

(2015) 10 JH CK 0035
In the Jharkhand High Court
Case No : W.P.(S) No. 2947 of 2012

Sudhir Kumar Singh

APPELLANT

Vs

Central Government of India and Others

RESPONDENT

Date of Decision : 31-10-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 384

Citation : (2016) 1 JLJR 560

Hon'ble Judges : Pramath Patnaik, J.

Bench : Single Bench

Advocate : Delip Jerath and S.K. Tiwary, Advocate, for the Appellant; Vijoy Kumar Sinha, A.S.C., for the Respondent

Final Decision : Disposed Off

Judgement

Pramath Patnaik, J.—In the accompanied writ application, the petitioner has inter alia prayed for quashing of the order dated 09.06.2011 passed by the Senior Divisional Security Commissioner, South Eastern Railway, Ranchi, in which respondent No. 2 has awarded the punishment of reduction of pay in time scale of pay by five stage lower for a period of two years with cumulative effect and for quashing of the departmental order dated 04.11.2011 passed by the I.G.-cum Chief Security Commissioner, Railway Protection Force, South Eastern Railway, Kolkata by which he has enhanced the punishment from reduction of pay in the time scale of pay by five stage lower for a period of two years with cumulative effect to removal from service with immediate effect and for quashing the letter dated 11.04.2012 passed by the Director General, Railway Protection Force, New Delhi, confirming the order of the appellate authority and for reinstatement of the petitioner from the date of the removal with consequential benefits.

2. Sans details, the facts as disclosed in the writ application, in brief is that the petitioner was appointed in the year 1999 as Constable in Railway Protection Force and since the date of his appointment he has been discharging his duties

to the utmost satisfaction of his superior authority. On 04.06.2009 a news was published in "Prabhat Khabar" that one Constable was taking bribe of Rs. 10/- from a vendor on 03.06.2009 and on the basis of aforesaid newspaper on the next day, one vegetable vendor namely, Pradip Mandal lodged a written report in G.R.P. Ranchi under section 384 of the Indian Penal Code alleging therein that one Constable of Ranchi Railway Protection Force was demanding money from him. On the basis of the newspaper report, departmental enquiry was initiated and enquiry officer was appointed. The enquiry officer submitted his finding holding the petitioner guilty of charge after examination of three witnesses. On the basis of the said report the Senior Divisional Security Commissioner, Railway Protection Force, South Eastern Railway, Ranchi removed the petitioner from services vide order dated 29.04.2010. It is further averred that the petitioner filed an appeal before the appellate authority and the appellate authority after perusal of the order of removal set aside the same and directed for de novo enquiry and direction was issued to the enquiry officer to enquire into the matter afresh. The petitioner was again awarded punishment of reduction of pay in the time scale of pay by five stages lower for a period of two years with cumulative effect on 30.05.2011 by the Senior Divisional Commissioner, Railway Protection Force, South Eastern Railway, Ranchi, vide order dated 09.06.2011. Being aggrieved by the said order, the petitioner filed appeal before the appellate authority, in which the appellate authority issued show cause to the petitioner for enhancement of punishment to removal from services with immediate effect. The petitioner filed reply to the show cause, before the appellate authority and the appellate authority vide order dated 11.04.2012 has rejected the appeal of the petitioner.

Being aggrieved by the order of disciplinary authority as well as the appellate authority, left with no alternative, efficacious and speedy remedy, the petitioner has approached this Court under Article 226 of the Constitution of India by invoking extraordinary jurisdiction of this Court for redressal of his grievances.

3. Heard Mr. Delip Jerath, learned counsel appearing for the petitioner as well as Mr. Vijoy Kumar Sinha, appearing for the respondents-Railways.

4. Learned counsel for the petitioner has strenuously urged that the material witness/informant of this case has not been examined so far as quantum of punishment is concerned. There is no reason for department for holding enquiry against the petitioner on such allegation, which constitutes no misconduct, therefore, departmental proceeding itself is nothing but an abuse of the process of law. Learned counsel has further submitted that the controlling officer of the petitioner has also been examined by the enquiry officer, who has clearly stated that he has not found any wrong against the petitioner, therefore, the charge against the petitioner has not been proved. Learned counsel for the petitioner further submits that the order passed by the appellate authority clearly reveals that there has been factual error which has crept into the order passed by the appellate authority, wherein it has been mentioned that the petitioner has not

been acquitted. But, on perusal of the order dated 02.06.2010, Annexure-8 to the writ application, it is quite evident that the petitioner has been acquitted for the offences under section 384 of the I.P.C. in G.R. No. 28 of 2009 (Tr. No. 333 of 2010) passed by the Railway Judicial Magistrate, Ranchi. Therefore, the foundational fact from which the impugned order 21.10.2011 has arisen, is contrary to the evidence on record. Learned counsel for the petitioner has further submitted that the disciplinary authority has awarded the punishment of reduction of pay in time scales of pay by five stages lower for a period of two years with cumulative effect. But, the appellate authority has enhanced the same with removal with immediate effect, since the order of the appellate authority is a non speaking order without reasons and the reasons, which has been arisen there, is not borne out from the records, therefore, the order passed by the appellate authority is not legally sustainable.

