

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1845 of 2012

=====

Mahadeo Mahto, Son of Late Nand Lal Mahto, Resident Of Village- Sakmapul
(Mirzapur), P.S. Town District- Darbhanga

.... Appellant

Versus

The Chief Regional Manager, Bank Of India, Regional Office, Pankaj Market,
Saraiya Ganj, Muzaffarpur

.... Respondent

=====

Appearance :

For the Appellant/s : Mr. Shivendra Kishore, Sr. Advocate
Mr. Bimlendu Shekhar Thakur, Advocate
Mr. Bishwanath Choudhary, Advocate
For the Respondent/s : Dr. Binay Kumar Singh, Advocate
Mr. Amit Singh, Advocate

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 22-03-2018

Seeking exception to an order passed by the writ court on 30th of August, 2012 in CWJC No. 12615/2004, this Letters Patent Appeal has been filed. The facts in nutshell goes to show that the appellant herein was working as a Daftari in the Darbhanga Branch of Bank of India, and on the basis of a complaint submitted on 06.01.1997, by the then Branch Manager, a case bearing Laheriasarai P.S. Case No. 7/1997 was registered for the offences under Section 420, 467, 468/84, 120B, 419, 471, 475 and 379 of the Indian Penal Code with regard to allegation of fabrication and forging of a demand draft to the tune of Rs. 2 Lakhs. While investigating the F.I.R. the co-



accused disclosed the name of the petitioner, and therefore, he was also arrested on 06.01.1997, subsequently released on bail on 03.03.1997, and put to trial in Trial No. 592/2001 by the Sub-divisional Magistrate, Darbhanga and the Sub-divisional Magistrate, Darbhanga vide judgment dated 25.06.2001 held the petitioner guilty of the offence and sentenced him to three years rigorous imprisonment. However, on a criminal appeal being filed being appeal No. 42/2001 the learned Sessions Judge, Darbhanga vide judgment dated 08.07.2003 set aside the conviction and acquitted the petitioner of all the charges. Petitioner, who was under suspension, the same was revoked, he was taken back on duty and after his acquittal disciplinary proceeding was initiated against him. A charge sheet was issued and finally by the impugned order passed on 10.10.2001, Annexure – 5 to the writ petition, he was dismissed from service. His removal dated 10.10.2001 was ordered in view of the conviction passed by the trial court. Subsequently, after he was acquitted by the Sessions Judge on 08.07.2001, he filed an application requesting the disciplinary authority to recall the order of termination and the Chief Manager of the respondent Bank, vide order dated 15.12.2003, cancelled the order of termination dated 10.10.2001. The petitioner was put back under



suspension and in accordance with clause 11 and 12 of the bipartite agreement dated 10.04.2002. The disciplinary proceeding was initiated against him by order dated 15.12.2003, (Annexure -9), enquiry was ordered and after issuance of a charge memo enquiry officer submitted his enquiry report on 17.02.2004.

2. A show cause notice was issued to him on 05.03.2004, and thereafter, by the impugned order dated 23.03.2004 (Annexure-14), he was terminated from service. The said order was challenged by the petitioner by filing an appeal, and after the appeal was dismissed on 27.05.2005, the petitioner challenged the same before the writ court. Before the writ court two fold submissions were made, one, that in view of the acquittal of the petitioner in the criminal case initiation of departmental enquiry against him was unsustainable, and, second was that even if under the bipartite agreement, conduct of a departmental enquiry after the acquittal is permissible, the entire enquiry proceedings and findings recorded in the enquiry which is based on the evidence in the criminal case is unsustainable, and therefore, the finding of the enquiry officer was also challenged. In support thereof various judgments including a judgment of Hon'ble Supreme Court in the case of



Capt. M. Paul Anthony Vs. Bharat Gold Mines Limited

reported in **AIR 1999 SC 1416** was brought to the notice of the writ court.

3. The Bank refuted the aforesaid contention relied upon Rule 19.3C of the Bank Employees Service Rules and Disciplinary proceedings, and argued that the Bank has a right to proceed with the departmental enquiry even after acquittal in the criminal case as the same is permitted bipartite settlement and the Shastri award, and therefore, the principle of double jeopardy is proceeding with the departmental enquiry after acquittal in a criminal case will not apply. The learned Writ court rejected the contention of the petitioner that departmental enquiry, after acquittal in criminal case, is not permissible, held that the same is permissible it does not amount to double jeopardy, provisions of Article-15 of the Constitution are not violated and dismissed the writ petition. However, while doing so, the learned writ court did not go through the merits of the departmental enquiry conducted and the challenge made by the petitioner to the procedure followed in the departmental enquiry and the finding recorded by the enquiry officer. The learned writ court did not evaluate the finding recorded by the enquiry officer and did not consider as to whether a misconduct, as



alleged, is made out and whether the employee could be dismissed from service based on report submitted in the departmental enquiry.

