

(2005) 08 JH CK 0051

In the Jharkhand High Court

Case No : CWJC No"s. 6329 and 6330 of 1995 (P)

Ram Pravesh Pandit and Others and Satya Narayan Singh
and Others

APPELLANT

Vs

State of Bihar (Now Jharkhand) and Others

RESPONDENT

Date of Decision : 29-08-2005

Acts Referred:

Arms Act, 1959 — Section 27

Constitution of India, 1950 — Article 226

Penal Code, 1860 (IPC) — Section 109, 148, 149, 201, 302

Citation : (2005) 4 JCR 447

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

**Advocate : Rajiv Ranjan, Abhay Kr. Mishra and Manish Mishra, for the Appellant;
Anil Kr. Sinha, A.G. and Saurav Arun, J.C. to A.G., for the Respondent**

Judgement

S.J. Mukhopadhaya, J.—In both the cases, the petitioners have challenged similar orders of dismissal all dated 2nd January, 1992, passed by the Commandant, BMP-3, Govindpur, Dhanbad, in different departmental proceedings, similar appellate orders dated 11th. January/17th March, 1993 as also the similar revisional orders, passed on different dates, and common question of law, being involved, they have been heard together and are being disposed of by this common judgment.

2. The case of the petitioners is that they were deputed as Constables along with others, including Sub-Inspectors of Police, at Khajuri Police Post under Konch Police Station, District-Gaya (Bihar), in the month of January, 1989 to maintain law and order, the area being effected by the Maobadi Communist Center (hereinafter to be referred as "MCC", as extremist group). On 12th March, 1989 at 5.00 p.m. one Sidheshwar Singh along with Madan Upadhyay and Sitaram Dubey came there for duty. On the same day (12th March, 1989), at 10.30 p.m. while some of them were sleeping, they heard the alarm of the guard "Hosiyar," raised by the Santri, Mandan Upadhyay. Sidheshwar Singh along with other

constables of Khajuri Police Post became alert. Ram Pukar Singh, Sub-Inspector (Arms), took position towards eastern side and Sidheshwar Singh took position in western side to assist the constables. They heard 5/6 rounds of firing. Due to the dark night, they could not identify the persons, who were making firing, but they could understand that they were the members of the M.C.C group 15 to 20 in number, who had reached at the Police Post in order to snatch away the rifles after attack. When the constables opened fire in their defence, after 15 to 20 minutes of encounter, the extremists fled away towards south. One Yogendra Choubey, a police personnel, was found dead, who had received gun-shot injury on his chest. The rifle was found near his dead body. Dead body of one extremist Suryadeo Ravidas was also found near the dead body of deceased Yogendra Choubey (constable). On 13th March, 1989, Ram Pukar Singh, Sub-Inspector (Arms), lodged fardbeyan, narrating the aforesaid facts. On the basis of which First Information Report was drawn up and Konch Police Station Case No. 26 of 1989 dated 13th March, 1989 was registered for the offences under Sections 148, 149, 302 and 307 of the Indian Penal Code and 27 of the Arms Act, against 17 to 20 unknown extremists. The information was also given to the higher authorities with regard to the extremists' attack and death of one constable and one extremist.

3. One Jamuni Devi, wife of deceased Suryadeo Ravidas, resident of Village-Khajuri, Police Station-Konch, District-Gaya (Bihar), made a separate began before the Officer-in-charge, Konch Police Station, on 13th March, 1989, alleging therein, that in the preceding night about 10.30 to 11.00 p.m. she heard two rounds of firing from northern side near Khajuri Police Post. She also heard hulla towards the village, where Ram Lila was going on. Her husband Suryadeo Ravidas had left the house to know as to what was the matter. No sooner he came out of his house, 2 to 3 constables caught hold of him (Suryadeo Ravidas) and told that he was a bad element and keeps gun and cartridges. It is further alleged that though her husband denied the allegation and stated that there was no complaint against him, the constables took him away after giving slaps on her, which was also witnessed by one Nagina Devi. In the night she could not go to the school but in the morning she narrated the aforesaid facts to Ram Naresh Ram, Teacher, who told her that the police might have taken away her husband for enquiry and later on, he may be released. But her husband did not return and later on, she came to know that her husband has been shot dead. She could come to know the names of the assailants amongst the constables. On the basis of the aforesaid beyan of Jamuni Devi, a formal First Information Report was also drawn up and Konch Police Station Case No. 28 of 1989 dated 13th March, 1989 was registered for the offence u/s 302 of the Indian Penal Code.

