IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1273 of 2018

In

Civil Writ Jurisdiction Case No.7506 of 2013

==========

Dhanu Hambrum Son of late Soniya Hambrum Former Driver Constable no. 358, Bmp-6 Muzaffarpur Resident of Village-P.O. Tilaka Rega, P.S. Manjha Dist.-Singhbhum Chaibasa Jharkhand.

... ... Appellant/s

Versus

1. The State Of Bihar and Ors
2. The Director General of Police, Bihar, Patna.
3. The Deputy Inspector General of Police B.H.M. Norther Division, Muzaffarpur.
4. The Commandant BMp 6, Muzaffarpur.
5. The Conducting Officer, B.M.P. 6 Muzaffarpur.

... ... Respondent/s

==========

Appearance :

For the Appellant/s : Mr. Rajendra Kumar Jain, Advocate

For the Respondent/s : Mr.

==========

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 24-01-2019

Heard learned counsel for the appellant.

The appellant was a driver in the Bihar Military Police. He was driving a vehicle that met with an accident resulting in injuries to himself as well as to his colleague constables who were riding on the said vehicle and one of them, ultimately, died as a result of that accident. A criminal case was also instituted. During the pendency of the criminal case, disciplinary proceedings were also commenced and appellant was served with a charge-sheet,

WEB COPY

the main charge being that the appellant was rashly and negligently driving the vehicle at a high speed in drunken state. The enquiry proceeded and, we find, a copy of the enquiry report on the record of the writ petition, which has been filed along with the counter affidavit of the respondents. After the conclusion of the enquiry, the punishment of dismissal was awarded to the appellant against which he filed an appeal that was also dismissed giving rise to the writ petition that has also been dismissed by the learned Single Judge.

It appears that during the pendency of the writ petition, the appellant was acquitted by the Trial Court vide a judgement and order dated 01.09.2017. A copy of the judgement of the Trial Court has been brought on record through a supplementary affidavit.

It is in this background that the learned counsel for the appellant contends that, firstly, once the disciplinary proceedings were initiated on the same set of charges of rash and negligent driving in a drunken state as was involved in the criminal case, the appellant having been acquitted, the order of dismissal ought to have been set aside by the learned Single Judge. It is urged that, as a matter of fact, the disciplinary proceedings ought not to

WEB COPY

have proceeded with and should have awaited the outcome of the criminal trial.

The second ground taken is that the procedure adopted during the enquiry was vitiated and in paragraph VI of the writ petition, it has been categorically stated that the enquiry officer did not supply the copy of the witnesses to the appellant-petitioner as a result whereof he could not cross-examine them. The third ground taken is that the appellant having been acquitted honourably by the Trial Court in the criminal case, the law laid down by the Apex Court in the case of G.M. Tank Vs. State of Gujarat, reported in (2006) 5 SCC 446, paragraph 20 clearly comes to the aid of the appellant on the strength whereof this Court should allow the appeal as the criminal court had acquitted the appellant as there was no evidence available against him.

The fourth submission made by the learned counsel is that even assuming for the sake of argument that the charge found against the appellant had been proved, the punishment meted out to the appellant by dismissing him from services is absolutely disproportionate and, consequently, in view of the law laid down in the case of State Bank of Bikaner and Jaipur Vs. Nemi Chand Nalwaya (2011) 4 SCC 584, the appellant should be awarded a lesser punishment being a humble employee who was discharging

WEB COPY

duties with the police department. Learned counsel has invited the attention of the Court to the judgement of the Trial Court and the material on record to contend that if the acquittal of the appellant is based on no evidence, then the same should be treated to be an honourable acquittal and he should be extended the benefit of the ratio of the decision cited at the bar.

Having heard the learned counsel for the appellant, we find that the enquiry report accompanying the counter affidavit categorically records two things; the first that the appellant had been medically examined and at the time of his medical examination, the Doctor had clearly reported that the appellant was driving in a alcoholic state and the inference was that alcoholic smell was coming out from his mouth even after lapse of several hours. The second feature which appears in the enquiry report is about the deposition of two defence witnesses namely Constable 571 Nabi Alam, and Constable 721 Pramod Kumar Sharma. The witnesses of defence, namely, that of the appellant, categorically stated during their examination that the appellant had been time and again told not to drive fast, yet under the influence of alcohol, he speeded the vehicle and this statement has been relied upon by the enquiry officer to treat the charges to have been proved.

WEB COPY

Comparing this evidence, which was collected during the disciplinary proceedings, we find that the acquittal in the criminal case was brought about because the prosecution failed to adduce any evidence and, not only this, no one turned up on behalf of the prosecution to even argue the case before the trial court. This state of affairs led to the acquittal of the appellant for want of complete evidence. In this background, it will be difficult to accept the proposition that the acquittal of the appellant can be termed as an "Honourable" acquittal. The acquittal was on account of the trial having collapsed due to failure of the Government prosecution machinery to adduce evidence and, further, not getting the matter argued by the public prosecutor.

This, by itself, demonstrates that the charge against the appellant is of driving the vehicle in a drunken state, whereas the trial in the trial court ended up without there being any assistance of which no benefit can be claimed by the appellant. Since there was no evidence before the trial court, the same cannot be read so as to construe that the evidence in the disciplinary proceedings is incorrect. The two proceedings being separate and distinct, the evidence led during the disciplinary proceedings, in our opinion, did establish the charge.

WEB COPY

So far the contention on behalf of the appellant that the enquiry officer had not supplied the copies of the deposition resulted in failure of justice, we may point out that while going through the enquiry report, we find that in respect of the proceedings before the enquiry officer when the defence witness Nabi Alam, Constable 571, was being examined and he made his statement, the appellant himself was given an opportunity to cross-examine him which he wilfully did not do, as is recorded in the enquiry report. Thus, the appellant cannot say that he was prejudiced on account of any violation of principles of natural justice, inasmuch as he appears to have participated in the enquiry proceedings when the depositions were being made.

Coming to the issue of doctrine of proportionality as pressed into service, it is correct that the proposition of law as laid down in the case of State Bank of Bikaner (supra) was in the background of the facts of that case where the employee was a bank employee, and the charge against him was with regard to the transfer of certain amount from a dormant account to an operative account. It is in this background that the Court held that the order of dismissal was harsh, but, at the same time, the Supreme Court had set aside the judgement of the High Court whereby the

WEB COPY

employee had been reinstated and converted the punishment to one of compulsory retirement.

Learned counsel emphasized that the dismissal from service clearly amounts to a complete elimination of livelihood which is nothing else and can be compared with the death of services of the appellant. It is correct that dismissal brings about complete disruption of service, but, at the same time, it cannot be lost sight of that the rash and negligent driving of appellant resulted in the death of one person and injuries not to his colleagues but himself as well.

Consequently, for all the aforesaid reasons, we find no material so as to extend any such benefit on the strength of the judgement as relied on by the learned counsel for the appellant. The appeal lacks merit and is accordingly dismissed.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

K.C.Jha/Uma/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	29.01.2019
Transmission Date	N/A

WEB COPY