
(1993) 09 PAT CK 0003
In the Patna High Court
Case No : C.W.J.C. No. 1016 of 1984

Shri Mudan Mohan Upadhyaya	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 02-09-1993

Acts Referred:

Citation : (1993) 09 PAT CK 0003

Final Decision : Dismissed

Judgement

Aftab Alam, J.—The Petitioner at the material time was a Sub-Inspector of Police posted at Khizir Sarai police station in the district of Gaya. On being convicted of an offence u/s 330 of the Penal Code (Voluntarily causing hurt to extort confessions etc.), he was dismissed from service by order contained in communication dated 13.3.1982 from the Deputy Inspector General of Police, Magadh Range, Gaya to the Supdt. of Police, Gaya. The Petitioner's appeal turned down and his dismissal was affirmed order dated 2.6.1983 passed by the Deputy Inspector General and Inspector General of Police. In copies of the dismissal order and the order assessed in appeal are to be found at Annexures 8 and 9 respectively; these two orders come under challenge in this application.

2. As noted above, the Petitioner's dismissal from service was based on his conviction for a criminal offence. His prosecution was instituted on the basis of a complaint filed by one Girija Singh on 17.9.1962. It appears that the Petitioner, purportedly in course of investigation into a case relating to the theft of some idols from a village temple picked up the complainant along with two other persons, namely, Anis Mian and Mohsin Mian. They were brought to the Khizir Sarai police station on 22.8.62 and were lodged there in the lock up; at 3.00 P.M. on the same day they were taken out and were produced before the Petitioner who asked them to make a confession regarding the theft of the idols. On their refusing to oblige, it is alleged that they were severely beaten up by the Petitioner at the instigation of the local Mukhiya. The Petitioner is said to have kicked them with boots and hit them with baton, fists and slaps. It was also

alleged that nail was pierced in the sole of the right foot of the complainant and in the palm of the right hand of Mohsin Mian. Further allegation was that they were assaulted for a second time in the night of 22.8.1962 and then again on 23.8.1962 and finally they were conducted before the Magistrate on 24.8.1962 the remanded them to jail custody where on account of their injury, they were lodged in the jail hospital.

3. The aforesaid complaint gave rise to S.T. No. 8/65. In this case the Petitioner (as also the Mukhiya) was convicted of offences under Sections 452, 438, 330 and 323 of the Penal Code and was sentenced to under go three years" rigorous imprisonment. The Petitioner's appeal against the trial court's judgment was allowed to the extent that the appellate court acquitted him of the other charges but maintained the conviction u/s 330 of the Penal Code. It disbelieved the prosecution story that any assault was committed by the Petitioner on 23.8.1962 but the prosecution case regarding the Petitioner having committed assault on the complainant and the other two persons on 22.8.1962 with a view to extort confession was found to have been established. With reference to the injury report which had found punctured wound on the right palm of Mohsin that appeared to have been caused by some pointed weapon like iron nail, the nature of assault as stated by the prosecution was also accepted by the appellate court. As stated above, the appellate court though maintaining the Petitioner's conviction u/s 330 alone of the Penal Code declined to interfere with the sentence and the Petitioner was directed to undergo rigorous imprisonment for three years.

4. A criminal revision application filed by the Petitioner before the High Court against his conviction and sentence was dismissed on 9.5.1978 and a petition for special leave to appeal was also dismissed by the Supreme Court.

5. The Petitioner was taken in custody on 6.12.1980 to serve his sentence and he duly served the sentence of three years rigorous imprisonment.

6. After his conviction by the trial court, the Petitioner was put under suspension on 5.4.1966. The suspension was, however, revoked on 6.1.1969. It appears that after the appellate judgment, dated 17.7.1969, he was again put under suspension on 18.7.1969. Later on, however, he was relieved from suspension. A departmental proceeding was initiated against the Petitioner on 28.8.1977. Initially it seems to have remained dormant and was not pursued for some time on the plea that the Petitioner's revision application was pending before the High Court. The departmental proceeding was revived on 31.12.1980 only after the Petitioner's SLP was finally dismissed by the Supreme Court and he was taken into custody for undergoing the sentence.

7. In the departmental enquiry, three witnesses were examined to prove the judgments of the trial court and the appellate court. The report of the enquiry officer is to be found at Annexure 5. This report completed the formality of recording a finding that the Petitioner had been convicted u/s 330 of the Penal

Code and was sentenced to rigorous imprisonment for three years. With reference to some observations made by the trial court and the appellate court, the report noted that the action of the Petitioner was bound to bring the police force in disrepute and recorded a finding that the charges against the Petitioner were established. It appears, that the Supdt. of Police endorsed the finding of the enquiry officer and made recommendation for the Petitioner's dismissal from service. Finally, the disciplinary authority, namely the Deputy Inspector General of Police, Magadh Range, Gaya by his order dated 13.3.82 passed the order dismissing the Petitioner from service with effect from 15.12.1980. The Petitioner's appeal as noted above was rejected by the order dated 2.6.1983 of the Director General of Police.

8. Mr. Tarakant Jha, learned Counsel for the Petitioner submitted that the Petitioner's dismissal from service was not on account of any charges which might have been proved in a departmental enquiry but was based solely on his conviction in a criminal trial. He pointed out that the relevant provision in this regard was to be found in Rule 845 of the Police Manual (vol. 1) but contended that in the facts and circumstances of this case, this rule had no application and the Respondent authorities had seriously erred in dismissing the Petitioner from service on the basis of this rule. Mr. Jha submitted that all convictions or imprisonments for any offence will not attract the rule but only convictions and/or imprisonments for offences of the nature specified in the rule. At this stage, it will be useful to take a look at Rules 844 to Rule 847 which are reproduced below:

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 a 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 proceeding shall not be taken until the appeal against the order of conviction has been heard or the time

allowed for appeal has expired.

