

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1620 of 2012

IN

Civil Writ Jurisdiction Case No. 6667 of 2002

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Haridwar Tiwary, son of late Chhabila Tiwari, resident of Vill-Nainijore, P.O.-
Nainijor, P.S.-Brahampur, Distt-Buxar.

.... Petitioner-Appellant

Versus

1. The State of Bihar.
2. The D.G. of Police, Government of Bihar, Old Secretariat, Patna.
3. The D.I.G. Of Police (Railway), Govt. of Bihar, Patna Old Secretariat, Patna
4. The S.P.(Rail) Katihar
5. Sri Bacha Singh, Inspector Police Station, Saharsa cum Departmental Proceeding
Conducting Officer, Katihar

.... Respondents-Respondents

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Appearance :

For the Appellant : Mr. Pranav Kumar, Advocate
Ms. Surya Nilambari, Advocate

For the Respondents : None

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

And

HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 01-03-2016

In the present Letters Patent Appeal, the challenge is to
an order passed by the learned Single Bench of this Court on 23rd
January, 2012, whereby the writ application filed by the appellant
against the order of punishment remained unsuccessful.

2. The appellant was a Constable with the Railway
Police, Katihar and was posted at Kharik Railway Station in the year
2000. The Police Post situated at Kharik Railway Station was
attacked on 24th January, 2000 when the police personnel were
injured and arms & ammunition were looted for which Bihpur



(Naugachia) Rail Police Case No.3 of 2000 dated 24.01.2000 was lodged for the offence under Sections 395, 397 and 120B of the Indian Penal Code. One Jai Prakash Singh, who was a non-F.I.R. accused, suffered a statement under Section 164 Cr. P.C. implicating himself and the appellant. Sub-Inspector Ram Kishore Singh, appeared in the departmental enquiry. The appellant was given an opportunity to cross-examine the said Sub-Inspector as well. The enquiring officer submitted its report on 03.01.2001. After considering the evidence recorded and issuing a show cause notice, an order of dismissal from the services was passed on 22nd May, 2001 which order was affirmed in appeal by the appellate authority on 30th July, 2001. The further writ application against the said orders remained unsuccessful before the Learned Single Judge.

3. Learned counsel for the appellant raised the following arguments:

(i) That the confession of Jai Prakash Singh has not been proved in the departmental proceedings. Such confession has only been tendered in evidence which is not a proof of his having suffered a confessional statement. Reference was made to the Supreme Court judgment in the case of Roop Singh Negi Vs. Punjab National Bank and others (2009) 2 SCC 570.

(ii) That the appellant was not on duty on the

relevant date and time and in the absence of any proof of he being on duty, the disciplinary proceedings against him are not tenable.

(iii) Lastly, in the second show cause notice, after supplying the copy of the enquiry report, the punishment has been proposed which runs counter to the Supreme Court judgment in the case of ORYX Fisheries Private Limited Vs. Union of India & Ors. (2010) 13 SCC 427.

4. We have heard learned counsel for the appellant and find no merit in the present appeal. The principle laid down in the in *Roop Singh Negi* case (supra) is not applicable to the facts of the present case. In the said case, the evidence collected by the police was produced in departmental proceedings, whereas in the present case, statement made to the Court recorded under Section 164 Cr. P.C. was produced in the departmental proceedings. Such document is a relevant piece of evidence in the departmental proceeding.

5. The Constitution Bench of the Hon'ble Supreme Court in the case of Union of India v. T. R. Varma, AIR 1957 SC 882 has examined the nature of evidence which is required to be led in departmental proceedings. The Court held that the Evidence Act has no application to the enquiries conducted by the Tribunal and the law requires that there should be observance of rules of natural justice. The enquiry is not open to attack on the ground that the

procedure laid down in the Evidence Act for taking evidence was not strictly followed. The relevant extract from the judgment read as:

“Now, it is no doubt true that the evidence of the respondent and his witnesses was not taken in the mode prescribed in the Evidence Act; but that Act has no application to enquiries conducted by tribunals, even though they may be judicial in character. The law requires that such tribunals should observe rules of natural justice in the conduct of the enquiry, and if they do so, their decision is not liable to be impeached on the ground that the procedure followed was not in accordance with that, which obtains in a Court of law.

Stating it broadly and without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them.

If these rules are satisfied, the enquiry is not open to attack on the ground that the procedure laid down in the Evidence Act for taking evidence was not strictly followed. Vide the recent decision of this Court in New Prakash Transport Co. v. New Suwarna Transport Co. 1957 SCR 98 : (S) AIR 1957 SC 232) (C) where this question is discussed.”

6. The three Judge Bench in State of Haryana V. Rattan Singh (1977)2 SCC 491 the Court held as follows:-

“4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus



and credibility. It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case-law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The 'residuum' rule to which counsel for the respondent referred, based upon certain passages from American Jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence- not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the Flying Squad, is some evidence which has relevance to the charge levelled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground.

