

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.482 of 2017

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Ranvir Kumar, Son of Shri Chuheswar Prasad Yadav, Resident of Village-Naulakha, P.S.-Kasimbazar, District-Munger.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Home (Special) Department, Government of Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Inspector General of Police, Patna Region, Patna.
4. The Deputy Inspector General of Police, Central Region, Patna.
5. The Senior Superintendent of Police, Patna.
6. The Deputy Superintendent of Police, Patna.
7. The Police Inspector, Police Station, Agamkuan, District- Patna.
8. The Sr. Major Traffic -cum- Conducting Officer, Patna, District-Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Amit Shrivastava, Advocate
Mr. Sanjeev Nikesh, Advocate

For the Respondent/s : Mr. Saroj Kumar Sharma, AC to AAG-3

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 29-03-2017

Heard Mr. Amit Shrivastava, learned counsel appearing for the petitioner and Mr. Saroj Kumar Sharma, learned Assisting Counsel to Additional Advocate General No.3 for the State.

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

The petitioner prays for issuance of a writ in the nature of certiorari for quashing the order dated 5.12.2016 passed by the respondent Director General of Police, Bihar, Patna, whereby the memorial preferred by the petitioner against the punishment order



has been rejected thus confirming the order bearing Memo No.6032 dated 23.5.2015 of the Senior Superintendent of Police, Patna as well as the order bearing Memo No.109 dated 17.5.2016 of the Deputy Inspector General of Police, Central Range, Patna as an Appellate Authority in Departmental Proceeding No.260 of 2014, whereby the petitioner has been visited with the punishment of dismissal from service. The order of dismissal, the order passed in appeal and the order passed in the memorial are impugned at Annexures P/10, P/14 and P/16 respectively to the writ petition.

The petitioner is a Constable with the Bihar Police posted in the District Police Force at Patna and faces a rather serious charge which not only led to institution of a police case vide Annexure P/1 but alongside a disciplinary proceeding was also initiated by service of charge memo, a copy of which is placed at Annexure P/3 to the writ petition. The charge against the petitioner is of misusing his position by taking a video clip of the complainant with a disrobed woman and forcing the complainant to cough up Rs.40,000/- for deleting such video clip which, according to the complainant, was given to the petitioner.

The police complaint as well as the charge memo alleges that when the complainant Sunil Kumar went to recover a loan amount given to one Dilip Kumar that this petitioner along with two



other constables, namely, Rajiv Kumar and Ashish Razak arrived and brought one girl who was disrobed and after taking photograph with the complainant in objectional position, it is the allegation that for deleting the said photographs these constables demanded an extortion amount of Rs.40,000/- which was given to them. The incident is of 5.9.2014 and was reported on 7.9.2014 before the local Police Station giving rise to Agamkuan P.S. Case No.352 of 2014 registered on 7.9.2014 under section 384 of the Indian Penal Code.

As I have observed that besides the Police Case, alongside a charge memo was also served on the petitioner thus initiating a disciplinary proceeding. The petitioner filed his reply, a copy of which is enclosed at Annexure P/4 denying the allegation as concocted and even the demand of extortion money was denied. In the enquiry conducted by the Sergeant Major (Transport), the department relied on 4 documentary evidences and equal number of oral evidence. The complaint as well as the complainant were also examined. The enquiry report is present at Annexure P/5 and reflects that while three official witnesses merely proved certain orders issued by the office relating to the suspension of the petitioner as well as the recommendation of the Station House Officer of Agamkuan Police Station, the complainant was examined on his complaint. While the official witnesses have proved the official



documents, the complainant has also stood by his complaint. The Enquiry Officer has noted that the petitioner neither chose to lead any evidence nor cross-examined the departmental witnesses on their evidence. The Enquiry Officer in the nature of the allegation facing the petitioner and on his failure to lead evidence to demonstrate that he is victim of conspiracy, has upheld the charge to report as such by Annexure P/5. The report was submitted on 27.4.2015 and the suspension of the petitioner was revoked by office order bearing Memo No.7183 dated 26.6.2015 present at Annexure P/6. The petitioner was served with the second show cause notice by the Senior Superintendent of Police bearing Memo No.6032 dated 25.5.2015 vide Annexure P/7. The petitioner responded to the second show cause drawing the attention of the Senior Superintendent of Police that he had been acquitted in the criminal case in absence of evidence and that even in the disciplinary proceeding there is no evidence to drive home the charge. While denying the allegation as being concocted the petitioner prayed for dropping of the disciplinary proceedings vide his reply present at Annexure P/8. Not being satisfied either by the reply filed by the petitioner or the judgment of acquittal passed by the trial court, that the Senior Superintendent of Police vide his order bearing Memo No.13974 dated 3.12.2015 impugned at Annexure P/10 has passed



the order of dismissal from service. The petitioner filed statutory appeal before the Appellate Authority i.e. the Deputy Inspector General of Police, Central Range, Patna vide Annexure P/13 and the Deputy Inspector General of Police, Central Range vide order bearing Memo No.109 dated 17.5.2016 has dismissed the appeal and thus affirming the order of the Disciplinary Authority and which orders have been confirmed by the Director General of Police when the memorial preferred by the petitioner vide Annexure-15 was rejected vide order bearing MemoNo.6367 dated 5.12.2016 impugned at Annexure-16. Feeling aggrieved the petitioner is before this Court.

