

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.13583 of 2008**

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Jawahar Prasad Yadav, son of Late Sri Sukul Prasad Yadav, resident of village-  
Bharrahi, P.S. Saharsa Town, District-Saharsa

.... .... Petitioner/s

Versus

1. The State of Bihar
2. Director General of Police, Police Head Quarter, Secretariat, Patna
3. Zonal Inspector General of Police, Darbhanga Range, Darbhanga
4. Deputy Inspector General of Police, Purnea Range, Purnea
5. The Superintendent of Police, Kishanganj

.... .... Respondent/s

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**Appearance:**

For the Petitioner/s : Mr. Md. ANIS AKHTAR

Mr. Arif Siddiqui

For the State : Mr. Jitendra Kumar, A.C. to AAG-14

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**CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN**

**ORAL JUDGMENT**

**Date: 21-11-2016**

Heard Mr. Md. Anis Akhtar, learned counsel for the  
petitioner and Mr. Jitendra Kumar, learned Assisting Counsel to  
AAG-14 for the State.

The petitioner has been dismissed from service vide Memo  
No. 860 dated 01.8.2006 impugned at Annexure-7 and which order  
of dismissal has been affirmed by the appellate authority by order  
passed on 21.8.2008, a copy of which order is placed on record by the  
respondents vide Annexure-A to the counter affidavit filed.

With the consent of the parties the writ petition has been  
heard with a view to final disposal at the stage of admission itself.

Fact of the case briefly stated is that the petitioner holding  
the post of a Constable in the State Police Force was charged with



theft of a portable television from a house of one Mehrunisha @ Pagli. The allegation is that while the accused including the petitioner were trying to hide the television in a temple that the priest got suspicious and informed the local villagers and whereupon the local police arrived, a police case was registered giving rise to Kishanganj P.S. Case No. 124 of 2002 for offence punishable under section 379 and 411 of the Indian Penal Code. A departmental proceeding was also held alongside, the enquiry report of which is placed on record holding the petitioner guilty. A show cause was asked from the petitioner vide Annexure-5 which was duly replied by the petitioner vide Annexure-6. The disciplinary authority not being satisfied has passed the order of penalty on 01.8.2006 impugned at Annexure-7 which has been affirmed by the appellate authority vide order passed on 22.8.2008 annexed at Annexure-A to the counter affidavit and the petitioner feeling aggrieved is before this Court.

A rather brief argument has been advanced by Mr. Anis Akhtar, learned counsel for the petitioner to question the order of dismissal. He refers to the judgment and order of the appellate court present at Annexure-9 to the writ petition to submit that the petitioner was acquitted from the charges in the criminal case in absence of any evidence supporting the charges. He submits that although the petitioner was charged with having committed theft of a television



belonging to one Mehrunisha @ Pagli but neither the owner of the television namely Mehrunisha @ Pagli was examined as a witness nor the item of theft was produced before the trial court. He thus submits that since the foundation for the criminal case as well as the departmental proceeding was resting on identical charge and identical evidence, the very acquittal of the petitioner from the criminal case by itself is sufficient to invalidate the dismissal order. The orders impugned have also been questioned by Mr. Akhtar on grounds of violation of principles of natural justice inasmuch as according to learned counsel, the petitioner was denied sufficient opportunity to defend himself. It is also the argument of Mr. Akhtar that although a departmental proceeding was held alongside but no charge memo was served on the petitioner and the proceeding entirely rested on the allegation made in the FIR and the evidence which formed part of the criminal case. Learned counsel in reference to a Bench decision of this Court reported in **2010(2) PLJR 20 (Rakesh Kumar Sinha vs. State)** paragraph-9 to 13, submitted that in view of the undisputed circumstances that the foundation for the two proceedings were same, the acquittal in the criminal case is enough to set aside the dismissal order. Learned counsel has also referred to a judgment of the Division Bench in **Arjun Prasad Verma vs. State** reported in **2015(3) PLJR 178** and in reference to paragraph-13 he submits that the absence of

charge sheet has been held to be a serious infirmity.

The argument of Mr. Akhtar has been contested by Mr. Jitendra Kumar, learned State Counsel to submit that a mere acquittal of the petitioner in the criminal case *ipso facto* would not be sufficient for his exoneration in the departmental proceedings. He has referred to a decision of this Court reported in **2003(4) PLJR 41** and with reference to paragraph-3 of the judgment he submits that the scope of a criminal proceeding and a departmental proceeding is different and even though the prosecution in a criminal case is required to prove the case against an accused beyond a reasonable doubt, insofar as a departmental proceeding is concerned, the matter is to be tested on the preponderance of probability. According to Mr. Jitendra Kumar the very arrest of the petitioner from the temple along with the seized goods, is sufficient preponderance of probability to uphold the charges framed against the petitioner and does not require an interference.

