

(2004) 02 PAT CK 0033
In the Patna High Court
Case No : C.W.J.C. No. 4205 of 1996

Ram Tawekya Sharma

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 03-02-2004

Acts Referred:

Citation : (2004) 02 PAT CK 0033

Final Decision : Dismissed

Judgement

Nagendra Rai and P.N. Yadav, JJ.—The Petitioner a constable in the Bihar Police, has challenged the order dated 4.7.1992 passed by the Senior Superintendent of Police, Patna, dismissing him from service; the order dated 14.7.1993 passed by the Deputy Inspector General of Police (for short "the D.I.G.") dismissing the appeal; the order passed by the Director General and Inspector General of Police (for short "the D.G.P.") dated 11.7.1994 dismissing the Memorial filed by the Petitioner and the subsequent order dated 13.2.1996 of the D.I.G., passed in terms of the order dated 22.5.1992 of this Court in C.W.J.C. No. 5457 of 1994, affirming the earlier order of dismissal. Copies of the said orders have been annexed as Annexures 2, 3, 4 and 9, respectively, to the writ application.

2. The Petitioner, at the relevant time, was posted as a constable. The allegation against him was that he along with his companions on 12.10.1991 robbed off three persons and on chase they were apprehended. The money, alleged to have been robbed off by them, was recovered from their possession.

3. The police registered a regular case, namely, Budha Colony P.S. Case No. 319 of 1991 dated 13.10.1991 under Sections 392/411 of the Indian Penal Code. The department also initiated a departmental proceeding and after giving an opportunity to the Petitioner in the departmental proceeding, the Senior Superintendent of Police dismissed him from service by order dated 4.7.1992 (Annexure 2). The criminal case instituted against the Petitioner ended in acquittal as the prosecution witnesses did not support the allegation and they" were declared hostile. The appeal filed by the Petitioner against the order of

dismissal in the departmental proceeding was dismissed on 4.7.1993 (Annexure 3) and that order was also upheld by the D.G.P. by order dated 11.4.1994 (Annexure 4).

4. The Petitioner and other two persons, whose services were also dismissed, challenged their orders of dismissal by filing three separate writ applications before this Court. The writ application filed by the Petitioner was numbered as C.W.J.C. No. 5457 of 1994. All the three writ applications were disposed of by a common order dated 22.5.1995 by a learned single Judge of this Court. The points were urged in the said writ applications by the Petitioner and others before the learned single Judge. The first point was that as the trial Court has acquitted the Petitioner and others of the charges levelled against them, it was not open for the disciplinary authority to pass an order of punishment with regard to the same charges. The second point was that a copy of the enquiry report was not furnished before passing the order of dismissal.

5. The learned single Judge considered the question with regard to the effect of acquittal of the Petitioner in the criminal case and negated the said point and observed in paragraph 9 as follows:

It is well known that an order of acquittal in a criminal case cannot operate a bar against the disciplinary authority to initiate a departmental proceeding against a Government employee for the same offence. There may be a case in which an accused can be granted acquittal, but if upon relevant materials the disciplinary authority is convinced that an offence is made out, certainly he can pass an order of punishment. Therefore, it depends upon facts of each case. In the case before me, it has already been noticed that the learned Magistrate acquitted the Petitioners because the prosecution witnesses were gained over and, therefore, declared hostile. If same set of witnesses have supported the case of the Petitioners before the enquiring officer with an opportunity to the Petitioners to examine them, it is well within the competence of the disciplinary authority to place reliance upon testimony of such witnesses. Therefore, there is no force in such submission.

So far as the point with regard to non-service of copy of the enquiry report concerned, the learned Single Judge held that {as a copy of the enquiry report was not served, an opportunity should be given to the Petitioners of the said writ petitions and, accordingly, directed the D.I.G. of Police, Central Range, Patna, to serve a copy of the enquiry report and give them opportunity to show under what circumstances they were prejudiced due" to non-supply of the report and if after hearing the parties, he came to the conclusion that even on supply of the inquiry report, there would have been no different result to the ultimate finding and punishment given, he shall record his finding accordingly and dismiss the appeal. Thereafter, the D.I.G. served a copy of the enquiry report upon the Petitioner and others and after hearing him has passed the order upholding the order of dismissal vide Annexure 9.

6. This writ application was placed before the learned single Judge and there one of the points urged was that according to the provisions of Rule 847 of the Bihar Police Manual, if a criminal case has been instituted then no departmental proceeding should be initiated or conducted relating to the same occurrence till the criminal case is disposed of and the period for preferring an appeal has expired. In this case, as the departmental proceeding was initiated against the Petitioner during the pendency of the criminal case, the proceeding as well as the ultimate order passed therein are vitiated in law. In support of the said submission, learned Counsel for the Petitioner, relied upon an unreported order passed by a Division Bench of this Court in the case of Bharat Sharma v. State of Bihar C.W.J.C. No. 1489 of 1986, disposed of on 21.3.1996. The learned single Judge finding himself in disagreement with the aforesaid view has referred the matter to the Division Bench. His Lordship observed that the irrelevant provisions of the Bihar Police Manual were not brought to the notice of the said Division Bench, wherein it was held that if a criminal case has been registered, no departmental proceeding can be initiated until the appeal against the order of conviction has been heard or the time allowed for appeal has expired and this is how the matter has been placed before us to decide the aforesaid point and other points raised on behalf of the Petitioner.

