

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3902 of 2014

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Ram Rup Das S/O Late Khantar Das Resident Of Village- Sardho, P.S- Sabour,
District- Bhagalpur.

.... Petitioner/s

Versus

1. The State Of Bihar, Through The Principal Secretary- Cum- Home Commissioner, Home (Special) Department, Government Of Bihar, Patna
2. The Joint Secretary- Cum- Director (Administration), Home (Prison) Department, Government Of Bihar, Patna
3. The Inspector General Of Prison, Old Secretariat, Government Of Bihar, Patna.
4. The Superintendent Central Jail, Bhagalpur.
5. The Superintendent Of Central Jail, Gaya.
6. The Jail Superintendent, Shekhpura.

.... Respondent/s

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Appearance :

For the Petitioner : Mr. Ramendra Nath Mukhopadhaya, Advocate.

For the Respondents : Mr. Jitendra Kumar, AC to AAG 14

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 19-07-2017

Heard Mr. Ramendra Nath Mukhopadhaya, learned
counsel for the petitioner and Mr. Jitendra Kumar, AC to AAG 14
appearing on behalf of the State.

2. The petitioner has filed this writ petition for quashing
the order as contained in Memo No. 4552 dated 12.09.2013 issued
under the signature of Joint Secretary-cum-Director, Administration,
Home Department, Patna (Annexure-1) by which the appeal of the
petitioner has been dismissed.

3. The petitioner was posted as Warder and while he was
posted in Sheikhpura jail, on 05.07.2003 one prisoner Bhajju Mahto



@ Anjani Kumar @ Rakesh fled away. For that Sheikhpura P.S. Case No. 162 of 2003 was registered under Sections 224 and 225 and other Sections of the Indian Penal Code. The petitioner was also departmentally proceeded for committing negligence in duty. The petitioner was held guilty and he was reverted to the initial post of his appointment. The petitioner did not file any appeal against the order of his reversion to his initial post vide order dated 26.11.2004. The petitioner was put on trial in criminal case. Thereafter, the petitioner filed C.W.J.C. No. 239 of 2013 and this Court vide order dated 08.01.2013 dispose of the writ petition on the prayer of the petitioner to withdraw the same in order to enabling the petitioner to avail departmental remedy. The petitioner filed appeal and by the order as contained in Memo No. 4552 dated 12.09.2013 (Annexure-1), the appeal of the petitioner has been dismissed as devoid of any merit besides the fact that the appeal was filed after many years.

4. Shri Ramendra Nath Mukhopadhaya, learned counsel for the petitioner firstly submits that the petitioner was put on trial and the trial court vide its judgment dated 21st December, 2010 passed in Sessions Case No. 328 of 2004/ Trial No. 21 of 2010 acquitted the petitioner from the charges under Sections 224, 225 and 120B of the Indian Penal Code. The petitioner ones acquitted from the criminal charges and on the same the petitioner also departmentally proceeded,



the punishment on the ground of same and similar charges in the departmental proceeding is bad. Learned counsel for the petitioner placed his reliance on paragraph-23 of the judgment of the Supreme Court in case of **S. Bhaskar Reddy and Another vs. Superintendent of Police and Another** reported in **(2015) 2 Supreme Court Cases 365** reads as follows:

23. Further, in Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. this Court has held as under: (SCC p. 695, paras 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 therefrom’. 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.”

5. On the other hand learned counsel for the State submits that a criminal case was instituted against the petitioner under Sections 224, 225 and 120B of the Indian Penal Code. The petitioner was also departmentally proceeded and in the departmental proceeding, the petitioner was held guilty vide order dated 26.11.2004 and he was reverted to the post of his first appointment. The petitioner did not prefer any appeal for about nine years. The petitioner was acquitted in Sessions Case No. 328 of 2004/ Trial No. 21 of 2010 on 21st December, 2010. In a criminal case charges against the petitioner were quite different as he was charged, that in collusion with the prisoners he allowed him to flee away from the prison but in the departmental proceeding the petitioner was charged, that he has committed negligence in discharging his duty and the prisoner fled away and on such he was proceeded. In the departmental enquiry, he was found guilty of committing negligence in discharge of his duty on different set of evidence than that in criminal case. Yardstick of



appreciating the evidence in departmental proceeding is quite different as the findings of the departmental proceeding is based on evidence but, in the criminal case, the charge is only proved beyond all reasonable doubts. Therefore, acquittal in criminal cases that too on a different charge does not give rise to any right to the petitioner to be exonerated from the charge in departmental proceeding. Learned counsel for the State has placed his reliance on paragraph-13 of a Division Bench Judgment of this Court in case of ***Bihar State Electricity Board through its Chairman, Vidyut Bhawan, Bailey Road, Patna & Ors.*** reported in ***2014 (1) PLJR 338*** which reads as follows:

13. We have considered the respective submissions. A departmental proceeding and a criminal prosecution on the same charge is not a complete bar. The purpose and scope of the two are entirely different. The former is conducted to enforce discipline in service and the consequences are based on preponderance of probabilities. The latter is based on enforcing the Rule of Law by penalizing the offender when proof beyond reasonable doubt is necessary. Therefore, the fact that a vigilance case may be pending against the respondent on the same charge is not relevant for the present discussion. In any event that challenge has been unsuccessful in an earlier round of litigation by the respondent carried in appeal also.

6. It is admitted fact that the petitioner was found guilty of committing negligence and vide order dated 26.11.2004, the disciplinary authority reverted the petitioner to his initial post of



appointment. The petitioner did not either move before the appellate authority nor filed any writ petition and he accepted the findings recorded in the departmental proceeding. The petitioner filed writ petition C.W.J.C. No. 239 of 2013, only after nine years of the order passed in departmental proceeding. This Court vide order dated 08.01.2013 disposed of the writ petition of the petitioner as follows:

“After this Court has made it clear that the impugned order of punishment dated 26.11.2004 cannot be assailed on account of delay of more than eight years in filing of this writ application, learned counsel for the petitioner seeks permission to withdraw this application in order to enable the petitioner to avail departmental remedy.

This application is, accordingly, disposed of with the aforementioned liberty but it is made clear that the petitioner shall have no right to move this Court again for assailing the same impugned order.”

7. From perusal of the order dated 08.01.2013 passed in C.W.J.C. No. 239 of 2013, it is evident that this Court was not inclined to interfere in the order of punishment inflicted against the petitioner after departmental enquiry in the year 2004 on the ground that on the same charge the petitioner was acquitted in criminal case in the year 2010. On the same ground the petitioner moved to this Court after nine years of the order inflicting the punishment against the petitioner. The acquittal in a criminal case does not give rise to any cause of action to the petitioner after such a belated stage.



Admittedly the petitioner was departmentally proceeded on the charge of committing negligence in his duty. On account of such negligence, the prisoners fled away from the prisons but, the petitioner was put on trial in a criminal case on the charges that the petitioner in collusion with the prisoners facilitated the prisoners who fled away from the prisons. The petitioner got acquittal in a criminal case on the basis of no evidence, as the prosecution failed to produce any witness. Whereas in the departmental proceeding, the petitioner was found guilty of committing negligence in discharge of his duty. On the request of the petitioner that the petitioner shall avail the alternative remedy, the writ was permitted to be withdrawn.

8. Having considered the facts aforesaid and discussions made above, I do not find any reason to interfere in the order impugned. Accordingly, this writ petition is dismissed.

(Prabhat Kumar Jha, J)

KKSINHA/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.08.2017
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