4. A complaint case being Complaint Case No. 259 of 1989 was also filed by Jamuni Devi on 18th March, 1989 in the Court of learned Chief Judicial Magistrate, Gaya, with respect to the said occurrence, as taken place on 12th March, 1989 between 10.00 to 11.00 p.m. for the offences under Sections 148, 149, 302 and 307 of the Indian Penal Code, naming accused Uma Shankar

Dubey, Officer-in-Charge, Konch Police Station, Hare Narayan Singh, ASI and other 18 police personnel of BMP-3, including the petitioners, who were deputed at Khajuri Camp. Names of Nagina Devi, MajuDevi, Sonu Mochi, Ram Krit Mochi and Jawahar Mochi were shown as witnesses. She alleged that on 12th March, 1989 at about 10.00 to 11.00 p.m. she heard sound of firing from the side of Police Camp. Her husband opened the door but he was caught hold of by the police constables and was taken to the Police Post. She wanted to know what was the wrong, committed by him, and" accordingly, made several requests. After sometime, Office-in-Charge of Konch Police Station AS1 of Konch Police Station along with two constable came back and ordered to shoot her husband Suryadeo Ravidas, who was done to death. After hullo, when the villagers reached there, again the BMP constables abused them. It was reported that though she complained the matter before the Superintendent of Police and other higher police officers, she believed that the police officers were trying to save the police personnel, who had committed the crime. However, complaint Case No. 259 of 1989, filed by Jamuni Devi, wife of deceased Suryadeo Ravidas, was dismissed by the learned Chief Judicial Magistrate, Gaya on 4th April, 1990, as even after several opportunities, the complainant did not turn up to pursue the complaint case.

5. While the aforesaid criminal cases were pending, the 4th respondent, Commandant, BMP-3, Govindpur, Dhanbad, vide letter No. 718; dated 15th March, 1989, placed the petitioners under suspension on the ground of indiscipline, dereliction of duties etc. However, the suspension was, later on, revoked vide order No. 434, dated 10th November, 1989 but the departmental proceedings being Case Nos. 9 of 1989, 10 of 1989, 11 of 1989, 12 of 1989, 14 of 1989, 16 of 1989 and 17 of 1989 [initiated against the petitioners of CWJC No. 6329 of 1995 (P)] and Case Nos. 8 of 1989, 13 of 1989 and 18 of 1989 [initiated against the petitioners of CWJC No. 6330 of 1995(P)] continued against the petitioners. In the departmental proceedings, the petitioners appeared and filed their respective show cause replies, denying the allegations. They also requested to stay the departmental proceedings, criminal case for the same charge having been pending against them. In this connection it may be mentioned that the departmental proceedings were initiated against the petitioners vide similar charge-sheets, communicated vide different letters all dated 14th April, 1989. Two charges were levelled against the petitioners. In the first charge, it was mentioned that while they were deployed at Konch Police Station at Village-Khajuri for the purposes of law and order duty, on 12th March, 1989 at about 10.30 p.m. deployed constable No. 642, Yogendra Choubey, one of the guards, was shot dead. But showing it an attack by the extremists, Konch Police Station Case No. 26 of 1989, dated 13th March, 1989 was lodged for the offence under Sections 148, 149 and 302 of the Indian Penal Code arid 27 of the Arms Act. In the second charge, it was mentioned that in order to conceal the alleged murder and to give it a colour of encounter, he (charged employee) and other guard constables and officers concocted a story of encounter by catching hold of one

Suryadeo Ravidas of Village-Khajuri, Police Station-Konch, and killed him for which Konch Police Station Case No. 28 of 1989, dated 13th March, 1989 has been registered for the offence u/s 302/34 of the Indian Penal Code.