7. So far as the legal position is concerned, it is well-settled that there is no legal bar in the conduct of the departmental proceeding as well as the proceeding in a criminal case even if the same are based on identical and similar set of facts. However, if the charge is of grave nature and involves complicated questions of law and fact, it would be desirable to stay the departmental proceeding till the conclusion of the criminal case. See Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, and the Bihar State Electricity Board Vs. Braj Kishore Singh and Others .However, according to the Petitioner, the provisions of Bihar Police Manual do not permit initiation of a departmental proceeding during the continuance of the criminal proceeding and in support of this submission he drew our attention to the provisions contained in Rules 844 to 847 in support of the aforesaid submission.

8. It is necessary to quote Rules 844 to 847 of the Bihar Police Manual, which are as follows:

844. Superintendent to examine records of cases against police officers.-- The Superintendent shall go through the record of every case brought against a Police Officer in the Courts, and shall take/initiate departmental cognizance of every criminal case in which a Police Officer is convicted or acquitted or discharged (except when the case is declared false) and record an order in writing (see Rule 843).

845. Effect of imprisonment.-- Every Police Officer imprisoned for an offence implying moral turpitude, such as theft, perjury, etc., or for a serious breach of discipline such as allowing a prisoner to escape, sleeping on sentry duty, etc., shall be proceeded against with a view to dismissal, and shall ordinarily be

dismissed. He shall receive his pay up to the date of ceasing to perform his duties.

846. Effect of a fine.-- When a Police Officer is sentenced to fine by a criminal Court, it is within the Superintendent's discretion to draw up/initiate proceedings with a view to dismissal.

847. Form of charge in such cases.-- The charge in proceedings under Rules 845 and 846 shall be that the accused has been convicted, imprisoned or fined, as the case may be, for the offence concerned. Such proceedings shall not be taken until the appeal against the order of conviction has been heard or the time allowed for appeal has expired.

9. The said rules of the Bihar Police Manual fall under the caption "Criminal Prosecutions" and a bare reading of Rule 847 shows that if the criminal case has culminated into conviction, irl that case the departmental proceeding shall not be taken until the appeal against the order of conviction has been heard or the time allowed for appeal has expired. Nowhere, these rules say that once there is an allegation against a police personnel, for which a criminal case has been instituted, then no departmental proceeding shall be initiated till the criminal case is concluded.

10. From a perusal of the order passed in the case of Bharat Sharma {supra}, it appears that there is no reference of the relevant rules of the Bihar Police Manual nor is there any discussion of any points. The said provisions were not considered by the Division Bench and one line observation was made to the effect: "According to the scheme of these rules, we are of the view that unlike the provisions contained in the Bihar Service Code, the Police Manual will contemplate the initiation of a departmental proceeding against an officer after the time for filing an appeal is over. Till that time he has only to remain under suspension."

11. In our considered view, the said decision is not an authority on the point raised on behalf of the Petitioner in view of the settled law and also in view of the fact that this Court has already earlier observed that initiation of a departmental proceeding during the pendency of a criminal case was not invalid. We do not find any force in the said point raised on behalf of the Petitioner. Accordingly, the said point is devoid of any substance.

12. Apart from the said point, learned Counsel for the Petitioner raised other points also, namely, with regard to non-supply of documents and similar other defects in the enquiry, non-fixing of date for examination of the witnesses, non-observance of the provisions contained in Rule 828(b) of the Bihar Police Manual.

13. So far as non-supply of documents or similar other defects in the enquiry are concerned, in our view, the Petitioner is debarred from challenging the impugned orders on the aforesaid point. Earlier, the Petitioner had come to this Court in the writ application aforementioned and raised only two points. He did not complain

of any such defects during the enquiry and as such the said point cannot be agitated and considered at this stage. Accordingly, the said point is also without any substance.

14. So far as non-observance of the provision contained in Rule 828(b) of the Bihar Police Manual is concerned, it provides, inter-alia, that no order of dismissal, removal, compulsory retirement or reduction shall be passed on any police officer unless he has been informed in writing of the grounds on which it is proposed to take action, and has been afforded an adequate opportunity of defending himself. In this case, full opportunity has been given to the Petitioner and the provision of the said Rule has been complied with and as such the impugned order of dismissal cannot be faulted on the ground of violation of the aforesaid provision.

15. In the result, we find no merit in this writ application and it is accordingly, dismissed.