5. Reliance was placed, as earlier stated, on the



non-compliance with the departmental instruction that statements of passengers should be recorded by inspectors. These are instructions of prudence, not rules that bind or vitiate in the violation. In this case, the Inspector tried to get the statements but the passengers declined, the psychology of the latter in such circumstances being understandable, although may not be approved. We cannot hold that merely because statements of passengers were not recorded the order that followed was invalid. Likewise, the re-evaluation of the evidence on the strength of co-conductor's testimony is a matter not for the court but for the Administrative Tribunal. In conclusion, we do not think the courts below were right in overturning the finding of the domestic tribunal." (Emphasis supplied)

7. In Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and others (1991) 2 SCC 716 the two Judge Bench of the Supreme Court held as follows:-

"37. It is thus well settled law that strict rules of the Evidence Act, and the standard of proof envisaged therein do not apply to departmental proceedings or domestic tribunal. It is open to the authorities to receive and place on record all the necessary, relevant, cogent and acceptable material facts though not proved strictly in conformity with the Evidence Act. The material must be germane and relevant to the facts in issue. In grave cases like forgery, fraud, conspiracy, misappropriation etc. seldom direct evidence would be available. Only the circumstantial evidence would furnish the proof. In our considered view inference from the evidence and circumstances must be carefully distinguished from conjectures or speculation. The mind is prone to take pleasure to adapt circumstances to one another and even in straining them a little to force them to form parts of one connected whole. There



must be evidence direct or circumstantial to deduce necessary inferences in proof of the facts in issue. There can be no inferences unless there are objective facts, direct or circumstantial from which to infer the other fact which it is sought to establish. In some cases the other facts can be inferred, as much as is practical, as if they had been actually observed. In other cases the inferences do not go beyond reasonable probability. If there are no positive proved facts, oral, documentary or circumstantial from which the inferences can be made the method of inference fails and what is left is mere speculation or conjecture. Therefore, when an inference of proof that a fact in dispute has been held established there must be some material facts or circumstances on record from which such an inference could be drawn. The standard of proof is not proof beyond reasonable doubt 'but' the preponderance of probabilities tending to draw an inference that the fact must be more probable. Standard of proof cannot be put in a strait-jacket formula. No mathematical formula could be laid on degree of proof. The probative value could be gauged from facts and circumstances in a given case. The standard of proof is the same both in civil cases and domestic enquiries."

8. In another judgment reported as Cholan Roadways Ltd. v. G. Thirugnanasambandam, (2005) 3 SCC 241, the Supreme Court held that "It is now a well-settled principle of law that the principles of the Evidence Act have no application in a domestic enquiry".

9. If the findings recorded in departmental proceedings are examined in view of the principles of law thus laid



down, we find that there has been no violation of the principles of natural justice. Not only the statement under Section 164 of Code of Criminal Procedure of Jai Prakash Singh has been taken into consideration, but also the evidence of Sub-Inspector Ram Kishore Singh, who has been examined in the departmental proceedings, has been taken into consideration. His statement is available on record as Annexure-A to the counter affidavit filed in the writ application. He has stated to the effect that during investigation one Jai Prakash Singh was arrested and on the basis of his confessional statement under Section 164 Cr. P.C. the incident was unearthed.

10. On the basis of evidence led, the enquiry officer gave his report, which has been attached as Annexure-B to the counter affidavit filed in the writ application. The order passed by the disciplinary authority shows that Guard Register was not produced by the appellant. At the time of occurrence, apart from the appellant, there was one Havildar Rup Lal Lohar and one constable Binod Kumar Singh. Both of them were injured and were sent for treatment. Therefore, the appellant was the only guard who was in possession of Guard Register which he should have produced in the disciplinary proceedings. Since the Guard Register was not produced by him, adverse inference was drawn against him.

11. In view of the said fact, we find that the confession



of a person, who was part of the group of attackers, is a relevant piece of material on the basis of which action could be taken against the appellant. Still further, the Guard Register, to find out who were the persons on duty, was not produced by the appellant. The appellant was the only guard available after the Havildar and the Constable got injured and taken to hospital. The appellant was in Station and was expected to protect the Government property and his fellow colleagues, who got injured in the occurrence, but the appellant did nothing which justifies the action taken against him by the authorities.

12. The argument that the punishment has been proposed in the second show cause notice as it will amount to a decision before grant of opportunity again is not tenable. The judgment in *ORYX Fisheries Private Limited case* (supra) deals with the show cause notice before imposing punishment. It was an administrative action which was proposed. The Court held that the order should contain reasons. The said judgment has no application to the facts of the present case even remotely.

13. The Hon'ble Supreme Court in *Haryana Financial Corporation and another Versus Kailash Chandra Ahuja* (2008) 9 SCC 31 was considering the case where in the show cause notice itself, the punishment was proposed as to why the delinquent



should not be dismissed. Considering the argument that such action violates the principles of natural justice, it has been held that non-supply of the report of inquiry officer would not *ipso facto* result in proceedings being declared null and void and order of punishment as *nonest* and ineffective. The Court held in paragraph 21 which read thus:

“21. From the ratio laid down in B. Karunakar (1993) 4 SCC 727, it is explicitly clear that the doctrine of natural justice requires supply of a copy of the Inquiry Officer's report to the delinquent if such Inquiry Officer is other than the Disciplinary Authority. It is also clear that non-supply of report of Inquiry Officer is in the breach of natural justice. But it is equally clear that failure to supply a report of Inquiry Officer to the delinquent employee would not ipso facto result in proceedings being declared null and void and order of punishment non est and ineffective. It is for the delinquent-employee to plead and prove that non-supply of such report had caused prejudice and resulted in miscarriage of justice. If he is unable to satisfy the Court on that point, the order of punishment cannot automatically be set aside.”

14. Still further, punishment mentioned in the show cause notice is proposed punishment. It is with a view to give an opportunity to the delinquent to respond to the proposed punishment and to point out any mitigating circumstance. It cannot be said that proposing punishment in the show cause notice violates any principles of natural justice.

15. In view of the above, we do not find any error in the order passed by the learned Single Bench of this Court which

may warrant interference in the present Letters Patent Appeal.

16. The Letters Patent Appeal thus stands dismissed.

(Hemant Gupta, J)

(Navaniti Prasad Singh, J)

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