

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10838 of 2003

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Ranjan Kumar son of Shri Radha Krishna Prasad resident of Mohalla Shivpuri Bhatta, P.S. Khajanchi Hat, Town and District Purnea.

... .. Petitioner/s

Versus

1. The Assistant General Manager Corporation Bank (Personal Administration Division) Head Office, Mangla Devi Temple Road, P.B.No. 88, Manglore-575001. (Karnataka)
2. The Chief Manager, (Personnel Administration Division) Corporation Bank Head Office, Mangla Devi Temple Road, P.B.No. 88, Manglore -575001 (Karnataka).
3. The Senior Manager, Corporation Bank, Exhibition Road, Patna (Bihar)

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Amar Nath Mishra
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 16-08-2018

The present writ petition has been filed for quashing the order dated 13.05.2002 whereby and whereunder punishment of dismissal from service has been inflicted upon the petitioner apart from a direction to recover a sum of Rs. 3,08,000/- from the petitioner herein. Consequently, the petitioner has also prayed for quashing the appellate order dated 26.11.2002.

2. The brief facts of the case are that a departmental proceeding was initiated against the petitioner and a charge-sheet dated 12.03.1999 was served on the petitioner, basically, regarding the charge of defalcation of a sum of Rs. 3,08,000/- by hatching a conspiracy and diverting the cheques of Bihar



State Food and Civil Supplies Corporation Limited into another bank account and from the said account, one Rajeev Kumar is said to have withdrawn a sum of Rs. 3.08 lakhs. The Inquiry Officer had conducted the inquiry and examined four witnesses including the said Rajeev Kumar, who is said to have withdrawn the money from the bank account. The inquiry officer by his inquiry report dated 20.12.2001 has found all the charges levelled against the petitioner to have been conclusively proved. Thereafter, a second show cause notice dated 13.02.2002 was served on the petitioner and upon considering his reply, the disciplinary authority has passed an order of punishment dated 13.05.2002, inflicting punishment of dismissal from service qua the petitioner herein and has further directed for recovery of a sum of Rs. 3.08 lakhs from the petitioner.

3. The learned counsel for the petitioner has submitted that firstly, a bare perusal of the entire inquiry report would show that no evidence whatsoever has come to conclusively show that it was the petitioner who had committed forgery resulting in withdrawal of money by the said Rajeev Kumar and merely, on the basis of hypothesis and evidence of the witnesses regarding hatching of conspiracy, the inquiry officer has proceeded to hold the charges levelled against the petitioner to have been



conclusively proved. The learned counsel for the petitioner has also referred to the deposition of the said Rajeev Kumar, who surprisingly was withheld by the prosecution, but his statement was recorded by the Regional Manager, Patna wherein he had declined to name the petitioner as the person, who had asked him to withdraw the money from the bank account. The learned counsel for the petitioner has also referred to the cross-examination of the said Rajeev Kumar, which has been annexed as Annexure-11 to the writ petition and submitted that the said Rajeev Kumar upon being asked to state as to who had engaged him for withdrawing the money, had disclosed that one Ashok Ghosh had engaged him on a monthly salary of Rs. 500/-. In fact, even the said Rajeev Kumar had nowhere, either in his deposition or in his cross-examination, named the petitioner as the person, who was instrumental in the aforesaid fraudulent transactions. It has been further submitted that for the same and similar allegation a police case was also lodged vide Gandhi Maidan P.S. No. 272 of 1997 under Sections 420, 467, 468 and 471/34 of the I.P.C. and in the trial of the said case, five witnesses were examined out of which four witnesses are same as those who have been examined in the present departmental proceeding and they have deposed in the criminal trial in similar



manner, as they have deposed in the present departmental proceeding. It is further submitted that the judgment of the trial court dated 28.02.2015 would show that the facts of the present case, the charges levelled in the present case as also the criminal proceeding and the witnesses adduced in the departmental proceeding and the criminal proceedings are same and similar and no distinction can be drawn, hence, it is submitted that since the petitioner and the said Rajeev Kumar have been acquitted by the learned trial court by a judgment dated 28.02.2015 passed in Trial No. 1785 of 2015 (arising out of Gandhi Maidan P.S. No. 242 of 1997), the petitioner herein should also be acquitted in the present disciplinary proceedings.

4. I have heard the learned counsel for the parties and I find that the present case is squarely covered by a judgment rendered by the Hon'ble Apex Court in the case of ***G.M. Tank Vs. State of Gujarat and Ors. (2006) 5 SCC 446***, paragraph Nos. 30 and 31 whereof are reproduced hereinbelow:-

“30. The judgments relied on by the learned counsel appearing for the respondents are distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a Departmental case against the appellant and the charge before the Criminal Court are one and the same. 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 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.”

5. Thus, the mandate and ratio of the judgment of the Hon'ble Apex Court is that once, the nature of criminal case lodged against the petitioner, the charges, evidence, witnesses and circumstances of the criminal case are one and the same to that of the departmental proceeding, the adverse finding recorded in the departmental proceeding against the petitioner herein cannot be permitted to stand. In the instant case also, the charges, the facts and circumstances of the case, the evidence and the witnesses both in the criminal trial, as also in the connected departmental proceeding is one and the same, hence, once the trial court has honourably acquitted the petitioner in the criminal trial, it is imperative to close the departmental proceedings and the findings recorded in the departmental proceeding cannot be allowed to stand.

6. Yet another aspect of the matter is that the main accused i.e. Rajeev Kumar who is said to be the main accused and the person responsible for withdrawing money and committing embezzlement has not only been exonerated by the learned trial court in the criminal case but has also deposed in favour of the petitioner in the connected departmental proceeding, hence, no



cogent evidence whatsoever has surfaced during the course of departmental proceeding so as to prove the charges levelled against the petitioner beyond any doubt.

7. Having regard to the facts and circumstances of the case, as also for the reasons mentioned hereinabove, the order of punishment dated 13.05.2002 is quashed. Since the order of punishment has been quashed, the appellate order is bound to fall, hence, the appellate order dated 26.11.2002 is also set aside. It is needless to state that as a result of quashing of the punishment order and the appellate order, the petitioner would be entitled to all the consequential benefits.

8. The writ petition is allowed.

(Mohit Kumar Shah, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.09.2018
Transmission Date	NA