5. As against the submission of learned counsel for the petitioner, learned counsel for the respondents-Railway has assiduously argued that the impugned order of punishment which has been confirmed by the appellate authority do not warrant any interference by this Court since the charges against the petitioner was very grave and the same has been proved by the enquiry officer and basing on the enquiry report, the disciplinary authority has passed the impugned order and the appellate authority basing on the evidence on record has enhanced the order of punishment of reduction of pay in time scales of pay by five stage lower for a period of two years with cumulative effect to that of removal from services with immediate effect. Learned counsel for the respondents-Railways has further submitted that the High Court under Article 226 cannot reappraise the evidence, the facts and findings in a disciplinary proceeding. Moreover, in view of the seriousness of allegation and misconduct committed by the petitioner, judicial review cannot be applied, moreover the fact finding given by authorities concerned based upon the material on record cannot be interfered with.

6. After hearing learned counsel for the respective parties at length and on perusal of the records, I am of the considered view that the impugned order of punishment passed by the disciplinary authority dated 09.06.2011, vide Annexure-4 of the writ application and the order of the appellate authority dated 04.11.2011, vide Annexure-6 of the writ application warrant interference by this Court in view of the following facts, reasons and judicial pronouncements:

"(I) Admittedly, in the instant case on the basis of newspaper report and the written report lodged by the complainant, proceeding has been initiated against the petitioner and enquiry officer was appointed and charges had been proved by the enquiry officer. But the enquiry officer relied on three witnesses who have not deposed anything against the petitioner and the complainant has not been examined which casts serious doubt on the veracity of allegations made by the complainant.

(II) Moreover, the lodgment of the written report is the basis of initiation of the departmental proceeding. The criminal case which was initiated against the

petitioner under section 384 I.P.C. has ended in acquittal of the petitioner by Railway Judicial Magistrate, Ranchi vide order dated 02.06.2010. It is order dated 21.10.2011 which has misconstrued the judgment of the Railway Judicial Magistrate in acquitting the petitioner and the findings of the appellate authority appears to be erroneous and hence not legally sustainable. Apart from that in the instant case, the punishment appears to be shockingly disproportionate to the proved charges.

(III) The Hon"ble Apex Court in S. Bhaskar Reddy Vs. Superintendent of Police, at paragraph 22, 23 and 24 has been pleased to hold:

"22. The meaning of the expression "honourable acquittal" was discussed by this Court in detail in Inspector General of Police v. S. Samuthiram, the relevant paragraph from the said case reads as under:

"24. The meaning of the expression "honourable acquittal" came up for consideration before this Court in RBI v. Bhopal Singh Panchal. In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions "honourable acquittal", "acquitted of blame", "fully exonerated" are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression "honourably acquitted". When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted."

(emphasis supplied)

After examining the principles laid down in the abovesaid case, the same was reiterated by this Court in a recent decision in Joginder Singh v. UT of Chandigarh.

23. Further, in Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. this Court has held as under:

"34. There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, "the raid conducted at the appellant's residence and recovery of incriminating articles therefrom". The findings recorded by the enquiry officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by police officers and panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the enquiry officer and the enquiry officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The

same witnesses were examined in the criminal case but the Court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the "raid and recovery" at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex parte departmental proceedings to stand.

35. Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case."

24. Further, in G.M. Tank v. State of Gujarat this Court held as under:

"20. ... Likewise, the criminal proceedings were initiated against the appellant for the alleged charges punishable under the provisions of the PC Act on the same set of facts and evidence. It was submitted that the departmental proceedings and the criminal case are based on identical and similar (verbatim) set of facts and evidence. The appellant has been honourably acquitted by the competent court on the same set of facts, evidence and witness and, therefore, the dismissal order based on the same set of facts and evidence on the departmental side is liable to be set aside in the interest of justice.

30. The judgments relied on by the learned counsel appearing for the respondents are distinguishable on facts and on law. ... It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge-sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts, namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer Mr. V.B. Raval and other departmental witnesses were the only witnesses examined by the enquiry officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by its judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed that the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

31. In our opinion, such facts and evidence in the departmental as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though the finding recorded in the domestic enquiry was found to be valid by the courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony case will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed."

(emphasis supplied)

(IV) The Hon''ble Apex Court has been pleased to set aside the order of dismissal to that of compulsory retirement and for payment of pensionary benefit including the arrears. The case of the petitioner is squarely covered by the judgment passed by the Hon''ble Apex Court in case of S. Bhaskar Reddy and Another (supra)."

7. On cumulative effect of the facts, reasons and judicial pronouncements, the impugned order dated 09.06.2011 passed by the Senior Divisional Security Commissioner, South Eastern Railway, Ranchi and the order dated 04.11.2011 passed by the appellate authority, are hereby quashed and the matter is remitted to the respondents to consider the case of the petitioner afresh on the quantum of punishment within a period of three months from the date of receipt/production of a copy of the order.

8. With the aforesaid direction, the writ petition is, disposed of.