

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15823 of 2010

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Ashok Kumar Mandal S/O Late Bhagwat Mandal R/O Vill.- Kajha, P.S.- K. Hat,
Distt.- Purnia, At Present R/O Mohalla- Sipahi Tola, Maranga Road, P.S.- K. Hat,
Distt.- Purnia

.... Petitioner/s

Versus

1. The State Of Bihar
 2. The District & Sessions Judge, Purnia
 3. The Additional District & Sessions Judge-Cum-Enquiry Officer, Purnia
 4. The Registrar, Civil Court, Purnia
- Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sunil Singh

For the Respondent/s : Mr. Piyush Lall

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

C.A.V. JUDGMENT

Date: 18-08-2018

1. The present writ petition has been filed for quashing the order dated 16.09.2008 issued by the District & Sessions Judge, Purnea whereby and whereunder, the petitioner has been held guilty of charges leveled against him and he has been inflicted with the punishment of compulsory retirement. The petitioner has further prayed for quashing of the consequential order dated 16.09.2008, whereby and whereunder the petitioner has been ordered to be compulsory retired from the service with immediate effect on invoking the suspension of the petitioner herein.

2. The brief facts of the case are that a departmental proceeding was initiated against the petitioner herein vide memo no. 443-45 dated 19.03.1996 by an order passed by the District Judge, Purnea against the petitioner herein who was working as typist in the



Civil Court, Purnea. In the charge sheet, allegation was leveled against the petitioner regarding him having committed forgery and practiced fraud on the Court by manipulating forgery and fake bail order of the Hon'ble Supreme Court of India with respect to accused persons namely Chandeshwari Mandal, Chedi Mandal, Anandi Mandal and Prabhu Mandal in Sessions trial no. 166 of 1985 and getting them unlawfully released on 19.06.1992 on the basis of said forged and fake bail order. The further allegation against the petitioner is that he had taken a sum of Rs. 50,000/- from the accused Chandeshwari Mandal to facilitate his release.

3. The Inquiry Officer had conducted the Inquiry and had submitted the Inquiry report dated 14.08.2006, holding the petitioner guilty for the allegation of committing forgery and practicing fraud on the court by manipulating a forged and fake bail order of the Hon'ble Supreme Court and getting Chandeshwari Mandal, Chedi Mandal, Anandi Mandal and Prabhu Mandal unlawfully released from the judicial custody on 19.06.1992 on the basis of forged and fake bail order and having taken a sum of Rs. 50,000/- for the said purpose from the convicted accused Chandeshwari Mandal. Thereafter, a second show cause notice was issued to the petitioner and the petitioner was told to appear for hearing before the disciplinary authority on the point of infliction of punishment on 08.05.2007. The petitioner had then appeared before the disciplinary authority on



08.05.2007 praying therein to supply a copy of the inquiry report, which was given to the petitioner on 09.05.2007. A hearing was thereafter held and the disciplinary authority had passed the final order inflicting punishment of compulsory retirement on the petitioner vide his order dated 16.09.2008.

4. The learned counsel for the petitioner has submitted that a criminal case had also been registered against the petitioner and he was taken under custody on 19.03.1996 and was released only after completion of trial on 31.07.2000 i.e. after he was acquitted in the Trial no. 1122 of 2000, hence the petitioner had already been adequately punished and he is required to be compensated by the State for being caught in jail for about four and half years without any fault on his part, thus a disciplinary proceeding is also fit to be set aside. It is further submitted that the petitioner cannot be inflicted with multiple punishments, inasmuch as he has been firstly punished being put behind bars for about four and half years without any fault of his, secondly, he has suffered the punishment of suspension and has been kept out of service and thirdly, since he has retired, he cannot be reinstated back in service. The learned counsel for the petitioner has further submitted that since the petitioner has been acquitted in the criminal case lodged against the petitioner on same and similar allegation by a judgment dated 31.07.2000 passed by the learned Chief Judicial Magistrate, Purnea in trial no. 1122 of 2000, the



petitioner should be exonerated of the charges leveled in the departmental proceeding and consequently, the punishment order dated 16.09.2008, being illegal, is fit to be set aside. The learned counsel for the petitioner has relied upon a judgment rendered by the Hon'ble Apex Court, reported in **1999(3) SCC 679 (Capt. M. Paul Antony v. Bharat Gold Mines Ltd.)**