6. As the charges in the departmental proceedings were vague and practically narrated the same facts, as were mentioned in the criminal case, the petitioners and some others requested to stay the departmental proceedings till the decision in the criminal case. It appears that some of them, such as, Sidheshwar Singh and others, moved before Patna High Court by preferring CWJC No. 248 of 1990 for stay of the departmental proceedings. A Bench of Patna High Court, taking into consideration the fact that there was no bar on the part of the disciplinary authority to examine the role of police officers, who were posted for maintenance of law and order, refused to stay the departmental proceedings and dismissed the writ petition. The High Court, however, observed that the constables were not likely to be prejudiced, as in the departmental proceedings the charges were relating to dereliction of duties and in action on their in connection with two criminal cases.

7. Before the enquiry officer, the prosecution named various prosecution witnesses, including PW 1 Bindeshwari Singh (Constable No. 335), PW 2 Om Prakash Singh (Constables No. 570), PW 3 Bhuwaneshwar Singh, ASI, PW 4 Indrasan Singh (Constable No. 734), PW 10 S. Ahmad, Office-in-Charge, Konch Police Station, and PW 11 Bindeshwar Paswan, the Investigating Officer. The complainant Jamuni Devi (wife of deceased Suryadeo Ravidas), the named witnesses Nagina Devi and Manju Devi were also produced as PWs 5, 6 and 7 respectively on behalf of the prosecution. In spite of repeated requests, made by the petitioner, Sri B.C. Verma, Superintendent of Police, Gaya, who submitted the supervision note "on 13th March, 1989, 14th March, 1989 and 21st March, 1989 in Konch P.S. Case Nos. 26 of 1989 and 28 of 1989, was not produced as witness before the enquiry officer, though the aforesaid supervision notes and letter No. 919, dated 13th March, 1989 (Ext. 4} were produced as exhibits. Some other officer"s, who also made investigation and submitted inspection report, in spite of repeated requests, were also not produced as witness.

8. The enquiry officer submitted similar individual reports, all dated 25th/28th May, 1991 (Armexure-7) series; in both the writ petitions) and held that there was no sufficient evidence on the records of the departmental proceedings to prove the charges; killing of Yogendra Choubey (Constable) and Suryadeo Ravidas by the charged employees has not. been proved: the evidence in the departmental proceedings while does not support the case of murder rather supports the case of extremists" attack on the police personnel. However, it, was observed that, as criminal case for the same incident it pending, it was not desirable to give any specific finding, apart from the above,

9. In spite of the aforesaid findings of the enquiry officer in respect of all the petitioners, holding them not guilty of the charges and that the evidence suggests that it was a case of extremists" attack on police personnel, the

Commandant, BMP-3, Govindpur, Dhanbad, while narrated the facts, as reflected from the First Information Report, statement of the witnesses, charge-sheets etc. and recorded the stand of the defence, taking into consideration the statement of Jamuni Devi that Suryadeo Ravidas was shot dead by some of the constables and that charge-sheet has been submitted and sanction has been given for prosecution against the charged employees, vide different memos all dated 15th July, 1991 having common language, forwarded notices to the petitioners as to why they be not dismissed from service. Copy of the enquiry report, was also enclosed with each of the notices. On receipt of replies, he Commandant, BMP-3, Govindpur, Dhanbad issued the impugned orders all dated 2nd January, 1992 and dismissed the petitioners from service on the ground that they have been found guilty for the charges, as were disclosed in the departmental proceedings. The appeals, preferred by the petitioners, were also dismissed by the Deputy Inspector General of Police, Armed Force, South Zone, Ranchi, vide Similar orders all dated 11th January/17th March, 1993, followed by rejection of revision applications, as were preferred by the petitioners, by similar orders.