Mr. Jha submitted that an action under this rule would be warranted only if the imprisonment was for an offence implying moral turpitude or was related to a lapse of discipline of the kind enumerated in the rule. According to Mr. Jha, committing assault for the purpose of extorting confession did not imply any moral turpitude and was a lapse of much milder nature and could not be said to be of the kind enumerated in the rule. It was contended by the learned Counsel that the prosecution story that the Petitioner had committed assault at the instance and investigation of the local Mukhiya was found to be untrue inasmuch as the Mukhiya had been acquitted by the appellate court. Hence, the natural inference would be that the Petitioner was acting on his own in course of an investigation of a crime and all that could be said against him was that he acted in a rather over zealous manner in the discharge of his duties. This, according to Mr. Jha, would not put the offence in the same category as enumerated in the rule. According to him the misconduct, if at all, was of a very mild nature and did not warrant the application of Rule 845. The departmental authorities if they wished to proceed in the matter, were obliged to have initiated a proper departmental proceeding in terms of Rule 828 of the Police Manual.

9. Though put forth by Mr. Jha in a most persuasive manner, I am unable to accept this contention for a moment. The offence of committing assault (specially of the nature as indented above in detail) is much more serious than the disciplinary lapses enumerated under Rule 845. In fact, it goes much beyond the limits of a mere disciplinary lapses and reaches into the realm of a criminal offence. It is to be noted that one of the breaches of discipline mentioned in Rule 845 is sleeping on sentry duty. Now, sleeping on sentry duty may not necessarily in all cases constitute an offence under the Penal Code but nevertheless it would attract the application of Rule 845. Here we are faced with a situation where the offence constitutes a criminal charge for which the Petitioner has been duly tried and convicted and has undergone sentence. Therefore, it does not appeal to me that the offence in question was of a much milder nature than those enumerated in Rule 845 and should not attract the application of the rule. It is also to be noted that under Rule 846 relating to effect of a fine the question of initiation of a proceeding rests within the discretion of the authority; not so, however, in case of imprisonment, as Rule 845 stipulates that the delinquent shall be proceeded against with a view to dismissal.

10. Mr. Jha further submitted that even in a case covered by Rule 845 a charge was to be framed and all aspects of the matter including the quantum of punishment gone into in a properly held departmental enquiry. It is to be noted that under Rule 828 which deals with infliction of major punishments and order of dismissal etc. cases based on facts which had led to the delinquent's conviction in a criminal case is treated as a separate class altogether and to such a case the provisions of Rule 828 do not apply. Moreover, in this case the requirements of Rule 847 appear to have been fully complied with. A charge was

duly framed against the Petitioner, witnesses were examined and the orders of the criminal courts were duly made exhibits and the gravity of the offence was taken into consideration. At this stage, I may note that though the enquiry report and the dismissal order passed by the disciplinary authority have been enclosed as annexures, the endorsement made by the Supdt. of Police on the enquiry report has not been brought on record. Had it been before the Court, it should have revealed an independent application of mind by the Supdt. of Police regarding the gravity of the offence and his recommendation thereon. Again in such a case what would have been better and more conclusive evidence in support of the charges than the well considered judgments of the criminal courts.

11. Learned Counsel then contended that in all cases of conviction, the punishment of dismissal from service may not necessarily follow as a matter of course and the authorities must take into consideration the nature and the gravity of the offence and must pass an order of punishment commensurate with the offence. In this regard reliance was placed in the cases reported in *Karam Pal and Others Vs. Union of India (UOI) and Others*, . There is no disagreement with the proposition that in all cases of conviction the order of dismissal should not follow as a matter of course. However, a priori it would follow that the punishment to be awarded should depend upon the nature of the offence of which the delinquent has been convicted. The cases relied by the Petitioner in this regard are of no help to him as in those cases the facts were entirely different and the nature of offences altogether different. It is an established principle that so far as the punishment is concerned, the courts would interfere only if the punishment is unconscionable or wholly unreasonable or arbitrary or has been inflicted without an application of mind. In the facts of the present case I find that before passing the order of dismissal due application of mind was made by the enquiry officer, the Supdt. of Police and the disciplinary authority, the Deputy Inspector General of police and I am unable to hold that in the facts of this case the punishment is either unconscionable or unreasonably severe. It is also to be noted that Rule 845 provides that the delinquent shall be proceeded against with a view to dismissal, and shall ordinarily be dismissed.

12. Learned Counsel lastly contended that the order of dismissal could not have been made retrospectively. It was pointed out that the dismissal order was passed on 13.3.1982 but the dismissal itself was made retrospectively effective from 15.12.1980. So far as this objection is concerned, I find that there is sufficient substance in the submission of the learned Counsel. Mr. P.K. Shahi, Government Pleader No. VII also does not seriously resist this aspect of the matter. It is accordingly directed that the Petitioner's dismissal shall be effective from the date of order i.e. 13.3.1982. Consequently he shall be entitled to his salary/subsistence allowance upto that date in accordance with law (keeping in mind the last sentence of Rule 845).

13. With these observations and directions, this application is dismissed. No order as to costs.