4. During the course of hearing of the matter, learned senior counsel, Sri Shivendra Kishore, appearing for the employer took us through the enquiry report, the findings of the enquiry officer and argued that in the enquiry no independent evidence or witnesses were examined, the charge-sheet was produced before the inquiry officer and enquiry officer in his report, Annexure-12, available on the record of the writ petition merely based on the F.I.R. and statement of witnesses recorded under Section 161/164 Cr.P.C. at the time of investigation held the petitioner guilty of the charges. This according to learned counsel is not permissible and he places heavy reliance in the judgment rendered in the case of **Capt. M. Paul Anthony** to say that even if a departmental enquiry is to be held after acquittal in the criminal case, in the departmental enquiry independent evidence should have been laid to prove the misconduct and merely based on the evidence that came on record in the criminal case, in the departmental enquiry the petitioner could not be held guilty and punished. Therefore, the findings recorded by the enquiry officer, according to the learned senior



counsel, on this ground alone the order of termination is liable to be quashed.

5. Having heard the learned counsel for the petitioner to this extent on last date we had requested the learned counsel representing the Bank, Sri Binay Kumar Singh, to inform us as to whether any independent evidence was laid in the departmental enquiry, if so the nature of evidence laid and as to whether the finding of enquiry officer are based on any independent evidence produced in the enquiry or it was based on the charge-sheet and the evidence that formed part of the criminal proceedings in which the petitioner was acquitted.

6. In all fairness, learned counsel representing the Bank, informs us today that in the departmental enquiry no independent evidence or witnesses were examined. The entire departmental proceedings proceeded based on the charge-sheet filed in the criminal case and the evidence that was available in the criminal case.

7. Having heard learned counsel for the parties, we find that in dismissing the first ground of the petitioner with regard to the protection available to him under Article 15 of the Constitution and holding that even after acquittal in the criminal case, an employee can be proceeded with departmentally and in



this case in view of the provisions of the bipartite agreement the Bank has a right to proceed with the enquiry no error has been committed by the learned Writ Court, this is a proper and legal finding and the same is also in accordance with law and to that extent we see no error in the order passed by learned writ court.

8. However, having held so, it was incumbent and mandatory for the learned writ court to consider the second question involved in the matter, i.e., as to whether the departmental enquiry conducted was in accordance with law, meets the requirements, i.e. the principles of natural justice, whether the findings recorded by the enquiry officer was proper, is based on the material that came in the departmental enquiry and whether on such finding the impugned action could be taken.

9. We have to say with due respect to the learned writ court that learned writ court failed to discharge this mandatory procedural requirement and dismissed the writ petition without considering this aspect of the matter. That being the position, under normal circumstances, we should have remanded the matter back to the writ court for examining this position, However, in the peculiar facts and circumstances of the case, as the employee has already attained the age of



superannuation and has retired in August 2012, and further, that it is an admitted position that in the departmental enquiry no independent witnesses were examined and merely based on the evidence that came in the criminal case the employee was held guilty of misconduct, it is not necessary for us to remand the matter back to the writ court. We can very well examine the question of law based on the admitted facts and decide the issues in this appeal itself.

10. For doing so, we went through the records of the departmental enquiry, finding of the enquiry officer which is available at Annexure 12 from page 59 of the writ petition and we find from para 4 onwards of the finding of the enquiry officer that in the departmental enquiry that was held, Sri Anil Kumar Verma, the presenting officer produced various evidence before the enquiry officer and the evidence were (a) a copy of the F.I.R. lodged by the then Branch Manager, Darbhanga Bank; (b) photocopy of the so-called forged and fabricated bank document; (c) copy of the charge-sheet filed by the police in the court of Sub-Divisional Judicial Magistrate, Darbhanga (d) ordersheet and evidence sheet of the criminal proceeding of the said Judicial Magistrate, Darbhanga and the judgment of the Sub-Divisional Judicial Magistrate, Darbhanga convicting the