10. The petitioners, thereafter, immediately preferred the present writ petitions. They also requested for early hearing of the cases, as is evident from the orders dated 22nd March, 1996 and 11th November, 1998 but somehow the other, the matter could not be taken up by the Patna High Court, were they were originally filed. Later on, both the writ petitions were transferred to this Court after re-organization of the State. Here the case was taken up out of turn after notice to the respondents. Parties were heard at length and the judgment was kept, reserved.

11. So far as Khajuri P.S. Case No. 26 of 1989 is concerned, the Government has not given sanction for further prosecution of the case and the matter remained pending. The petitioners had to move before the Patna High Court by filing a writ petition being Cr. W.J.C. No. 82 of 1999. In the said case, Patna High Court after hearing the parties vide its judgment dated 13th July, 1999 set aside the First Information Report. The other criminal case being Khajuri P.S. Case No. 28 of 1989, lodged at the instance of Smt. Jamuni Devi, wife of deceased Suryadeo Ravidas, after commitment, was numbered as Sessions Trial No. 117 of 2003/269 of 2003. In the said case, after trial, learned 7th Additional District and Sessions Judge, Gaya, vide its judgment dated 13th May, 2004 while held that the husband of the informant was murdered, further held that none of the witnesses has stated anything against the accused persons. A finding was given that the prosecution has miserably failed to prove the charges against the accused persons and all the thirteen accused were acquitted of the charges, levelled against them, whose names are (1) Uma Shankar Dubey, (2) -Sita Ram Dubey, (3) Madan Upadhyay, (4) Ram Pravish Pandit, (5) Indrasan Singh (6) Satya Narain Singh, (7) Singheshwar Singh, (8) Ram Pukar Singh, (9) Nand Kishore Sharma, (10) Mohan Lal Mahto, (11) Sadhu Urain, (12) Rajat Indwar and (13) Rameshwar Singh.

12. It appears that the petitioners, thereafter, filed an application for review of the orders of punishment, enclosing a copy of the judgment, passed by the learned trial Court, wherein, they were acquitted of the charges for the offence under Sections 302/149, 109/149 and 201 of the Indian Penal Code and 27 of the Arms Act, which was rejected by the Commandant, BMP-3, Govindpur, Dhanbad, vide order dated 26th April, 2005 on the ground that if the criminal Court acquits the accused, who is Government Servant, though the appointing authority should review the case, in the present case, as the petitioner were found guilty of different misdemeanor and have not behaved in a manner, expected of them as a Government Servant, the orders of dismissal can not be recalled. It was observed that the petitioners have not got clean acquittal rather in absence of any evidence and/or because of the fact that some of the witnesses have become hostile, they have been acquitted. One of such orders dated 26th April, 2005 has been challenged by the concerned petitioner by filing LA. No. 1631 of 2005 in CWJC No. 6329 of 1995. The said amendment petition was allowed and the respondents were also allowed to file counter affidavit to the same, but no separate counter affidavit was filed by the respondents to the amendment petition.

13. Learned counsel for the petitioners made certain submissions, which were refuted by the counsel for the State as discussed hereunder.

14. In the departmental proceedings, the supervision note of the Superintendent of Police, Gaya, was placed. One letter No. 919, dated 31st March, 1989 (Ext.4), written by one Mr. B.C. Verma, Superintendent of Police, Gaya, was also placed and relied. The petitioners specifically pleaded that though they requested to call the said Superintendent of Police, Gaya, for cross-examination, neither he was called for nor the petitioners were given opportunity to cross-examine him. They requested for examination of Mr. B.C. Verma, Superintendent of Police, as the supervision note given By him was in their favour. This fact was highlighted by the petitioners while they were given the notice by the Commandant, BMP-3, Govindpur, Dhanbad. Vide the impugned orders all dated 2nd January, 1992 the Commandant While noticed the aforesaid submission, gave no finding as to whether in the facts and circumstances, the rules of natural justice were violated or not.