Mr. Amit Shrivastava, learned counsel appearing for the petitioner while reiterating the sequence of events has submitted that the finding of the Enquiry Officer as well as the conclusion drawn by the Disciplinary Authority is based on no evidence inasmuch as except for the complaint filed no other evidence was led by the department to support the complaint. Learned counsel has relied upon a Constitution Bench judgment of the Supreme Court reported in **AIR 1964 SC 364 (Union of India vs. H.C. Goel)** and in reference to the conclusion drawn by the Court at paragraphs 23 and 27 he submits that there has to be some evidence to connect a delinquent on the charge and that a mere suspicion cannot be held



sufficient for upholding any charge.

He next questions the order impugned on grounds that even while the complaint present at Annexures P/1 reflects involvement of three persons, namely, the petitioner, Rajiv Kumar and Ashish Razak and even when the charge and evidence confronting the two constables are same but while constable Rajiv Kumar has been exonerated of the charges by the Enquiry Officer as well as the Disciplinary Authority on his acquittal in the criminal case as manifest from Annexure P/9 and P/12 of the writ petition, the petitioner has been singled out in the process even when there is no separate evidence to pin down the petitioner. The argument advanced by Mr. Shrivastava, learned counsel appearing for the petitioner is that on the same set of facts and on the same evidence while the department has chosen to exonerate constable Rajiv Kumar in view of his acquittal in the criminal case and even when the petitioner has also been acquitted in the criminal case vide Annexure P/9 yet he faces dismissal.

Learned counsel in support of his argument that the Disciplinary authority can be selective in the matter of imposing punishment has relied upon a judgment of the Supreme Court reported in **AIR 2008 SC 2481(Man Singh vs. State of Haryana)** more particularly paragraphs 18 to 20 of the judgment in which on a



similar issue falling for consideration before the Supreme Court where of the two police officials facing departmental proceedings whereas one of them, namely, Head Constable Vijay Pal was exonerated of the charges in view of acquittal in the criminal case, in so far as the appellant of the case is concerned the disciplinary authority yet proceeded to impose punishment and when the Supreme Court has held that the action of the Disciplinary Authority in such cases has to be tested on the doctrine of equality and fair play and there should not be any discrimination between the same set of delinquents.

It is submitted by learned counsel for the petitioner that all the witnesses are hearsay and even when the department has failed to lead supporting evidence either in the criminal case or in the departmental proceeding yet the departmental authority has got swayed on the allegation. While admitting to the fact that an acquittal in the criminal case *ipso facto* would not come to the aid of the petitioner he submits that in the present case the petitioner has not been acquitted on benefit of doubt rather it is complete absence of evidence which has led to his acquittal, as confirmed from Annexure P/9. Learned counsel has referred to a judgment of the Supreme Court reported in **(2006) 5 SCC 446 (G.M. Tank vs. State of Gujarat)** to submit that where the departmental proceeding and



the criminal proceeding are resting on the same set of evidence, an acquittal on merits in the criminal case, would apply to the issue raised in the departmental proceeding.

The argument of Mr. Shrivastava has been contested by Mr. Sharma, learned counsel appearing for the State and who has again referred to the complaint present at Annexure P/1 and P/3 to submit that the petitioner while discharging a role of protector has become a predator in the present proceeding. He submits that while it was the duty of the petitioner to grant protection against illegal acts in the present case the petitioner himself is guilty of indulging in illegal acts and which is unpardonable. He submits that the allegation made in the complaint was tested in the departmental proceedings where the complainant stood by his complaint and the petitioner did not even choose to confront the complainant. He thus submits that in the circumstances where the complainant has reiterated the position and the petitioner has not bothered to confront him by cross-examining him, he has waived of his right to contest the charges and the petitioner cannot raise any issue before this Court.