I have heard learned counsel for the parties and I have perused the records. Since learned counsel for the petitioner had denied reasonable opportunity of hearing in the departmental proceeding and had also raised issue regarding non-service of charge sheet, that the file of the departmental proceedings has been produced by Mr. Jitendra Kumar and while the file does confirm a service of



notice on the petitioner to attend the proceeding thus negating the charge regarding denial of opportunity to participate in the proceedings as manifest from running page 48 of the file of the departmental proceedings which contains a notice dated 31.01.2003 fixing a date of hearing in the proceeding on 04.2.2003 and though the petitioner was released on bail by the said date and has also accepted the notice which is confirmed from his receipt present on the notice, the issue so raised regarding denial of opportunity, is rejected.

It is now to be seen whether the order of dismissal can be sustained in view of the judgment and order of acquittal of petitioner in the criminal case.

It is rather surprising that although a decision was taken by the respondents to hold a disciplinary proceeding into the allegations but no charge memo has been framed in the present case. Undisputedly it is only upon service of a charge memo that a disciplinary proceeding is said to have been initiated. Though there is an order of the Superintendent of Police, Kishanganj dated 27.7.2002 regarding determination of charge against the petitioner and appointment of an Enquiry Officer as manifest from the order sheet in the disciplinary proceeding but no charge memo has been framed in the disciplinary proceedings. The non-preparation of a charge memo in a proceeding would prove fatal for unless a delinquent is served



with a charge memo, he cannot be proceeded departmentally under the disciplinary rules. In absence of a charge memo, the appointment of an Enquiry Officer had no meaning for until such time that the Enquiry Officer is made aware of the subject matter of enquiry as well as the allegations together with evidence relied upon, the enquiry stood vitiated. In my opinion, the non framing of charge by the respondents in the present case has vitiated the entire proceedings for unless a charge memo is framed and served on a delinquent he cannot be expected either to participate therein or to repel the charge.

There is another aspect of the matter. Waiving of the infirmity of non service of a charge memo for a while and treating the FIR itself to be a charge memo for the disciplinary proceedings it is to be seen whether the order can yet be saved. In my opinion even this is not going to improve the situation for the respondents because the allegation which is the foundation for the police case, was put to trial and tested before the trial court, to result in the acquittal of the petitioner. The prosecution has completely failed to lead any evidence to drive home the charge against the petitioner in the criminal case and the failure is such that neither the owner of the stolen television nor the stolen item was led as an evidence. I am completely at loss to appreciate as to how in view of such extraordinary failure on the part of the prosecution to lead evidence to support the



allegation resulting in the acquittal of the petitioner in the criminal case, they can revert back to support the same in the disciplinary proceeding. A somewhat similar situation came up for consideration before the Apex Court in the case of **S. Bhaskar Reddy vs. Superintendent of Police** reported in **(2015) 2 SCC 365** where the charges against the delinquent in a criminal case and the disciplinary proceedings were the same and the delinquent had been acquitted in the criminal case. The Supreme Court while quashing the dismissal order passed in the case of the delinquent has discussed the legal position at paragraph-21 to 26 of the judgment which would be relevant for the purpose and is being quoted herein below for ready reference:

“21. It is an undisputed fact that the charges in the criminal case and the Disciplinary proceedings conducted against the appellants by the first respondent are similar. The appellants have faced the criminal trial before the Sessions Judge, Chittoor on the charge of murder and other offences of IPC and SC/ST (POA) Act. Our attention was drawn to the said judgment which is produced at Exh. P-7, to evidence the fact that the charges in both the proceedings of the criminal case and the Disciplinary proceeding are similar. From perusal of the charge sheet issued in the disciplinary proceedings and the enquiry report submitted by the Enquiry Officer and the judgment in the criminal case, it is clear that they are almost similar and one and the same. In the criminal trial, the appellants have been acquitted honourably for want of evidence on record. The trial judge has categorically recorded the finding of fact on proper appreciation and evaluation of evidence on record and held that the charges framed in the criminal case are not proved against the appellants

and therefore they have been honourably acquitted for the offences punishable under 3 (1) (x) of SC/ST (POA) Act and under Sections 307 and 302 read with Section 34 of the IPC. The law declared by this Court with regard to honourable acquittal of an accused for criminal offences means that they are acquitted for want of evidence to prove the charges.