applicant in the session trial held. It is based on these materials which was nothing but the evidence in a criminal case that the appellant has been held guilty of the charges leveled against him. This in our considered view is not permissible. As per the law laid down by the Hon'ble Supreme Court in a catena of judgments including the judgment in the case of **Capt. M. Paul Anthony (supra), Corporation of the City of Nagpur vs. Ramchandra G. Modak** reported in AIR 1984 SC 626, AIR 1968 Patna 300, 2010 (2) SCC 772, 2013(2) PLJR 251 and 1992 (1) PLJR 304; the law is that even after acquittal in the criminal case, the employer has a right to cause an enquiry with regard to misconduct committed in discharge of the duties but the enquiry conducted by the employer should be an independent enquiry and the findings recorded in the said enquiry should be based on the evidence that are produced in the departmental enquiry. The same cannot be based on the evidence which form part of the criminal case. It may be permissible if the employee has been convicted but once the employee is acquitted on the basis of evidence in the criminal case the same evidence cannot form the basis for holding the employee guilty of the charges leveled against him.

11. In the instant case, the learned enquiry officer



has held the employee, the appellant, guilty of the charges leveled against him solely on the basis of the evidence that was laid before the Sub-Divisional Judicial Magistrate, Darbhanga in Session Trial No. 592/2001, this judgment of conviction by the learned trial court has been set aside in the judgment of the Session Court. We find from the enquiry report that even the judgment of the session court was placed before the enquiry officer by the defence counsel but the enquiry officer sat over the judgment of the session court, as if it was exercising the further appellate jurisdiction found lacuna and error in the said judgment and refused to accept it and after accepting the finding of the trial court recorded the finding of guilt in the departmental enquiry.

12. This, in our considered view, was beyond the jurisdiction and power of the learned enquiry officer for two reasons, one, the entire enquiry stands vitiated on account of the fact that it is based on the evidence that came on record in the departmental enquiry and which obtaining any independent evidence in the departmental enquiry the entire enquiry stood vitiated on account of violation of principles of natural justice, the finding of the enquiry officer being based on the evidence which was not acceptable in a departmental proceeding, and



secondly, the finding of the enquiry officer for the purpose of rejecting the acquittal ordered by the Sessions Judge is based on the illegal power exercised by him, enquiry officer who acted as an appellate authority and exercised the power available to a criminal appellate court under the Cr.P.C. Once the Sessions Judge has recorded a finding of acquittal the same was binding on the enquiry officer at least with regard to the allegations made in the criminal case and the enquiry officer, under law, had no jurisdiction to exercise any further appellate jurisdiction and hold that the finding of the sessions court was not proper and not acceptable to him. He could do so, only if independent evidence was led in the enquiry and he chose it appropriate to accept the evidence that came in the enquiry. On the contrary, acting as an appellate authority, sat over the decision of the Sessions Judge, rejected it for various reasons indicated in the enquiry report and recorded a finding of guilt on the same set of evidence as was available in the record of the criminal case, which in our considered view is wholly illegal, unsustainable and prohibited under law.

13. In view of the above, the finding of the enquiry officer has to be rejected in its totality, once the finding of the enquiry officer is rejected all subsequent actions of termination



also goes.

14. Accordingly, in view of the detailed discussion made hereinabove, we are of the considered view that now it is not necessary to remand the matter back for further consideration as on the face of it the entire departmental enquiry and the finding recorded in the departmental enquiry stands vitiated.

15. Accordingly, we allow this appeal and set aside the order of termination dated 23.03.2004 and the order of the appellate authority dated 27.05.2005 and direct that the petitioner shall be deemed to have continued in service and retired on attaining the age of superannuation in August 2012. Treating him to have continued in service and retired on attaining the age of superannuation all arrears of salary and post retiral benefits be paid now within a period of three months.

16. However, considering the fact that the departmental enquiry has been quashed by us on a technical ground of procedural violation in view of law laid down by the Hon'ble Supreme Court in the case of **Managing Director, ECIL Hyderabad & Ors, Vs. B. Karunakar & Ors. reported in (1993) 4 SCC 727**, liberty shall be available to the bank if so advised, to proceed with the enquiry in accordance with law, but



after conducting such an enquiry in case the petitioner appellant is held guilty of the charges levelled against him the punishment to be imposed shall be only one which can be imposed on an employee who has superannuated during the pendency of the departmental proceeding.

(Rajendra Menon, CJ.)

(Rajeev Ranjan Prasad, J.)

Arvind/Rajeev

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.03.2018
Transmission Date	NA

