
(2003) 09 JH CK 0117
In the Jharkhand High Court
Case No : CWJC No. 2082 of 1995 (R)

Niranjan Mandal

APPELLANT

Vs

Steel Authority of India and Others

RESPONDENT

Date of Decision : 02-09-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 4 JCR 450

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : V. Shivnath and B.V. Kumar, for the Appellant; M.M. Banerjee, Ananda Sen and Indrajit Sinha, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—The petitioner is working as store-keeper in the Store-department of the respondents-Bokaro Steel Plant. In the year, 1985 a theft was committed by some unknown persons in the godown of which the petitioner was in-charge. As such, the petitioner lodged a written report to the officer-in-charge, Crime Section, Central Industrial Security Force (CISF) which was forwarded to Bokaro Steel City Police Station for institution a case and for investigation. On receipt of such information FIR was lodged and a case being Bokaro B.S. City PS Case No. 198/85 under Sections 461/379 of the Indian Penal Code was registered. The police during investigation arrested the petitioner and two other employees of the company-respondent and submitted charge-sheet. Accordingly the petitioner along with two other employee was tried in the Court of Judicial Magistrate, 1st class, Bokaro. The Court pronounced judgment on 18.6.1987 whereby the petitioner was acquitted of the charge holding that the prosecution failed to prove the charges levelled against the petitioner.

2. It appears that in the meantime the petitioner was put under suspension vide order dated 23.8.1985 and was charge-sheeted. The Enquiry Committee so constituted inquired into the charges levelled against the petitioner. On the basis

of the inquiry report submitted by the Enquiry Committee the Disciplinary Authority punished the petitioner by reducing his pay to an amount equivalent to two increments vide his order dated 24.8.1988.

3. The petitioner filed departmental appeal asserting that since he has been acquitted in the criminal case, the impugned order of punishment is not sustainable in law. The said appeal was eventually dismissed by the respondent-authority.

4. Mr. V. Shivnath learned counsel appearing on behalf of the petitioner assailed the impugned order of punishment as being illegal and wholly without jurisdiction. Learned counsel submitted that the petitioner has already spent 29 years of his service and he became entitled to promotion in 1993 when many juniors to him have been promoted to the post of Managers, According to the learned counsel the action of the respondents in not considering the case of the petitioner for promotion is illegal and mala fide. Learned counsel relied on a decision of the Supreme Court in the case of Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, .

5. The case of respondents in the counter affidavit is that the post of E-4 grade is a selection grade post in the Executive Cadre. As such promotion from non-executive cadre to executive cadre is not based on seniority alone. The educational qualification, performance appraisal" rating and performance in the interview are the criterias for promotion. In 1992 and 1994 the case of the petitioner was assessed and considered by the Departmental Promotion Committee but the petitioner was not found fit for promotion to E-4 grade. On the other hand, respondent Nos. 7 and 8 have been found suitable for promotion.

6. Mr. M.M. Banerjee, learned counsel appearing on behalf of the respondents submitted that the petitioner was charge-sheeted for dishonestly taking and misappropriating the company's property and negligence in duty. The charges against him was proved in the inquiry and, accordingly, he was punished. Learned counsel submitted that there is no bar in proceeding with the departmental inquiry even if a person is acquitted in a criminal case. Learned counsel relied upon a decision of the Supreme Court in the case of Secretary, Ministry of Home Affairs and Anr. v. Tahir Ali Khan Tyagi reported in 2002 (6) SC 274.

7. Law has been set at rest on the basis of judicial pronouncements that the proceedings in a criminal case and the departmental proceeding can go on simultaneously except where the departmental proceeding and the criminal case are based on the same set of facts and the evidence in both the proceedings is common. If criminal case and the departmental proceeding are based on identical set of facts and on the basis of same set of evidence and the delinquent is acquitted on the finding that the charges have been proved, then it would be unjust and unfair to punish him by holding a departmental proceeding. Law has been laid down by the Supreme Court in the case of Capt. M. Paul Anthony Vs.

Bharat Gold Mines Ltd. and Another,

8. In the instant case, as noticed above, the petitioner was acquitted in the criminal case by judgment dated 18.6.1987, A copy of the judgment has been annexed as Annexure 2 to the writ application. From perusal of the judgment it appears that the Magistrate has discussed and considered all the evidence of the witnesses and other evidence and recorded a conclusive finding. In 18 pages" judgment the learned Magistrate has come to the following conclusion :

"Having regard to the discussion made above I am of the view that though the prosecution case with regard to theft of articles is absolutely true but with much of emphasis I should say that there was no connection of these three accused persons in the commission of either theft or criminal misappropriation of the articles and, as such, this Court finds and holds the accused persons quite innocent. They are, therefore honourably acquitted u/s 248 of Cr PC. They are also discharged from the liabilities of their bail bonds."

9. In the case of Secretary, Ministry of Home Affairs (supra) their lordships, in the facts of the case, held that acquittal in a criminal case cannot be a ground to quash the departmental proceeding on the same charges. Their lordships held as under:

"That apart, the second part of Rule 12 of the rules, unequivocally indicates that a departmental proceeding could be initiated if the opinion of the Court, the prosecution witnesses are found to be won over. In the case in hand, the prosecution witnesses did not support the prosecution in the criminal proceeding on account of which the public prosecutor cross-examined them and therefore, in such a case, in terms of rule 12, a departmental proceeding could be initiated. In this view of the matter we are of the considered opinion that the tribunal committed error in interfering with initiation of a departmental proceeding and the High Court committed error in dismissing the writ petition filed. We, therefore, set aside the impugned judgment of the High Court as well as that of the tribunal and direct that the departmental proceeding be concluded as expeditiously as possible."

10. Coming back to the instant case, as noticed above, about 8 prosecution witnesses including the responsible officers were examined in the criminal case but the prosecution failed to prove even the date of occurrence and the details of the articles stolen away. It is not a case where the prosecution witnesses became hostile and did not support the prosecution case and they were cross-examined by the defendant. In that view of the matter, I am of the opinion that the ratio decided by the Supreme Court in Secretary, Ministry of Home Affairs's case (supra) does not apply in the facts of the present case. Applying the principle laid down by the Supreme Court in Capt. M. Paul Anthony's case (supra) the order of punishment passed against the petitioner is unwarranted and unsustainable in law.

11. So far the claim of the petitioner for promotion is concerned it appears that

his case for promotion was considered in 1992 and 1994 and he was not found fit for promotion. However, the case of the petitioner was not considered thereafter.

12. Taking into consideration all the facts of the case (this writ application is allowed in part and the impugned order of punishment is quashed. It is held that the petitioner would be entitled to be considered for promotion by the Departmental Promotion Committee as and when promotion matter is considered.