22. The meaning of the expression "honourable acquittal" was discussed by this Court in detail in the case of Deputy Inspector General of Police & Anr. v. S. Samuthiram, the relevant paragraph from the said case reads as under: (SCCp.609, para 24)

"24. The meaning of the expression "honourable acquittal" came up for consideration before this Court in *RBI v. Bhopal Singh Panchal*. In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions "honourable acquittal", "acquitted of blame", "fully exonerated" are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression "honourably acquitted". *When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.*"

(Emphasis supplied)

After examining the principles laid down in the above said case, the same was reiterated by this Court in a recent decision in the case of Joginder Singh v. Union Territory of Chandigarh & Ors. **in Civil Appeal No. 2325 Of 2009 (decided on November 11, 2014.**

23. Further, in *Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. & Anr.* this Court has held as under: (SCC 0.695 para 34-35)

"34. There is yet another reason for discarding the



whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, "the raid conducted at the appellant's residence and recovery of incriminating articles there from". The findings recorded by the enquiry officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by police officers and panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the enquiry officer and the enquiry officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. *The same witnesses were examined in the criminal case but the Court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the "raid and recovery" at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex parte departmental proceedings to stand.*

35. Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case."

(emphasis supplied)

24. Further, in *G.M. Tank v. State of Gujarat and Ors.* this Court held as under: (SCC pp. 456 & 460-61, paras 20 & 30-31)

"20.....Likewise, the criminal proceedings were initiated against the appellant for the alleged charges punishable under the provisions of the PC Act on the same set of facts and evidence. *It was submitted that*

*the departmental proceedings and the criminal case are based on identical and similar (verbatim) set of facts and evidence. The appellant has been honourably acquitted by the competent court on the same set of facts, evidence and witness and, therefore, the dismissal order based on the same set of facts and evidence on the departmental side is liable to be set aside in the interest of justice.*

30. The judgments relied on by the learned counsel appearing for the respondents are distinguishable on facts and on law.....It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge-sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts, namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer Mr V.B. Raval and other departmental witnesses were the only witnesses examined by the enquiry officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by its judicial pronouncement with the finding that the charge has not been proved. *It is also to be noticed that the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.*

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 [pic]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."

(emphasis supplied)

25. The High Court has not considered and examined this legal aspect of the matter while setting aside the impugned judgment and order of the Tribunal. The Tribunal has also not considered the same. We have examined this important factual and legal aspect of the case which was brought to our notice in these proceedings and we hold that both the High Court and Tribunal have erred in not considering this important undisputed fact regarding honourable acquittal of the appellants on the charges in the criminal case which are similar in the disciplinary proceedings.

26. We have answered the alternative legal contention urged on behalf of the appellants by accepting the judgment and order of the Sessions Judge, in which case they have been acquitted honourably from the charges which are more or less similar to the charges levelled against the appellants in the Disciplinary proceedings by applying the decisions of this Court referred to supra. Therefore, we have to set aside the orders of dismissal passed against the appellants by accepting the alternative legal plea as urged above having regard to the facts and circumstances of the case."

There is no dispute on the factual position that no independent charge memo was framed in the disciplinary proceedings. In the uncontested circumstances thus where the disciplinary



proceeding in the present case, is not founded on a separate charge memo rather it is the charge leveled against the petitioner in the police case which is the foundation for the disciplinary proceeding, its outcome becomes completely dependant on the outcome of the criminal proceedings and the disciplinary authority cannot take a decision independent of the outcome in the criminal case. The framing of a charge memo in a disciplinary proceeding gains importance for this reason for had a charge memo been framed in the present proceedings, it would have discussed the materials on which it was founded and which in turn may have given a reason to the disciplinary authority to take a decision independent of the criminal court judgment, in consideration of the evidence discussed therein.

Such is not the position here and in the present case except for the F.I.R., no separate charge memo exists to continue the disciplinary case and considering that the prosecution has not only failed to drive home the charges against the petitioner in the criminal case rather even failed to produce supporting evidence to confirm the charge of theft so leveled against the petitioner, in my opinion, the acquittal of the petitioner in the criminal case is by itself sufficient to hold that the order of dismissal is based on no evidence and is unsustainable in law.

For the reasons aforementioned, the order of dismissal

passed against the petitioner bearing Memo No. 860 dated 01.8.2006 impugned at Annexure-7 together with the order dated 21.8.2008 passed by the appellate authority cannot be sustained and are accordingly quashed and set aside.

The writ petitioner is reinstated in service with 50 per cent back wages.

The writ petition is allowed.

Let the file of the departmental proceedings so produced by Mr. Jitendra Kumar be returned to him.

S.Sb/-

**(Jyoti Saran, J)**

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