

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.166 of 2011

IN

Civil Writ Jurisdiction Case No. 4857 of 2010

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Brij Kumar Singh, Son of Late Peyar Singh, resident of Village Pasaur, PS
Charpokhari, District Bhojpur

.... Appellant/s

Versus

1. The State of Bihar
2. The Director General-cum-Commandant General, Bihar Home Guard, Bihar,
Patna
3. The Additional Commandant General, Bihar, Patna
4. The Deputy Director General, Bihar Home Guard, Bihar, Patna
5. The Commandant, Bihar Home Guard, Head Quarter, Bihar, Patna
6. The Divisional Commandant, Bihar Home Guard, Bihar, Patna
7. The District Commandant, Bihar Home Guard, West Champaran, Bettiah

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rajendra Narain, Sr. Advocate
Mr. Satyapal Singh, Advocate

For the Respondent/s : Mr. Niraj Kumar, AC to GA 10

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 14-09-2017

Seeking exception to an order dated 09.11.2010 passed
by the learned Writ Court in CWJC No. 4857 of 2010 this appeal
has been filed under Clause 10 of the Letters Patent.

Appellant was working as a Company Commander in



the Bihar Home Guard. On a First Information Report, Bettiah PS Case No. 405 of 2005 was registered against him on 14.11.2005 for offence under Sections 376/511 and 354 of the Indian Penal Code. However, while investigating the matter the police filed the charge-sheet under Section 354 IPC.

The incident which led to filing of the aforesaid F.I.R. was based on a complaint made by father of a small girl aged 4 to 5 years to the effect that on 13.11.2005 in the evening after 5 p.m. the appellant instigated his daughter to come to his rented house and thereafter committed various acts of commission and omission which amounts to the aforesaid offence. Apart from lodging the F.I.R. a departmental enquiry was conducted into the matter after issuance of a charge-sheet on 20th December, 2005 and finally by the impugned order passed on 01.01.2008, the appellant was dismissed from service. Challenging the dismissal an appeal was filed. The appeal was also dismissed on 15.05.2008 and thereafter a memorial to the Commandant General was also rejected on 17.12.2009 and challenging this action the writ petition was filed.

The learned Writ Court after considering various submissions that were made before it pertaining to violation of the principles of natural justice in conducting of the departmental enquiry, non-grant of opportunity in the departmental enquiry,



perversity in the finding of the Enquiry Officer and the question of criminal case and the departmental enquiry are going together, rejected all the contentions and, therefore, this appeal.

The learned Senior Counsel appearing for the appellant before us challenged the action of the department and the learned Writ Court on the following grounds:-

(a) The enquiry was conducted in violation to the statutory rules governing conduct of the departmental enquiry, i.e. Bihar Government Servants (Classification, Control and Appeal) Rules, 2005. The procedure contemplated in the Rules has not been followed inasmuch as after the prosecutrix was examined and cross-examined the Enquiry Officer took her inside a room and recorded her statement behind the back of the delinquent employee and his defence counsel and, therefore, there is procedural violation.

(b) No Presenting Officer was appointed as required under 2005 Rules. The Enquiry Officer himself acted as a prosecutor and, therefore, the enquiry stands vitiated. Examination of the witnesses has not been done strictly in accordance



with the requirement of the Rules and no opportunity for giving defence statement was afforded. It is also pointed out that there are certain factual errors in the order passed by the learned Writ Court inasmuch as the learned Writ Court observed that the Enquiry Officer recorded the statement of the mother of the prosecutrix which was not correct and further the case diary of the criminal case was produced before the Enquiry Officer which also according to the learned counsel for the appellant was not correct.

(c) Finally, the last ground canvassed before us was that the appellant was acquitted in the criminal case on the basis of compromise petition whereas the learned trial court has come to conclusion that the prosecution has failed to establish the charges levelled against the appellant and acquitted him.

On the grounds aforesaid, learned counsel representing the appellant submitted that the order of the learned Writ Court is unsustainable in the eye of law.

