

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.903 of 2012

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1. Vijay Kumar Paswan S/O Late Biranchi Paswan Resident of Village-Dilawarpur,
P.O. + P.S. Bihta, District-Patna at present residence of village Karimchauk, P.O.
Bara, P.S. + Distt. Arwal

2. Rejendra Prasad S/O Late Kedar Prasad resident of Mohalla Langar Toli Gali
(Nala Road), H/O Arun Mahto, P.O. + P.S. Kadamkuan, District-Patna

.... Petitioner/s

Versus

1. The State of Bihar through its Commissioner-Cum-Secretary of Transport
Department, Bihar, Patna

2. The Managing Director, Bihar State Road Transport Corporation, Virchand Patel
Marg, Bihar, Patna

3. The Administrator, Bihar State Road Transport Corporation, Virchand Patel
Marg, Bihar, Patna

4. The Special Officer, Bihar State Road Transport Corporation, Bihar, Virchand
Patel Marg, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Lalan Kumar Singh, Adv.

For the Respondent/s : Mr. Prabhat Kumar Verma, Sr. Adv.
Mr. Nand Kumar Singh, Adv.
Mr. Kameshwar Prasad Gupta, G.P.10

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 05-09-2016

Heard Mr. Lalan Kumar Singh, learned counsel for the
petitioners, Mr. Prabhat Kumar Verma, Sr. Advocate and Mr. Nand
Kumar Singh learned counsel for the Corporation and Mr.
Kameshwar Prasad Gupta for the State.

The petitioners are aggrieved by the punishment order bearing
memo No.174 dated 22.3.2003 passed by the Administrator, Bihar
State Road Transport Corporation (hereinafter referred to as the



‘Corporation’) whereby the petitioners have been visited with the penalty of removal from service. A copy of such order is impugned at Annexure-7 to the writ petition. The petitioners also question the order bearing memo No.1572 dated 15.3.2011 whereby the punishment order has been confirmed on review by disciplinary authority.

Facts of the case lie in a very narrow compass. The two petitioners herein are Security Guard and have been charged by the Security Hawaldar Jineshwar Yadav of attempted theft by cutting aluminum sheet from a vehicle bearing No.BPI-287 having dimension of 8ft.x3 ft.A copy of the charge memo is present at Annexure-2.The charge led to institution of a criminal case giving rise to Gardanibagh P.S. Case No. 546 of 1999 registered for the offence punishable under Sections 461, 411 and 379 of the Indian Penal Code and along side a departmental proceeding was also initiated upon service of the charge memo as stated above, vide Annexure-2. The Enquiry Officer submitted his report, a copy of which has been placed on record vide Annexure-A to the counter affidavit filed by the Corporation holding the petitioner guilty of the charges and which led to the passing of the order of penalty by the Administrator, a copy of which is impugned at Annexure-7 to the writ petition imposing a penalty of removal from service vide order bearing Memo No.3142 dated 17.7.2003.



While the departmental proceedings resulted in an order of removal, in so far as the criminal case instituted against the petitioners is concerned, it resulted in an acquittal on the failure of the prosecution to drive home the charges and in absence of any evidence connecting the petitioners with the charges. A copy of the judgment of acquittal passed in favour of the petitioners has been enclosed at Annexure-9. The petitioners in the circumstances came before this Court in C.W.J.C.No.14079 of 2010 questioning the punishment order and a Bench of this Court vide order passed on 27.8.2010 enclosed at Annexure-11 allowed the petitioners to represent before the Administrator. The petitioners approached the Administrator and since the same was not being disposed of that the petitioner again came before this Court in M.J.C.No.1032 of 2011 and the Bench vide order passed on 26.8.2011 present at Annexure-12 taking note of the development where the representation had been rejected vide order bearing No. 1572 dated 15.3.2011 disposed of the contempt application accordingly. The copy of the order passed by the Administrator dated 15.3.2011 is impugned at Annexure-13. The petitioners feeling aggrieved by the order of removal impugned at Annexure-7 as well as its affirmation vide Annexure-13 is before this Court.

