

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1506 of 2014

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1. The Union of India through the Chief General Manager, Telecom (B.S.N.L.) Patna
 2. The Principal General Manager, O/o the C.G.M. Telecom (B.S.N.L.) Patna
 3. The General Manager, Telecom District - B.S.N.L. Patna
 4. The Assistant General Manager (Admin) O/O the C.G.M. Telecom Bihar, Patna
 5. The Director, Telecom (North) B.S.N.L. Patna
 6. The Chief Superintendent, Central Telegraph Office, Patna
 7. The Accounts Officer, Telecom Account, B.S.N.L. Patna
 8. The Deputy G.M. (Admin) O/O the C.G.M. Telecom, Bihar Circle, Patna

.... Petitioners

Versus

1. Bali Ram Sharma S/O Late Shiv Dhar Singh, Ex. T.A. (Central Telegraph Office, Patna) resident of Mohalla - Patel Nagar, P.O. - Shastri Nagar, P.S. Shastri Nagar, Distt. Patna (Bihar)
2. Kalika Prasad Singh, S/O Late Pratap Narayan Singh Resident of Village + P.O. Israin Kalan, P.S. Sri Nagar, Distt. Madhepura (Bihar)

.... Respondents

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Appearance :

For the Petitioners : Mr. Viveka Nand Prasad Singh, Advocate
For the Respondents : Mr. M.P. Dixit, Advocate
Mr. Sanjay Kumar Choubey, Advocate
Mr. Shailendra Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE V.N. SINHA)

Date: 29-10-2015

Heard learned counsel for the parties.

2. Petitioner is aggrieved by the order dated 16.08.2013, passed by Patna Bench of Central Administrative Tribunal in O.A. No. 489 of 2010 whereunder order of compulsory retirement dated 24.01.1991, passed against respondent nos. 1, 2 along with orders dated 28.04.2007 and



13.03.2007, Annexure-4 series has been set aside. It appears respondent nos. 1, 2 were made accused in Special Case Nos. 08 of 1982, 66, 67 both of 1983 for the offence under Sections 120-B, 420 and other allied Sections of the Penal Code and Sections 5(1)(d), 5(2) of the Prevention of Corruption Act, 1947. After conviction of the respondents in the said case they were subjected to punishment of compulsory retirement under order dated 24.01.1991. Respondent nos. 1, 2 assailed their aforesaid conviction by filing Criminal Appeal No. 113 of 1991 before this Court and this Court heard the said appeal along with Criminal Appeal No. 96 of 1991 filed on behalf of the three co-convicts. Both the appeals were heard and allowed under judgment dated 22.09.2004, Annexure-2. After acquittal respondent nos. 1, 2 requested the authorities for grant of consequential benefit as during pendency of the appeal they attained the age of superannuation. Under orders dated 28.04.2007, 13.03.2007 such request has been rejected, against which respondent nos. 1, 2 approached the Central Administrative Tribunal, Patna Bench by filing O.A. No. 489 of 2010. Tribunal issued notice to the respondents and after having heard the parties under the impugned judgment directed the disciplinary authority of the respondents to grant them similar benefit, which has been granted to the co-

accused also covered by order dated 22.09.2004, the employees of the Department of Post. Aforesaid order is being assailed before us by filing this writ petition on the ground that the Tribunal was not justified in giving the aforesaid direction as the acquittal granted to the two respondents is only on the basis of benefit of doubt.

4. Punishment of compulsory retirement was imposed on the two respondents after they were convicted. Once conviction order has been set aside by the High Court under judgment dated 22.09.2004, Annexure-2, the disciplinary authority was required to have revisited the punishment imposed on the two respondents in the light of their representation. The representation having been rejected under order dated 28.04.2007, 13.03.2007. Both orders were assailed along with the order of compulsory retirement dated 24.01.1991 on the ground that other similarly situate persons, co-accused appellants in the connected appeal have, in the meantime, been reinstated.

5. Tribunal instead of giving direction to the authorities to proceed against the two respondents in the light of the law laid down in the case of **Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and another (1999) 3 SCC 679** has chosen to grant them similar benefit as was allowed to the appellants of the connected appeal. Once the two respondents were acquitted of the



criminal charge, may be by granting them benefit of doubt, the disciplinary authority on their representation was required to have revisited punishment imposed to them after conviction, which has not been done in the present case, meanwhile, more than 11 years have passed and the two respondents have attained the age of 79, 80 years respectively. In the circumstances, at this stage, we do not deem it appropriate to grant liberty to the disciplinary authority of the two respondents in the B.S.N.L. to initiate any fresh proceeding against the two respondents in view of the fact situation discussed by the Supreme Court in Paragraph 36 in the case of **Capt. M. Paul Anthony** (supra), which is quoted hereinbelow for ready reference :

“36. For the reasons stated above, the appeal is allowed, the impugned judgment passed by the Division Bench of the High Court is set aside and that of the learned Single Judge, insofar as it purports to allow the writ petition, is upheld. The learned Single Judge has also given liberty to the respondents to initiate fresh disciplinary proceedings. In the peculiar circumstances of the case, specially having regard to the fact that the appellant is undergoing this agony since 1985 despite having been acquitted by the criminal court in 1987, we would not direct any fresh



departmental enquiry to be instituted against him on the same set of facts. The appellant shall be reinstated forthwith on the post of Security Officer and shall also be paid the entire arrears of salary, together with all allowances from the date of suspension till his reinstatement, within three months. The appellant would also be entitled to his cost which is quantified at Rs. 15,000.

6. The writ petition is, accordingly, dismissed.

(V.N. Sinha, J)

(Aditya Kumar Trivedi, J)

Rajesh/-

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