Learned counsel for the respondent-State has vehemently



opposed the aforesaid submissions and argued that all procedural formalities as required under the law was followed. Petitioner was permitted to take assistance of an Advocate in the departmental enquiry and he was ably assisted by his Advocate, namely, Shri Madan Mohan Verma and once he was assisted in the departmental enquiry by a legally trained person, ie. an Advocate, he could not complain for procedural violation. As far as the complaint made with regard to the Enquiry Officer examining the prosecutrix in a room for her cross-examination is concerned, learned counsel invites our attention to the finding in this regard and special reasons that delayed the enquiry which was considered by the learned Writ Court and argued that because of this no prejudice has been caused to the petitioner and, therefore, on this ground interference cannot be made.

We have heard learned counsel for the parties at length and considered the rival contentions. The first and foremost ground canvassed by learned counsel representing the appellant is that after the examination-in-chief of the prosecutrix girl even though she on her examination-in-chief implicated the appellant with commission of the offence but in her cross-examination she admitted that when she was playing, the ball fell on a plate from which the appellant was eating something in the evening, when she



went to take the ball the appellant scolded her, pulled her ear and thereby he tortured the girl. It was stated that on this admission of the prosecutrix no action could be taken as no misconduct is committed. However, it is seen that the appellant was represented in the departmental enquiry by an Advocate and the Advocate has elaborately in detail grilled the small child by bombarding questions and when the Enquiry Officer found her to be uncomfortable in answering certain questions, in this situation he thought it appropriate to take the child to a room and ask her actually what has happened. The learned Writ Court has taken note of this conduct of the Enquiry Officer in detail and has found that if the Enquiry Officer considering the tender age of the girl, who was overawed by cross-examination done by a lawyer, thought it appropriate to find out the correct story from the girl, has not committed any error when the story narrated by the girl is the same story, i.e. recorded in the F.I.R. lodged immediately after the incident had taken place on 14.11.2005. The story narrated by the girl is supported by the statements of other witnesses including her father on the same day. That being the peculiar position of the case, we consider that the Enquiry Officer by taking the girl into a room for her examination in order to elicit the correct story has not committed any error. The principle of evidence taken behind the



back of the accused and various other principles in this regard cannot be applied in the peculiar facts and circumstances of this case, particularly when the statement of the girl which has been recorded behind the back of the appellant finds support from the F.I.R. lodged and other material available on record. As far as the other grounds with regard to procedural violation, namely, non-appointment of Presenting Officer, non-grant of opportunity to give defence statement etc. are concerned, we have taken note of the fact that in this case the appellant was not participating in the enquiry himself, on the contrary, the Enquiry Officer had permitted him to take assistance of a legally trained person, i.e. an Advocate, to defend himself in the enquiry, and he was ably assisted by an Advocate who had cross-examined the witnesses at length in the enquiry who had participated and during the conduct of the enquiry at no stage did the Advocate to the appellant raise any grievance with regard to any procedural irregularity nor did he seek any opportunity to lead any further evidence or give any defence brief etc. That being the position in this case, we are not inclined to interfere into the matter on this ground.

As far as the acquittal of the appellant is concerned, a perusal of the order of acquittal goes to show that the appellant was acquitted because the complainant, her mother and her father, all



stated in the court that as they have no grievance with the petitioner and they did not have anything to say and it is because of this reason that the compromise was recorded. But on the contrary, in the departmental enquiry the prosecutrix and her father have given evidence which is in conformity with the F.I.R. lodged and thereafter the superior officer who had dealt with the issue who was present in the spot when a law and order situation arose also proved the arrest of the appellant. Taking note of all these factors as the departmental proceedings have proceeded, we see no reason to exonerate the appellant only because of his acquittal in the criminal case.

The learned Writ Court has gone into detail of all these aspects of the matter and relying upon the law laid down by the Supreme Court with regard to prosecution of a delinquent employee in a criminal case and in a departmental enquiry on the judgments in the case of **State of Rajasthan vs. B K Meena [(1996) 6 SCC 417]** and **M Paul Anthony vs. Bharat Gold Mines Ltd & anr. [(1999) 3 SCC 769]** has held that merely because the petitioner is acquitted in the criminal case he cannot seek benefit of the same and has rejected the writ petition.

Apart from considering the submission made before us, we find that a detailed order was passed by the learned Writ Court



meticulously analyzing all the aspects of the matter and we find no error in the same warranting reconsideration.

Accordingly, the appeal stands dismissed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

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