The short argument advanced by Mr. Singh to question the



impugned order of dismissal is, that it is based on no evidence. Mr. Singh learned counsel for the petitioner has taken this Court through the judgment of the trial court to submit that the subject matter of the departmental proceeding and the criminal proceeding rest on the same evidence and the trial court has exhaustively dealt with the matter to conclude that the prosecution had completely failed to drive home the charges. He submits that except for the statement of the informant alleging theft on the petitioners, there is no other evidence of any nature which would connect the petitioner with the alleged charge. He submits that the seriousness with which the matter was being pursued by the department before the court below is evident from the fact that neither the alleged object of theft was produced before the court below nor the Investigating Officer was examined. He submits that while the Security Hawaldar has mentioned in the F.I.R. that he produced the two accused before the Station House Officer along with the object of theft where the seizure list was prepared, it is during the course of his deposition that he deviates from this statement to mention that when the police arrived at the workshop, these two petitioners were having tea and they presented themselves before the Investigating Officer. It is stated that the proceeding in question is an outcome of a dispute between the petitioner and the Security Hawaldar and it is merely the position that he exercises within the



workshop that he has misused his power to implicate the petitioner even in absence of any substantive piece of evidence to connect the petitioner with the alleged charge. He submits that even when an allegation of theft is being made against the petitioners, neither they were put in any custody nor the police were summoned at the time when the theft was discovered nor there is any other independent witness to support the charge.

Learned counsel has referred to a Division Bench judgment of this court reported in **2008(2)PLJR 597 (Bhagirath Mahto vs. State of Bihar & Ors.)** to submit that the law laid down by the Court in respect of the matters which give rise to a departmental proceeding as well as a criminal proceedings stands discussed and it has been concluded in reference to a judgment of the Supreme Court reported in **(2006) 5 SCC 446 (G.M. Tank Vs. State of Gujarat)** and the judgment rendered in the case of **Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. and Another** since reported in **(1999) 3 SCC 679** that where the departmental proceeding and the criminal preceding rest on the same piece of evidence and the delinquent is acquitted in the criminal proceedings on the failure of the prosecution to prove the charge with supporting evidence, the departmental proceeding should be disposed of accordingly. It is submitted that since in the present case there is no other evidence except those present in the criminal

case, it is wholly arbitrary on the part of the Administrator in not considering the prayer of the petitioners for reinstatement in view of the clean acquittal recorded by the trial court in the criminal case.

The argument of Mr. Singh has been contested by Mr. Nand Kumar Singh learned counsel appearing for the Corporation who initially chose to raise a preliminary objection as regarding the maintainability of the writ petition with reference to a Bench decision of this Court since reported in **(2003)2PLJR 841 (Sidheshwar Prasad vs. State Road Transport Corporation)** to submit that the proper course of remedy for a delinquent who is a workman with the corporation, would lie before the forum available under the Industrial Disputes Act. He submits that in the nature of grievance raised, the appropriate remedy for the petitioners would be before the Industrial court and not in a writ jurisdiction.

On merits Mr. Nand Kumar Singh reverts back to submit that an acquittal in the criminal case would not ipso facto be a foundation for exoneration in the departmental proceeding as well. According to Mr. Singh there are evidence on record which would be sufficient to uphold the charge of misconduct by the petitioners to invite an order of dismissal. It is submitted that these two petitioners were found involved in attempted theft of aluminum sheet and were apprehended in the act by the Security Hawaldar and even though the criminal case

may have resulted in an acquittal but the circumstances existing in which the petitioners were apprehended, would be sufficient to uphold the order of dismissal passed in the departmental proceeding.

I have heard learned counsel for the parties and perused the records.

The contest is in between Security Hawaldar and the petitioners. While the Security Hawaldar charges the petitioners of attempted theft, the charge is being returned by the petitioners to the Security Hawaldar on grounds that a dispute on card game has resulted in the twin proceeding. It is not in dispute that apart from the Security Hawaldar Jineshwar Yadav there is no other witness to the occurrence. The place of occurrence is the Central Workshop of the respondent Corporation at Patna. Obviously the time of the alleged occurrence being 1.45 A.M., the workshop would presumably be under the watch of the security guards. Surprisingly, even when there is a security guard posted at the gate and the Security Hawaldar allegedly apprehended these two petitioners while committing theft, neither he made a call for any of the security guards nor did he bother to call the police for registering a case rather he waited until morning to register a police case and the delay is not explained.

