

(2001) 11 PAT CK 0001
In the Patna High Court
Case No : C.W.J.C. No. 14934 of 2001

Sri. Ram Pandit

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 19-11-2001

Acts Referred:

Citation : (2002) 1 PLJR 359

Hon'ble Judges : Ravi S. Dhavan, C.J.;Aftab Alam, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Learned Counsel for the Petitioner Mr. Amar Nath Jha in course of arguments has submitted before the Court that before a writ jurisdiction Court facts are normally not seen and only the law point. The Court will revert to this aspect subsequently.

2. This petition has been filed against the decision of the Central Administrative Tribunal, Patna Bench, Patna in O.A. No. 684 of 1997. Sri. Ram Pandit v. Union of India and Ors. The impugned decision is dated 28 May 2001. Now straight to the question as to what exactly are the facts on which this entire matter is based and whether the Court should look into it or permit the arguments, that is, legal arguments only san facts so as to consider whether the decision of the Tribunal is in error.

3. The facts make a horrible back ground reading and there is no issue on the facts on record. The Petitioner Counsel accepts that whatever be the facts and the events which took place as recorded did take place. Normally this Court would not have noticed the facts in detail to write this order but the writ jurisdiction. of the High Court should not be made a mockery that the Court is precluded from seeing uncontroverted facts that they lie on record. Matters should not be permitted to become an architecture of legal ingeminate so as to subvert and balk the public justice system. The facts as reproduced from the

order of the Tribunal:

While Member (Technical), Gorakhpur Bench of Railway Claims Tribunal had gone away to Lucknow, the applicant was the Bungalow peon at the residence of said Member on 18.4.1994 when an unfortunate incident took place. The wife of the said officer was in the house. After taking bath, when she came out, the applicant is alleged to have caught hold of her and tried to outrage her modesty. On hearing her cries, the wife of the applicant came rushing. On seeing his wife, the applicant fled away. On the basis of complaint made by Smt. S. Mathur, wife of Member (Technical), Gorakhpur Bench of Railway Claims Tribunal, preliminary enquiry was held in which a prima facie case got established against the applicant, who was issued charge-sheet for major penalty on 26.4.1994 alongwith necessary Annexures.

4. These facts of the Tribunal are based upon the charges which were served upon the Petitioner. The charges as are on record are reproduced:

(1) On 18.4.1994 when the delinquent employee (Sri. Ram Pandit) reached the bungalow of Sri. Kranti Kumar, the Member (Technical), for performing his morning duty he was under intoxication of Bhang.

(2) While performing duties around 10.30 A.M. without the permission and with malicious and criminal intention, he (delinquent employee) entered the bedroom of the Member (Technical) and kept himself concealed behind the curtain/TV.

(3) When Smt. Suman Mathur, the wife of Member (Technical) after taking bath in the bathroom, came to the bedroom, the delinquent employee behaved indecently with her and tried to molest her. The delinquent employee caught hold of the wrists of both the hands of Smt. Suman Mathur and hurt her, while dragging her towards himself.

(4) Despite her repeatedly crying, the delinquent employee did not release her hands and on account of that she was hurt.

(5) On 18.4.1994 after the said incident the delinquent employee after signing the attendance register in his office, remained absent for the rest of the day from his office.

5. The crucial question now is as to what did the Petitioner do after he was given an opportunity to file a reply. The Petitioner has not appended the reply which he filed but counsel accepts that the written statement of his defense is noticed at page 52 of the petition. The defense of the Petitioner as recorded by the enquiry officer in his enquiry report dated 17 November, 1994 is reproduced:

(i) that when he had reached for duty, he was under mild intoxication.

(ii) that (when) he reached in the bedroom for keeping the dustbin (there), (then) suddenly Memsahib (namely Smt. Suman Mathur) came from the bathroom after taking bath-he became nervous and hide (himself) behind the T.V.

(iii) that he (Sri. Ram. Pandit) apologised to "Memsahib" (Smt. Suman Mathur) by holding her hand (may be hands), (saying) Memsahib wrong was done by him and Memsahib made first call, hearing which his wife Malari came: (by the time) she (Smt. Malari) had climbed-up 3-4 steps, he was going down-stairs.

(iv) that on the first cry itself, releasing the hands of "Memsahib" (Smt. Suman Mathur), he (Sri. Ram Pandit) had proceeded downstairs and neither had pushed her nor had caused any injury to her.

(v) that on 18.4.94 at 11 A.M. he marked his presence in the office and went to the quarter of his brother and slept there; on account of his nervousness he did not go any where; therefore the Hon'ble self (Asstt. Registrar/Gorakhpur Bench) was requested to kindly excuse his mistake.

6. The enquiry report had been sent to the Petitioner by registered cover, by personal service and apart from these two modes a publication in the daily Hindi newspaper. The Petitioner is supposed to have submitted a reply to the show cause. But this is not appended to the writ application.

7. The Petitioner's reply has been taken note of by the disciplinary authority. It is accepted before the Court that the Petitioner had taken legal grounds, that is, the authority for his removal was the General Manager Personnel and in the circumstances the enquiry had been done by the wrong authority. The second objection was that the enquiry should have been conducted by the railway administration and not by the administration of the Railways Claims Tribunal. This objection had been taken on the ground that the Assistant Registrar, Railway Claims Tribunal, Gorakhpur Branch was not part of the railway administration. The Petitioner overlooks that his misdemeanor during the course of his employment and duty was at the place of duty, i.e., the residence of the Member, Railways Claims Tribunal.

8. Before this Court the facts have been avoided. The Court cannot ignore the facts more so when they are not disputed.

9. The contention of the Petitioner that at the time when the incident took place he had walked into the bedroom of the officer, and his wife came out from the bathroom naked and his presence there happened as he was intoxicated does not improve the situation. It only puts him from the frying pan into the fire. Drunkenness and intoxication on duty is a charge and a misdemeanor by itself.

10. There are other underlying circumstances on which a satisfactory explanation had not been offered to the Central Administrative Tribunal nor before this Court. When the Petitioner was given an opportunity to defend himself, repeatedly he took up pleas that he was sick and was taking treatment at the civil hospital, Gorakhpur. The question which arises is why the Petitioner went to the civil hospital when the railway hospital is available to him. The Petitioner was delaying an enquiry. As the enquiry was being delayed on the adjournments taken by the Petitioner the inquiry officer had no option but to bring the inquiry right at the

door step of the Petitioner and, thus, upon the notices not being accepted by the Petitioner notice was pasted at the out-house of Bungalow No. 19 in the presence of two witnesses, the premises where the Petitioner was residing and present.

11. The facts are accepted. The incident did take place. A plea of temporary loss of sanity is being put forward; drunkenness is the factor.

12. The Petitioner was not an innocent peeping Tom in a single digit age under ten. He went into the bedroom of his employer to ogle in just. He manhandled the wife of the officer he served. He took courage in this in the absence of the officer who was outstation.

13. In fact the Court is a little surprised that a criminal complaint had not been filed nor a charge drawn up against the Petitioner in addition to charges already made that he was drunk on duty. The Petitioner is a nuisance. His demeanor is against public order and duty both.

14. Dismissed.