Responding to the arguments of lack of evidence it is stated by Mr. Sharma that the scope of a departmental proceeding is entirely distinct from that of the criminal proceeding and in the



present case since there is an evidence on record charging the petitioner of indulging in activity which constitutes serious and grave misconduct, that by itself is sufficient to uphold the charge. Learned counsel has relied upon the finding of the Enquiry Officer present at Annexure P/5 to demonstrate that the complainant had stood by his complaint and that there was a recovery of Rs.10,000/- from the possession of the petitioner which supported the charge of extortion. He further submits that acquittal of the petitioner in the criminal case would not hold much value because as can be seen from the judgment, a compromise petition was filed before the criminal court, which itself would suggest that the complainant was forced into a compromise and in which event, the acquittal would not hold good rather it is the substance of the allegation which would be guiding the disciplinary proceeding. According to Mr. Sharma, there is no such strait-jacket formula that any acquittal *ipso facto* would exonerate the delinquent from his charge in the departmental proceeding rather each case has to be tested on its own merits and in so far as the case in hand is concerned, the complaint of the complainant and the recovery of Rs.10,000/- are sufficient evidence to uphold the charge. Learned counsel has relied upon a judgment of the Supreme Court reported in **(2012) 1 SCC 442 (Karnataka SRTC vs. M.G. Vittal Rao)** and placing reliance on



the opinion expressed at paragraph 24 of the judgment he submits that an acquittal of an employee in the criminal case cannot be the basis of taking away the effect of the disciplinary proceeding as held by the Supreme Court. He submits that the judgment so relied upon by Mr. Shrivastava does not have any universal application rather it is to be tested from case to case.

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

The facts stand discussed and requires no reiteration. As I have observed at the outset, the charges are rather serious but then there has to be evidence to support the charge. What I find from the records is that except for the police complaint at Annexure P/1 and the complaint filed by the complainant Sunil Kumar which was led as Exhibit-4 to the departmental proceeding, there is no other evidence connecting the charge or supporting the allegation. I am rather surprised that two important piece of evidence which could have put curtains on the case of the petitioner were neither thought important by the department nor the prosecution thought it proper to lead it as evidence. The allegation at Annexure P/1 and the charge memo at Annexure P/3 both would reflect that the petitioner has taken the photograph of the complainant by clicking mobile camera in objectionable position with a semi-clad woman. The allegation



also demonstrates that on payment of Rs.40,000/- by the complainant to the petitioner, the said photograph was deleted. Meaning thereby there was definite evidence which would confirm the charge and i.e. the photographs taken by the petitioner, of the complainant in objectionable position with a semi-clad woman. This was an important piece of evidence and even if deleted, could have been procured from the service provider but was not thought so important either by the department or the prosecution. There is no dispute on facts that any thing recorded in a mobile phone, be it in the form of message or in the form of photographs, is preserved with the service provider and can well be obtained by the prosecution but they did not think it proper or important enough to procure and use it either in the criminal proceeding or in the departmental proceeding.

The other surprising aspect of the matter is that even though there is a specific allegation against the petitioner by the complainant that he clicked the complainant through his mobile camera but the mobile phone of the petitioner was neither seized nor led as an evidence. Such is the seriousness with which the case has been handled. The result is that except for the written complaint of the complainant, there is nothing on record to connect the petitioner with the alleged charge. Meaning thereby it is the word against a word. While the complainant has stood by the complaint, the



allegation has been contested by the petitioner as being concocted and without any foundation. It is unfortunate that the Enquiry Officer as well as the Disciplinary Authority discharging quasi-judicial function have decided to go by the complainant version disregarding the contest by the petitioner as well as the judicial verdict of acquittal and the reasons have not been given.

Though it is very rightly argued by Mr. Sharma, learned counsel appearing for the State that a mere acquittal in the criminal case *ipso facto* would not exonerate a delinquent of the charges faced in the disciplinary proceeding but then there has to be reasons for such distinction. It is rightly advanced by Mr. Shrivastava that in the present case there is no separate evidence of the allegation facing the petitioner in the departmental proceeding other than what was put to consideration in the criminal case. On the contrary the callous and the casual manner in which the disciplinary proceedings have been conducted, is evident from the fact that the prosecution has failed to lead any evidence other than the complaint. Now the complaint put to test in the criminal case, has resulted in a judgment of acquittal at Annexure P/9 and even the complainant on examination, has gone hostile. The judgment of acquittal is not resting on benefit of doubt nor the acquittal is honourable rather acquittal of the petitioner in the criminal case is on merit and in



absence of evidence being led by the prosecution. Unfortunately similar is the case in so far as the disciplinary proceeding is concerned, for other than the complaint and the complainant, there is no other evidence to support the allegation forming the complaint.

As I have observed it is a case of a word against word and there is no justification for the Disciplinary Authority to have gone with the version of the complainant and to reject the contest made by the delinquent, even in absence of evidence supporting the charge that the petitioner has taken a photograph of the complainant in objectionable position with a semi-clad woman or of receiving extortion money. In fact although the Enquiry Officer has mentioned a recovery of Rs.10,000/- from the possession of the petitioner but even the said sum of Rs.10,000/- was not led as evidence in either proceedings.