The judgment in the criminal case again reflects a discrepancy in the version of the informant. The trial court has taken note of the



evidence of the informant who though has stated that the Investigating Officer arrived at the workshop where the written report was given to him and a seizure list was prepared but during the course of his examination the informant has stated that the two petitioners were having tea when the Investigating Officer had arrived. The evidence of prosecution witness no. 2 Rameshwar Thakur deviates from the evidence of prosecution witness no.1 and he submits that the informant took both the accused to the police station along with the aluminum sheet and where a report was prepared together with seizure list. The findings of the trial court at paragraph 11 of the judgment shows that whereas in the F.I.R. the informant has stated that he handed the accused along with the stolen article to the Investigating Officer but during the course of his examination he has stated otherwise to submit that the petitioners were having tea when the S.H.O. arrived. The two statement go divergent to each other. Besides the discrepancy in the evidence of the informant qua the other witnesses, another important aspect of the matter is that although the charge on the petitioners at Annexure-2 is that they were taking out an aluminum sheet from the vehicle but neither any cutting instrument has been seized nor it is explained as to how a 8ft. x 3ft. aluminum sheet was taken out of the vehicle. Even more surprising is that except for the Security Hawaldar, there is no witness to the occurrence. It is

taking note of such conflicting evidence the trial court has acquitted the petitioners vide judgment and order dated 18.7.2008 in absence of any evidence connecting the petitioners to the alleged charge.

It is not a case where the petitioners have been acquitted by giving benefit of doubt rather it is a case of clean acquittal where the prosecution has completely failed to drive home the charge in absence of any evidence connecting the petitioner with the offence. Unfortunately, not only the Enquiry Officer but even the disciplinary authority has not applied their mind to the fact situation where there is complete absence of evidence to support the charge of theft. Each of the two authorities i.e. the Enquiry Officer as well as the Disciplinary Authority has held that the petitioners have failed to produce any evidence to dispel the charge which by itself shows the mechanical approach to the problem by the Disciplinary Authority who has held the petitioners guilty on their failure to prove the negative. In my opinion the Disciplinary Authority has shown ignorance to the elementary principles that it is for the prosecution/department to lead evidence connecting the petitioner to the alleged charge and in the present case there is nothing to confirm the charge except the evidence of the Security Hawaldar.

The case in hand is a case of word against a word. While the Security Hawaldar charges the petitioners of attempted theft of



Aluminum sheet and though the occurrence took place at the Central Workshop at 1.45 A.M. but there is none to support this charge and the evidence of the prosecution witness deviates from the version of the informant. On the other hand, this charge has been negated by the petitioners by shifting it back on the Security Hawaldar attributing the allegation to a dispute in between the parties. No doubt an acquittal in a criminal case ipso facto would not be a sole basis for exoneration in a departmental proceeding but then there has to be some evidence to connect the delinquents with the alleged charge. In the present case there is none.

In the circumstances discussed, hereinabove, I am of the considered opinion that the order of the penalty passed by the Administrator dated 22.3.2003 impugned at Annexure-7 together with its confirmation vide order dated 15.3.2011 impugned at Annexure-13 are resting on no evidence and is an opinion reflecting perversity.

In result, the order(s) dated 22.3.2003 together with the order dated 15.3.2011 are quashed and set aside.

It is stated by Mr. Lalan Singh that both the petitioners have since reached the age of their superannuation. In that view of the matter, the petitioners are held admissible to 50% of their wages together with consequential benefits until the date of their superannuation and whereafter they would be entitled to the retrial

benefits as admissible to them which shall be provided to them within the period of three months from the date of receipt/production of a copy of this order.

The writ petition is allowed.

(Jyoti Saran, J)

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AFR	
CAV DATE	
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Transmission Date	