

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1386 of 2012
Arising out of
Civil Writ Jurisdiction Case No. 9985 of 2003**

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Vijoy Prakash, S/O Late Bhanu Prakash, Retired Assistant, New India Assurance
Company Ltd., Division II, Dak Bungalow Road, Patna

.... Appellant/s

Versus

1. The New India Assurance Co. Ltd. Head Office-87, Mahatma Gandhi Road,
Mumbai Through Its Chairman-Cum-Managing Director
2. The Chairman-Cum-Managing Director New India Assurance Co. Ltd., 87,
Mahatma Gandhi Road, Mumbai
3. The General Manager New India Assurance Co. Ltd., 87, Mahatma Gandhi
Road, Mumbai
4. The Regional Manager New India Assurance Co. Ltd., B.S.F.C. Building,
Fraser Road, Patna-1
5. The Senior Divisional Manager, Divisional Office I Jawahar Lal Nehru Road,
Red Cross Bhawan, 3rd Floor, North Gandhi Maidan, Patna
6. The Divisional Manager, New Indian Assurance Co. Ltd. Divisional Office No.
Ii, Govind Bhawan, 2nd Floor, 122, New Dak Bungalow Road, Patna-800001
7. The Superintendent Of Police Central Bureau of Investigation, S. K. Singh
Path, Bailey Road, Patna-1

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. S.K.Agrawal, Advocate.
Mr. Shanti Pratap, Advocate.

For the Resp. Nos.1-6 : Mr. Durgesh Kumar Singh, Advocate.

For the Resp. : Mr. Bipin Kumar Sinha, Advocate.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 08-09-2016

Heard learned counsel for the parties.

2. The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench of this Court on 16th July, 2009 whereby an order passed by the Disciplinary Authority on 12th May, 1999, the Appellate Authority on 16th November, 1999 and the revisional order passed by the Chairman-cum-Managing Director on 29th May, 2003 imposing punishment of reduction of basic pay scale by three stages remained unsuccessful.

3. A complaint was filed by one Chansi Rai before the Central Bureau of Investigation (hereinafter referred to as the 'CBI') against the appellant, who was then working as an Assistant, complaining that the appellant was asking for illegal gratification for securing job of his younger brother. A trap was led in which Rs. 1000/- was found in possession of the appellant. A case was registered and investigated by the CBI, but, subsequently, the CBI recommended initiation of departmental proceedings against the appellant. The departmental proceedings were initiated in terms of General Insurance (Conduct, Discipline and Appeal) Rules, 1975. In departmental proceedings, two witnesses of recovery of Rs. 1000/-, namely, Sanjay Kumar and R.K.Verma, were examined. On the basis of proof of recovery of Rs. 1000/-, the disciplinary authority imposed punishment of reduction of his basic pay scale by three stages. Such

order was affirmed by the appellate authority and the revisional authority.

4. Learned counsel for the appellant submits that since the criminal proceedings having been initiated, therefore, the departmental proceeding cannot be maintained.

5. Such argument was not accepted in the light of the Supreme Court judgment in the case of T.N.C.S. Corporation Limited & Ors. vs. K. Meerabai, (2006) 2 SCC 255 and that of P.S.Rajya v. State of Bihar, (1999) 9 SCC 1. Learned Single Bench returned the following finding:

“In my view, this proposition in the case of Captain M.Paul Anthony (supra), as relied by the petitioner, works against the petitioner himself and the petitioner cannot take benefit of the said decision which is totally distinguishable on the facts. In the case before the Apex Court after a full-fledged trial the delinquent was given an honourable exit, which is not the present case.

Now, I may refer to the decision in the case of T.N.C.S. Corporation Limited (supra), as relied by the respondents. Here their Lordships have clearly again held that the scope of disciplinary proceedings and the scope of criminal proceedings in a Court of criminal law are quite distinct, exclusive and independent of each other. Moreover, the standards of proof required in a criminal proceeding and the departmental disciplinary actions are not the same. In that case the High Court had held that in case of acquittal of the delinquent by criminal Court, the departmental enquiry must fail. This was not accepted by the Apex Court on the said principle.

Thus seen, in the facts of the present case, the petitioner not having been sent up for trial in criminal case by the C.B.I. is no ground to hold the departmental proceeding to be non est.”

6. Aggrieved against the said judgment, the appellant filed an appeal bearing L.P.A.No. 1139 of 2009, which was withdrawn on 12.01.2011. The order reads as under:

“After some argument learned counsel for the appellant seeks permission to withdraw this appeal in order to enable the appellant-writ petitioner to file a review application.

This appeal is accordingly permitted to be withdrawn with the aforementioned liberty.”

7. It is thereafter review petition was filed, which stands dismissed on 04.07.2012. The order reads as under:

“This civil review application is directed against the judgment and order passed by this Court on 16.07.2009 in CWJC No 9985 of 2003. The writ petition was argued by Shri Shyama Prasad Mukherjee, learned Senior Advocate at length. Considering various aspects of the matter, as were argued, the writ petition was dismissed. The writ petitioner then went in appeal before Division Bench in LPA No 1139 of 2009 but, after some argument, it was withdrawn with liberty to file review application. Now it is urged that there were some other issues which have not been decided by this Court. Unfortunately, in writ proceedings, there is no second inning. What was argued was decided, what was not argued could not be decided or was not required to be decided. What the review petitioner now wants is a

rehearing of the writ petition which is impermissible.”

8. Learned counsel for the respondents has raised a preliminary objection that appeal against the impugned order is not maintainable as the L.P.A.No. 1139 of 2009 preferred against the said judgment stands withdrawn. It is argued that only the order passed in Civil Review can be challenged in the subsequent Letters Patent Appeal, but not the order against which the appeal was withdrawn.

9. We find merit in the argument raised. The appellant has withdrawn appeal against the order dated 16th July, 2009. Therefore, the appellant could not dispute the same order in subsequent Letters Patent Appeal, i.e., present one. However, with the assistance of the learned counsel for the parties, we have examined the issue on merits as well. The entire argument of the appellant is that Chansi Rai has not been examined by the Department in the departmental proceeding. Therefore, the Department cannot be said to have proved the misconduct against the appellant. However, we do not find any merit in the said argument, as the Department has examined R.K.Verma and Sanjay Kumar, as the witnesses of recovery. In the departmental proceedings, the rule of evidence is rule of probabilities and not of proof, as is required before the criminal court. Such issue has been examined by the Supreme Court in the case of State of Haryana v. Rattan Singh, (1977) 2 SCC 491, wherein it has been held 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. In the said case, the ticket money was collected from the passengers but the passengers were not examined in the departmental proceedings. The Court held that mere fact that the passengers have not been examined will not lead to any inference that the charges are not proved.

10. Similar issue has been examined by this Court in L.P.A.No. 1620 of 2012 (Haridwar Tiwari vs. The State of Bihar & Ors.) on 1st March 2016, wherein reference was also made to the Supreme Court's judgment in the cases of Union of India v. T.R.Varma, AIR 1957 SC 882; Maharashtra State Board of Secondary and Higher Secondary Education vs K.S. Gandhi and others, (1991) 2 SCC 716 and Cholan Roadways Ltd. V. G. Thirugnanasambandam, (2005) 3 SCC 241, to hold that the principles of Evidence Act have no application in a domestic enquiry.

11. Keeping in view the aforesaid judgments and the fact that the Department has examined Sanjay Kumar and R.K.Verma, as the witnesses, in support of the allegations levelled against the appellant, we do not find any error in the order passed by the learned

Single Bench. Consequently, the present Letters Patent Appeal is dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Sujit/-

AFR/NAFR	NAFR
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