In this context I think it proper to put on record the observation of the Constitution Bench in the case of **H.C. Goel** (supra) relied upon by Mr. Shrivastava more particularly paragraphs 23 and 27 thereof. In the said case the complainant was the Deputy Director and the charge against the petitioner who was an Engineer in the Central Public Works Department was that he attempted to give bribe to the Deputy Director and for which he took out some paper from his wallet which looked like 100 rupees note. It is this



piece of evidence which was relied upon in the departmental proceeding. The opinion of the Supreme Court on the issue would squarely apply to the case in hand as noted in paragraphs 23 and 27 and which runs as follows:

“23. That takes us to the merits of the respondent’s contention that the conclusion of the appellant that the third charge framed against the respondent had been proved, is based on no evidence. The learned Attorney General has stressed before us that in dealing with this question, we ought to bear in mind the fact that the appellant is acting with the determination to root out corruption, and so, if it is shown that the view taken by the appellant is a reasonably possible view this Court should not sit in appeal over that decision and seek to decide whether this Court would have taken the same view or not. This contention is no doubt absolutely sound. The only test which we can legitimately apply in dealing with this part of the respondent’s case is, is there any evidence on which a finding can be made against the respondent that charge No.3 was proved against him. In exercising its jurisdiction under Art. 226 on such a plea, the High Court cannot consider the question about the sufficiency or adequacy of evidence in support of a particular conclusion. That is a matter which is within the competence of the authority which deals with the question; but the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence illegally the impugned conclusion follows or not. Applying this test, we are inclined to hold that the respondent’s grievance is well founded, because, in our opinion, the finding which is implicit in the appellant’s order dismissing the respondent that charge number 3 is proved against



him is based on no evidence.”

“27. Now, in this state of the evidence, how can it be said that the respondent even attempted to offer a bribe to Mr. Rajagopalan? Mr. Rajagopalan makes a definite statement that the respondent did not offer him a bribe. He merely refers to the fact that the respondent took out a paper from his wallet and the said paper appeared to him like a hundred rupee note double folded. Undoubtedly, Mr. Rajagopalan suspected the respondent’s conduct, and so, made a report immediately. But the suspicion entertained by Mr. Rajagopalan cannot, in law, be treated as evidence against the respondent even though there is no doubt that Mr. Rajagopalan is a straight-forward and an honest officer. Though we fully appreciate the anxiety of the appellant to root out corruption from public service, we cannot ignore the fact that in carrying out the said purpose, mere suspicion should not be allowed to take the place of proof even in domestic enquiries. It may be that the technical rules which govern criminal trials in courts may not necessarily apply to disciplinary proceedings, but nevertheless, the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary enquiries held under the statutory rules. We have very carefully considered the evidence led in the present enquiry and borne in mind the plea made by the learned Attorney General, but we are unable to hold that on the record, there is any evidence which can sustain the finding of the appellant that charge No.3 has been proved against the respondent. It is in this connection and only incidentally that it may be relevant to add that the U.P.S.C. considered the matter twice and came to the firm decision that the main charge against the respondent had not been established.

Apart from the issue discussed another important aspect of the matter which persuades this Court in favour of the petitioner is



that while three constables were charged with alleged acts of misconduct including the petitioner and while the evidence supporting the allegation in respect of the petitioner as well as Rajeev Kumar is the same but while the Enquiry Officer as well as the Disciplinary Authority have chosen to exonerate the said Rajeev Kumar relying upon the same very opinion of the trial court which recorded the judgment of acquittal in the criminal case as manifest from Annexures P/11 and P/12 but in so far as the petitioner is concerned despite similar acquittal on merits and even in absence of any separate evidence, that they have recorded a different opinion and the reasons for such deviation, is completely absent. The observations of the Supreme Court in the case of **Man Singh** (supra) in the circumstances discussed above at paragraph 18 to 20 would squarely apply to the issue at hand because identical situation was put to consideration before the Supreme Court in the case of **Man Singh** (supra) and when it was held that the Disciplinary Authority cannot be selective in approach.

I am aware and also conscious of the fact that Article 14 of the Constitution of India cannot have a reverse application but then to hold it as such, there has to be some kind of evidence to connect the petitioner with the alleged charge which I have repeatedly observed are rather grave in nature but would remain



paper transaction in absence of any evidence supporting the allegation which is conspicuously absent in the case.

For the reasons and discussions aforementioned the writ petition is allowed and the orders of penalty impugned at Annexure P/10, P/14 and P/16 respectively are quashed and set aside. The petitioner stands reinstated with consequential benefits.

Let the records so produced by Mr. Sharma be returned to his custody.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	19-04-2017
Transmission Date	NA