15. Admittedly the enquiry officer has observed that there was no evidence on record to hold the petitioners guilty of the charges. He did not choose to give specific finding that the petitioners are not guilty on the ground that a criminal case in this regard was pending and such finding may affect the criminal proceeding. Thus, nothing having been proved against the petitioners, though it was open to the disciplinary authority to differ with such finding after giving grounds and then to ask the petitioners to submit show cause reply, the disciplinary authority i.e. Commandant, BMP-3, Govindpur, Dhanbad, without differing with the findings of the enquiry officer, re-appreciated the evidence and issued similar show cause notices all dated 15th July, 1991 to the petitioners,

asking them to show cause as to why they be not dismissed from service. Copy of the enquiry report was forwarded to each of them, which was in their favour. However, in the so called second show cause notice dated 15th July, 1991 no finding was given by the disciplinary authority as regards the specific charge, levelled against the petitioners, having been proved. As stated above, at this stage, it is pertinent to mention here that in the charge-sheet while it was alleged that the constable Yogendra Choubey was killed and it was shown in Konch P.S. Case No. 26 of 1989, dated 13th March, 1989 that he was killed by the extremists, the charge was made that the petitioners concocted a story of encounter and killed Suryadeo Ravidas. The aforesaid action on their part was alleged to be "indiscipline", "dereliction of duty" and "incompetence" and their behaviour was alleged to be unbecoming of a police personnel, which maligns the image of police.

16. The disciplinary authority i.e. Commandant, BMP-3, Govindpur, Dhanbad, while passed the impugned orders of punishment all dated 2nd January, 1992, re-appreciating the evidence, failed to show as to how a case of "indiscipline", "dereliction of duty" and "incompetence" was made out against any of the petitioners. There is nothing on the record nor any evidence was cited to suggest that any of the petitioners killed Yogendra Choubey (constable) and one Suryadeo Ravidas, the alleged extremist. There is no evidence on record to suggest that a concocted story of encounter was made by one or other petitioner. There is no such finding, given by the Commandant, BMP-3, Govindpur, Dhanbad (disciplinary authority).

17. The aforesaid facts have neither been noticed nor discussed either by the appellate authority or by the revisional authority.

18. Apart from the aforesaid facts, it has been brought to the notice of the Court that the petitioners have been acquitted of the charges for the offence under Sections 302/149, 109/149 and 201 of the Indian Penal Code and 27 of the Arms Act by the learned 7th Additional District and Sessions Judge, Gaya, in Sessions Trial No. 117 of 2003/269 of 2003, arising out of Konch P.S. Case No. 28 of 1989, corresponding to G.R. No. 708 of 1989. The Commandant, BMP-3, Govindpur, Dhanbad, vide the impugned order dated 26th April, 2005 rejected the review application of one of the petitioners on one of the grounds that he was found guilty of departmental misdemeanor and he has not behaved in a manner, expected from him, which is far from truth. No authority, including the disciplinary authority, has given any such finding. The Commandant has also given a wrong finding that the petitioners have not been given clean acquittal but have been given the benefit of doubt. This is contrary to the findings of the trial Court, wherein, the Court has held as follows :

"6. From the above materials available on the record it is clear that the husband of the informant was murdered but none of the witnesses stated anything against the accused persons. Accordingly, the prosecution has miserably failed to prove its case against the accused persons. Hence I come to a definite finding

that the accused persons are not found and held guilty "for offence under Sections 302/149, 109/149, 201, IPC and 27 Arms Act. Accordingly all the thirteen accused persons are acquitted from the charges levelled against them. They are also discharged from the liabilities of their bail bonds and they are set at liberty."

19. Learned counsel for the State relied on a Supreme Court's decision in the case of *Manager, R.B.I., Bangalore Vs. S. Mani and Others*, . In the said case, the Supreme Court having discussed the effect of acquittal of an accused in a criminal proceeding vis-a-vis departmental enquiry, held that the acquittal of employee in a criminal action will not be binding upon the merit and does not automatically gives the employee a right to be re-instated. It depends on nature of allegation and the finding, given by the trial Court.

