
(2014) 04 JH CK 0077
In the Jharkhand High Court
Case No : LPA Nos. 14, 16 and 18 of 2009

Tuntun Rai

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 03-04-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 34, 386

Citation : (2014) 2 AJR 787 : (2014) 142 FLR 968 : (2014) 2 JLJR 423

Hon'ble Judges : R. Banumathi, C.J.; S. Chandrashekhar, J

Bench : Division Bench

Advocate : Ritu Kumar in LPA No. 14, Sumeet Gadodia, Prem Pujari Rai and Anurag Kashyap LPA Nos. 16 and 18, Advocate for the Appellant; Shivani Verma, Advocate for the Respondent

Final Decision : Dismissed

Judgement

S. Chandrashekhar, J.—In the incident dated 26.5.2001, a First Information Report being Tata Nagar G.R.P. Case No. 31 of 2001 u/s 386/34 of the I.P.C. was registered against three accused persons who are appellants herein namely, Tuntun Rai, Chhedi Paswan and Mir Alimuddin. A departmental proceeding was also initiated against the appellants and all the three appellants have been dismissed from service. Since the necessary facts in these Letters Patent Appeals are common and the impugned order dated 17.12.2008 has been assailed by the appellants on identical grounds, all the appeals have been heard together and are being disposed of by a common order.

Brief Facts

All the appellants were appointed in Railway Police Service on the post of Constable. On 26.5.2001 a First Information Report u/s 386/34 was registered on the allegation that the accused persons (who are appellants herein) had threatened and extorted money from the passengers of "Gitanjali Express Train, 2859 Dn." which was waiting at Tata Nagar Railway Station, Platform No. 4 and

when other passengers raised objection they fled away. Vide Memo dated 20.7.2001 the appellants were charged for gross indiscipline, dereliction of duty, suspicious conduct etc. A specific charge of threatening the passengers who were smoking cigarette in Gitanjali Express Train and extorting Rs. 500/- from them, was framed against the appellants. During the departmental enquiry six witnesses were examined on behalf of the Department and on conclusion of the enquiry proceeding, enquiry reports were submitted holding the charges proved against the appellants. Though, it was a common enquiry, separate enquiry reports dated 14.6.2002 and 5.7.2002 were prepared and furnished to the appellants with second show-cause notice. By separate penalty orders, that is, dated 20.7.2002, 25.7.2002 and 13.8.2002, the appellants were dismissed from service. They preferred appeal before the Deputy Inspector General of Police, Railway and their appeals have also been rejected by appellate orders dated 3.7.2003, 4.7.2003 and 28.6.2003. By judgment and order dated 5.12.2007 in G.R. Case No. 53 of 2001, the appellants were acquitted from the criminal charges by the Trial Court and thereafter, the appellants approached this Court by filing writ petitions being W.P.(S) No. 3861 of 2003, W.P.(S) No. 1778 of 2003 and W.P.(S) No. 3905 of 2003. By a common order dated 17.12.2008 the writ petitions filed by the appellants have been dismissed and therefore, the appellants have approached this Court by filing the present Letters Patent Appeal. The necessary details in each Letters Patent Appeal are given below:--

2. Mr. Sumeet Gadodia, the learned counsel appearing for the appellants in L.P.A. No. 16 of 2009 and L.P.A. No: 18 of 2009 advanced the arguments for the appellants and Mrs. Ritu Kumar, the learned counsel appearing for the appellant in L.P.A. No. 14 of 2009 adopted the argument of Mr. Sumeet Gadodia. Ms. Shivani Verma, J.C. to A.G. appeared on behalf of the State of Jharkhand.

3. Mr. Sumeet Gadodia, the learned counsel has submitted that evidence which was led before the Criminal Court and the evidence adduced during the departmental enquiry are identical and since the appellants have been acquitted of the criminal charges by the Criminal Court, the orders passed by the departmental authorities are liable to be quashed and the appellants are entitled for reinstatement in service. It is further submitted that in view of the evidence led by the Department during the departmental proceeding, an order of dismissal from service is definitely disproportionate to the charges framed and found proved against the appellants.