5. *Per contra*, the learned counsel for the respondents has submitted that firstly, there is no illegality in conduct of the disciplinary proceedings as well as there is no irregularity in conduct of the same, hence the order of punishment dated 16.09.2008 does not require any interference by this Court. The learned counsel for the respondents has further submitted that acquittal in a criminal case would not operate as a bar to either drawing up of a disciplinary proceeding against the delinquent or punishing the delinquent, in case the charges against the delinquent stand proved during the course of the departmental inquiry. It is further submitted that the charges for which the petitioner was tried in criminal proceedings are different from the charges leveled against the petitioner in the disciplinary proceedings, inasmuch as the charge leveled in the criminal case against the petitioner is that he along with the other accused persons in furtherance of a conspiracy, manipulated the forged bail order and used the same in the Court resulting in release of two convicted accused from the jail in an illegal manner whereas the charge leveled



against the petitioner in the present proceeding is regarding committing forgery and practicing fraud on the Court by manipulating forged and fake bail orders of the Hon'ble Supreme Court regarding accused persons namely Chandeshwari mandal, Chhedi Mandal, Anandi Mandal and Prabhu Mandal in S.T. case no. 166 of 1985 and getting them unlawfully released on 19.06.1992 on the basis of the said forged and fake bail order and *in lieu* thereof, taking a sum of Rs. 50,000/- from the accused Chandeshwari Mandal. Thus, the submission of the learned counsel for the respondents is that while the main charge in the disciplinary proceeding is receiving bribe of Rs. 50,000/- and committing fraud on the Court by manipulating forged and fake bail orders of the Hon'ble Supreme Court, the charge in the criminal trial is conspiring and forging bail order as well as using the same in the Court for the purposes of release of the accused from the jail custody. The learned counsel for the respondents has further submitted that the evidence adduced before the trial court and that adduced before the disciplinary authority are not the same, hence the petitioner is not entitled for grant of any benefit of acquittal in the criminal trial as far as the disciplinary proceedings are concerned.

6. I have heard the learned counsel for the parties and find that there may be situations wherein, in case charges and the evidence adduced in the criminal trial and the disciplinary proceeding are one and the same, acquittal in the criminal trial could lead to exoneration



in the disciplinary proceedings, however in the present case, not only the charges are different but the evidence led by the prosecution is also different as far as the criminal trial and disciplinary proceedings are concerned. The Inquiry Officer has found the charges leveled against the petitioner to have been conclusively proved during the course of the disciplinary inquiry on the basis of the evidence of the two convicts namely Chhedi Mandal and Anandi Mandal who are in jail and have categorically stated in their evidence led before the Inquiry Officer that a sum of Rs. 50,000/- was given to the petitioner in their presence at the jail gate and thereafter, they were released from jail on the basis of the forged bail order of the Hon'ble Supreme Court of India. It must be stated here that the said two witnesses could not have been witnesses in the criminal trial since they were accused in the said criminal trial, hence admittedly the evidence adduced in the criminal trial and the oral evidence used in the disciplinary inquiry are different. As far as the third witness namely Uma Devi is concerned, she was declared hostile in the criminal trial. Thus, I find that since the charges and the set of evidence are different in the criminal trial from those in the disciplinary inquiry pertaining to the petitioner herein, the petitioner cannot derive any benefit in the present proceeding from his acquittal in the criminal trial. As far as the present case is concerned, the Inquiry Officer, on the basis of cogent evidence, has found the charges leveled against the petitioner to have



been conclusively proved, hence the order of punishment Dated 16.09.2008 passed by the District & Sessions Judge, Purnea, relying on the inquiry report dated 14.08.2006 as also giving cogent reasons for passing the order of punishment, does not suffer from any illegality or infirmity. This Court further finds that the issue raised by the learned counsel for the petitioner to the effect that the petitioner has already been suitably punished, hence the present order of punishment is not warranted, is also misplace, firstly on the ground that there is no pleadings to the said effect in the entire writ petition and secondly, the disciplinary proceedings are independent proceeding and once the charges have been proved conclusively during the course of the department inquiry, there is no scope for showing any mercy on the delinquent on the ground that he had remained incarcerated for certain period without any fault on his part. The judgment relied upon by the learned counsel for the petitioner rendered in *Capt. M. paul Antony (supra)* is also distinguishable in the facts and circumstances of the case, inasmuch as the said judgment is only an authority on the proposition of law to the effect as to whether a departmental proceeding and a proceeding in a criminal case lodged on the basis of the same set of evidence can be continued simultaneously. Nonetheless, it is equally a well settled law that departmental inquiry can continue despite acquittal of delinquent in a criminal case. Reference in this regard be had to a judgment reported



in **1992 (4) SCC 711 (Nelson Motis v. Union of India and Anr.)**. Last but not the least, it must be stated that in the connected disciplinary proceedings, there has been no irregularity or illegality and the order of punishment has been passed only after the Inquiry Officer has held the petitioner guilty, after affording full opportunity to the petitioner to defend his case and infact, the petitioner has been let-off lightly, inasmuch as he has been compulsorily retired and not dismissed from service for the proved charge of gross misconduct.

7. Having regard to the facts and circumstances of the case as also for the reasons stated hereinabove, I do not find any merit in the present petition, hence the same is dismissed.

(Mohit Kumar Shah, J)

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CAV DATE	01.08.2018
Uploading Date	18.08.2018
Transmission Date	NA