20. In the case of *Union of India and others Vs. Shri Bihari Lal Sidhana*, , the Supreme Court that though the charged employee is acquitted by a criminal Court, but acquittal does not automatically gives him a right to be re-instated into the service. It would still be open to the competent authority to take decision whether the delinquent Government Servant can be taken into service or disciplinary action should be taken under the rules or not. In the case of *Management of Krishnakali Tea Estate Vs. Akhil Bharatiya Chah Mazdoor Sangh and Another*, , the Supreme Court held that while there is honorable acquittal by a criminal Court, the case will be different but while the acquittal by a criminal Court is based on the fact that the prosecution did not produce sufficient materials to establish its charge, the matter is to be looked into from different angle.

21. Now it is a settled law that the approach and objective of a criminal proceeding and the departmental proceeding are altogether distinct and different. But in a appropriate case, an accused can derive the benefits of the judgment of a trial Court. In the case of *Captain M. Paul Anthony v. Bharat Gold Mines Ltd.*, reported in (1993) 3 SCC 769, the Supreme Court having noticed that the evidence, led in criminal case as well as in the domestic enquiry was one and same and the criminal Court having acquitted the workman on the same very evidence, came to a definite conclusion that the finding to the contrary on the same evidence by the domestic enquiry would be unjust, unfair and oppressive.

22. In the present case, the petitioners have pleaded that it is the same set of facts and same set of witnesses and exhibits for which departmental proceedings were initiated, they have been acquitted of the charges under Sections 302/149, 109/149 and 201 of the Indian Penal Code and 27 of the Arms Act. However, it is not in dispute that the charge of "dereliction of duty", "indiscipline" and "incompetence" was levelled in the departmental proceeding, which was not the charge in the criminal case. I have noticed the finding of the trial Court only to ascertain as to whether the petitioners were actually found guilty for the offence under Sections 302/149, 109/149 and 201 of the Indian Penal Code and 27 of

the Arms Act to determine as to whether this Court in its writ jurisdiction under Article 226 of the Constitution of India will grant relief, if they have been convicted for such offence u/s 302 of the Indian Penal Code. There is no other reason to take into consideration such finding. It has already been noticed and held that the enquiry officer has not found the petitioner guilty. It has also been mentioned that though the Commandant, BMP-3, Govindpur, Dhanbad, issued show cause notices all dated 15th July, 1991 and punished the petitioners vide similar orders all dated 2nd January, 1992, neither in the show cause notice it was mentioned nor in the punishment order it has been mentioned that the petitioners have been found guilty of "indiscipline," "dereliction of duty" and "incompetence," which were the charges in the departmental proceedings.

23. It has also been noticed that the petitioners were not given any opportunity to cross-examine Mr. B.C. Verma, the then Superintendent of Police, Gaya, though Letter No. 919, dated 31st March, 1989, written by him, was relied upon as Ext. 4 in the departmental proceedings.

24. For the reasons aforesaid, the impugned orders all dated 2nd January, 1992, whereby and whereunder, the petitioners have been dismissed from service, including the appellate orders all dated 11th January/17th March, 1993 as also the revisional orders and the order of review dated 26th-April, 2005 are hereby set aside. All the petitioners of both the writ petitions i.e. CWJC No. 6329 of 1995 (P) and C.W.J.C No. 6330 of 1995 (P) stand re-instated. However, in the facts and circumstances, I allow only 50 per cent of the arrears for the intervening period, though the intervening period will be counted as on duty for all other purposes. The respondents are directed to accept the joining of the petitioners, if they have not yet attained the age of superannuation and to pay them the arrears of 50 per cent of the salary for the intervening period within a period of three months from the date of receipt/production of a copy of this judgment. If one or other petitioner has superannuated in the meantime, he will be entitled for the consequential retiral benefits, apart from 50 per cent of the arrears of salary, as ordered above, within the same period. Both the writ petitions i.e. CWJC No. 6329 of 1995 (P) and CWJC No. 6330 of 1995 (P) are hereby, allowed with the aforesaid observations and directions. However, there shall be no order as to costs.