4. Reiterating the submission, Ms. Ritu Kumar contended that it is a case of no evidence. Learned counsel further submitted that on same set of charges, criminal case was registered and when the criminal case ended in acquittal, the departmental proceedings cannot continue and therefore, the punishment of dismissal from service is liable to be set aside.

5. On the other hand, the learned counsel appearing for the respondents has submitted that the charges framed against the appellants in the departmental proceeding are different from the charge in the criminal case and the evidences

led during the departmental proceeding and the criminal trial are also not similar. It is thus, submitted that acquittal of the appellants in the criminal case cannot be a ground for interfering with the orders passed in the departmental proceeding. It is further submitted that the standard of test in the departmental proceeding and in the criminal trial are different and the findings recorded in the criminal case, more so, when the criminal case has failed due to non-examination of material witnesses, cannot be made a ground for interfering with the order of punishment passed in the departmental proceeding. It is also submitted that long after the appellants were dismissed from service, the order of acquittal was recorded by the Criminal Court and in the meantime, the dismissal order had attained finality and therefore, the learned Single Judge has rightly refused to interfere in the matter.

6. Having appreciated the contentions advanced by the counsel for the parties and having perused the documents on record, we first propose to examine the evidence produced by the department in the enquiry proceeding against the appellants. On 26.5.2001, a First Information Report being Tata Nagar G.R.P. Case No. 31 of 2001 dated 26.5.2001 u/s 386/34 I.P.C. was lodged against the appellants. A preliminary enquiry was conducted by the Dy. S.P. of Railways Police, Jamshedpur and a prima facie case against the appellants was found established and therefore, a departmental proceeding was ordered to be initiated. On 20.7.2001, a Charge Memo was served upon the appellants in which besides a charge of assaulting and threatening the passengers and extorting Rs. 500/- from two passengers, charges of gross indiscipline, dereliction of duty, suspicious conduct etc. were also levelled against the appellants. During the departmental proceeding, a copy of the First information Report dated 26.5.2001 and the supervision note in Tata Nagar G.R.P. Case No. 31 of 2001 were produced and proved through the witnesses. Out of 8 cited witnesses, 6 witnesses were examined. In the criminal trial, Rajiv Ranjan, Vijay Shankar Singh, Santosh Kumar Bhattacharya (T.T.E.), Chandra Bhan Singh, Swadesh Vishwakarma and Vinay Kumar Pandey were cited as eyewitnesses however, they were not examined during the trial. In the departmental proceeding in support of the charges, the Department examined Kedar Prasad Dubey, Vinay Kumar Pandey, Vijay Shankar Singh, Chandra Bhan Singh, Rambrich Singh and Dinesh Tiwari. Thus, it can be seen that the witnesses in departmental proceeding are not the only persons who were proposed to be examined by the prosecution during the trial in the criminal case and there are witnesses who have been examined in the departmental proceeding but not in the Criminal Court.

7. Relying on a decision of the Hon'ble Supreme Court in G.M. Tank Vs. State of Gujarat and Another, , the learned counsel for the appellants has submitted that the appellants are entitled for reinstatement in service. The contention is that, although during the departmental enquiry as many as six witnesses have been examined, the enquiry officer has based his findings only on the evidence of Kedar Prasad Dubey who has been treated as an eyewitness by the enquiry officer. Whereas, during the criminal trial, the learned Trial Court has found the

said Kedar Prasad Dubey not an eye witness. Since all other charge-sheet witnesses were not examined by the prosecution during the criminal trial, the evidence led during the departmental proceeding was in fact identical in as much as, during the departmental proceeding also only one witness namely, Kedar Prasad Dubey has supported the charge framed against the appellants.

