
(2003) 01 PAT CK 0088
In the Patna High Court
Case No : C.W.J.C. No. 11481 of 2001

Satyendra Sharma

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 08-01-2003

Acts Referred:

Arms Act, 1959 — Section 27
Penal Code, 1860 (IPC) — Section 302, 34, 364

Citation : (2004) 1 PLJR 258

Hon'ble Judges : Chandramauli Kr. Prasad, J

Bench : Single Bench

Advocate : Chitranjan Sinha and Manish Kumar, for the Appellant; Uma Kant Singh, for the Respondent

Final Decision : Allowed

Judgement

Chandramauli Kr. Prasad, J.—This writ application was initially filed for quashing the order dated 23rd of June, 1998 (Annexure-6) whereby the Petitioner who was a Sailor in the Indian Navy was discharged from service. Further prayer of the Petitioner is to quash the order dated 2nd of February, 2001 (Annexure-10) whereby the prayer made by the Petitioner for re-instatement has been turned down. However, when the matter is taken up Mr. Chitranjan Sinha appearing on behalf of the Petitioner submits that on account of the fact that the Petitioner's engagement has come to an end on 31st January, 2001, Petitioner is not claiming for re-instatement but his prayer is that all other service benefits which was denied to him on account of his termination from service, be given to him.

2. According to the Petitioner, he was a Sailor in the Indian Navy and he proceeded on 56 days leave to his native place with effect from 15th of September, 1994. During the leave period he was made accused in a murder case and ultimately by judgment and order dated 22nd of December, 1997 passed by the Additional Sessions Judge, Gaya in Sessions Trial No. 177 of 1995 he was convicted for offence under Sections 364 and 302/34 of the Indian Penal

Code and Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for life and for a period of five years respectively. When the fact of conviction of the Petitioner came to the notice of the Naval authorities, by order dated 23rd of June, 1998 (Annexure-6) he was discharged from Naval service. Petitioner preferred Criminal Appeal No. 86 of 1998 (Satendra Sharma alias Totan Sharma v. State of Bihar) before this Court. A Division Bench of this Court by judgment dated 9th August, 2000 (Annexure-1) set aside the conviction of the Petitioner and acquitted him of all the charges. While doing so, this Court observed as follows:

For the reasons aforementioned, therefore, it appears that the occurrence had taken in some other manner and not in the manner disclosed by the prosecution and the prosecution witnesses have not spelt out the truth. It has come in the evidence of the informant that there was some enmity and previous grudge in between the prosecution side and the Appellants. The defence version of the case that the Appellants have falsely been implicated in this case, therefore, cannot be completely ruled out as the prosecution evidence creates doubt and does not inspire confidence.

3. After the acquittal, Petitioner preferred application for his reinstatement in service. By order dated 2nd of February, 2001 (Annexure-10) Petitioner was informed that his request for reinstatement in Naval service has been carefully examined at the Naval Headquarters and the same has been rejected by the competent authority, as it is devoid of merit.

4. Counter affidavit has been filed on behalf of the Respondents in which the assertion of the Petitioner that he was discharged from service on account of his conviction by the trial court has not been denied further it has not been denied that the order of conviction has been set aside by the appellate court. However, it has been stated that the Petitioner has spent more than five years and ten months in jail after conviction and during this prolong period he must have come across with criminals and anti social elements in jail and hence re-instating the Petitioner is undesirable in disciplined and fighting service which requires high standard of conduct and moral. It has been further stated that the Petitioner has not been acquitted by the High Court honourably but was given the benefit of doubt.

5. Therefore it is an admitted position that Petitioner was discharged from service on account of his conviction, which order has been set aside by the appellate court and the said order has attained finality.

6. Mr. Chitranjan Sinha appearing on behalf of the Petitioner submits that the Petitioner was discharged from service only on the ground of his conviction in a criminal case and the order of conviction having been set aside by this Court, the very foundation of the order of discharge does not exist and as such the Respondents erred in declining the prayer of the Petitioner for re-instating him in service. In support of his submission he has placed reliance on a judgment of

this Court in the case of Binod Krishna Jha v. Union of India 2000 (1) P.L.J.R. 239 and my attention has been drawn to paragraph 7 of the judgment, which reads as follows:

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 precondition for the exercise of power under Rule 161.1 of the Rules. The impugned order, 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.

(Underlining mine)

7. Learned counsel appearing on behalf of the Respondents, however, submits that on account of conviction of the Petitioner by the trial court, he had remained in jail for a considerable long period and thus came in contact with criminals and anti social elements and re-instating the Petitioner in service shall be against public interest.

8. Having appreciated the rival contention, I find substance in the submission of Sri Sinha. To put the record straight it may be stated that right now Petitioner is not claiming reinstatement but the benefits of service which he, would have entitled, had he not been dismissed from service. It is relevant here to state that the foundation of the order of discharge of the Petitioner from service is conviction in criminal case which has been set aside by a Division Bench of this Court. While setting aside the conviction this Court has not only observed that the prosecution was not able to prove the charges beyond reasonable doubt but also observed that "the defence version of the case that the Appellant has been falsely implicated in the case therefore cannot be completely ruled out as the prosecution evidence creates doubt and does not inspire confidence". In my opinion on account of acquittal the very foundation of the order of discharge becomes non-existence, hence the Respondents referred in not re-instating the Petitioner in service on the purported ground that during his stay in jail he must have come across with anti social elements and the criminals.

9. As stated earlier, the Petitioner was engaged as sailor in the Navy on 7th January, 1986 for a period of 15 years which has come to an end on 31st January, 2001 and taking into consideration the aforesaid facts counsel for the Petitioner has not made prayer for the Petitioner's re-instatement. Hence I decline re-instatement but direct that the order of discharge be ignored and the

Petitioner be given other benefits which he would have been otherwise entitled, had he not been discharged from service.

10. Application stands allowed in the aforesaid terms.