly set aside. As a consequence, the petitioners will be deemed to continue in service.

7. It will be, however, open to the disciplinary authority to proceed against the petitioners, in accordance with law in respect of the occurrence giving rise to the criminal case. In case the disciplinary authority decides to proceed further against the petitioners they would be duly intimated in that regard within two months from the date of receipt/production of a copy of this order. Further proceedings, if any, would be concluded within four months of its initiation. The disciplinary authority will also pass necessary orders as per rules regarding the past salary of the petitioners and all the lawful dues would be paid to the petitioners within two months from the date of receipt/production of a copy of this order. In the result, these two writ petitions are allowed subject to the aforesaid observations and directions.