8. A perusal of enquiry report discloses that besides the First Information Report, the supervision note in the criminal case was also relied upon by the Department and the officer who prepared the supervision note namely, Dinesh Tiwari has appeared before the Enquiry Officer and stated that he had taken statement of Chandra Bhan Singh and Rambrich Singh who had supported the allegation against the appellants. Other witnesses, namely Kedar Prasad Dubey and Vinay Kumar Pandey also affirmed the charges levelled against the appellants. In G.R. Case No. 53 of 2001, the appellants have been acquitted of the criminal charges by the Trial Court mainly on the ground that the complainant namely, Kedar Prasad Dubey is not an eye witness. As noticed above, the prosecution failed to produce all other charge-sheet witnesses and therefore, it cannot be said that the acquittal of the appellants from the criminal charges is on merits. Moreover, from the aforesaid discussion it is apparent that the evidences led and relied upon by the prosecution before the Criminal Court and evidence relied upon by the Enquiry Officer are different. In "G.M. Tank vs. State of Gujarat & Others" (supra), the Hon"ble Supreme Court has held as under:--

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.

9. In "G.M. Tank vs. State of Gujarat & Ors." (supra), it was found by the Hon"ble Supreme Court that there was not even an iota of difference in the evidence produced during the departmental enquiry and the evidence led in the criminal proceeding. It was also noted that the acquittal in the criminal case was an honourable acquittal of the delinquent employee and it came "during the pendency of the proceedings challenging the dismissal". The facts in the present case are entirely different. About five years after the dismissal from service, the appellants were acquitted from the criminal charges mainly because except the complainant, none of the witnesses were produced before the criminal court and the complainant was found not an eye witness to the occurrence. As noticed hereinabove, the evidences produced before the criminal court and the evidences led during the departmental enquiry were different and thus, the reliance placed

by the learned counsel for the appellants on the decision in "G.M. Tank vs. State of Gujarat & Others" (supra) is misplaced.

10. The contention raised on behalf of the appellants that evidence led before the departmental proceeding was not sufficient to record a finding of dismissal from service is also liable to be rejected. It is well-settled that the High Court would interfere with the order passed in departmental proceeding when there is a violation of rules of natural justice or the enquiry has been conducted in violation of the statutory rules. As rightly pointed out by the learned counsel for the respondents that the appellants participated in the departmental enquiry and they were afforded sufficient opportunity to defend themselves, they could not have alleged violation of the rules of natural justice. The appellants have not alleged that the departmental proceeding was conducted in violation of the statutory rules and it also cannot be said that the enquiry report is based on irrelevant considerations or the conclusion arrived at by the enquiry officer is wholly arbitrary or capricious. In State of Andhra Pradesh Vs. Sree Rama Rao, the Hon"ble Supreme Court has held as under:--

7..... The High Court is not constituted in a proceeding under Article 226 of the Constitution, a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence.....

11. In Union of India (UOI) Vs. Sardar Bahadur, , the Hon"ble Supreme Court has observed as under:--

Where there are some relevant materials which the authority has accepted and which materials may reasonably support the conclusion that the officer is guilty, it is not the function of the High Court, exercising its jurisdiction under Article 226, to review the materials and to arrive at an independent finding on the materials. If the enquiry has been properly held, the question of adequacy or reliability of the evidence cannot be canvassed before the High Court.

12. In so far as, the submission that the penalty of dismissal imposed upon the appellants is excessive, relying on the decision of the Hon"ble Supreme Court in Samar Bahadur Singh Vs. State of U.P. and Others, , the learned counsel for the respondents has submitted that the appellants though belonged to the disciplined force, they indulged in illegal and criminal activities and therefore, they have rightly been dismissed from service. It is well-settled that choice of punishment rests with the departmental authorities and the Court can interfere with an order

of penalty only when it is so excessive and disproportionate that it shocks the conscience of the Court. In "Apparel Export Promotion Council vs. A.K. Chopra" (supra) the Hon"ble Supreme Court has observed as under:--

22..... The High Court should not have substituted its own discretion for that of the authority. What punishment was required to be imposed, in the facts and circumstances of the case, was a matter which fell exclusively within the jurisdiction of the competent authority and did not warrant any interference by the High Court. The entire approach of the High Court has been faulty.....

The appellants having been found guilty of serious misconduct, the penalty of dismissal from service cannot be said to be disproportionate. In view of the aforesaid discussion, we find no merit and accordingly, all the Letters Patent Appeals are dismissed.