

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1678 of 2017

In

Civil Writ Jurisdiction Case No.3459 of 2014

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Bipin Bihari Sharma @ Bipin Sharma, son of late Karu Singh, resident of village-Kandaul, P.S.-Hulasganj, District-Jehanabad.

... .. Petitioner-Appellant

Versus

1. The State of Bihar through the Home Commissioner, Bihar, Patna.
2. The Director General and Inspector General of Police, Bihar, Old Secretariat, Patna.
3. The Deputy Inspector General of Police, Rail, Patna.
4. The Superintendent of Police, Rail, Patna.
5. the Deputy Inspector General of Police, Patna.

... .. Respondents-Respondents

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Appearance :

For the Appellant : Mr. Sanjay Kumar, Advocate

For the Respondents-State: Mr. Suman Kumar Jha, AC to AAG-3

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

and

HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 22-11-2019

The present Letters Patent Appeal has been filed by the appellant challenging the judgment dated 21.08.2017 passed by the learned single Judge in CWJC No.3459 of 2014 by which the prayer of the appellant for quashing the order dated 14.01.2013 issued under the signature of the Director General of Police, Bihar, Patna whereby the representation filed by the appellant for reinstatement in service has been rejected was dismissed.

2. The appellant, a constable in Muzaffarpur Railway Protection Force, was proceeded in a departmental



proceeding on several charges including the charges of dereliction of duty, misconduct, misbehaviour with colleague and higher officers. He was also prosecuted in a criminal case vide Muzaffarpur Rail P.S. Case No.19 of 2000 dated 01.03.2000 registered under Sections 341, 342, 323, 353, 427 and 504 of the Indian Penal Code. Having been found guilty of the charges, he was dismissed in the departmental proceeding vide order dated 21.08.2001. He filed an appeal before the Appellate Authority, which was rejected vide order dated 06.12.2001. Thereafter, he filed a memorial before Director General of Police-cum-Inspector General of Police, challenging the appellate order, which too was rejected vide order dated 27.03.2004. Being aggrieved by the rejection of his memorial, he filed a writ petition before this Court vide CWJC No.8234 of 2004, which was dismissed vide order dated 09.01.2006. He challenged the order passed in the writ petition in a Letters Patent Appeal vide LPA No.146 of 2006. A Division Bench of this Court, vide order dated 12.01.2007, dismissed the intra court appeal. The appellant challenged the order passed in the LPA No.146 of 2006 before the Supreme Court vide Special Leave to Appeal (civil) No.17538 of 2008, which was also dismissed vide order dated 12.01.2009.



3. Subsequently, in the criminal trial arising out of Muzaffarpur Rail P.S. Case No.19 of 2010, he was acquitted by the Railway Judicial Magistrate, Sonapur vide judgment dated 5th of August, 2010.

4. After the judgment of acquittal in the criminal case was passed, he filed an application on 09.09.2010 before the Director General of Police for recalling the order of dismissal on the ground that he was acquitted of the charges in the criminal case.

5. As no order was passed on the representation of the appellant, he filed a writ petition before this Court vide CWJC No.6836 of 2011 before this Court seeking quashing of various orders by which on conclusion of departmental proceeding, he was dismissed from service and his memorial was rejected.

6. The said writ petition was disposed of with a direction to the Director General of Police or the Inspector General of Police, Bihar, Patna to consider the representation of the appellant and examine his case and pass appropriate orders in accordance with law, preferably within three months.

7. Subsequently, the representation of the appellant was rejected vide order dated 16.01.2013 passed by the Director



General of Police, Bihar, Patna.

8. While rejecting the representation, the Director General of Police observed that the criminal trial ended into acquittal as only two witnesses were examined on behalf of the prosecution whereas in the disciplinary proceeding the charges had already been proved. He further observed that the charges in the departmental proceeding and the criminal proceeding were not identical.

9. Being aggrieved by the aforesaid order passed by the Director General of Police, the appellant filed writ petition vide CWJC No.3459 of 2014 wherein a prayer was made for reinstatement in service with all consequential benefits such as, back wages, promotion, etc. The said writ petition has been dismissed by the learned single Judge vide impugned judgment dated 21.08.2017.

10. Challenging the impugned judgment dated 21.08.2017 passed by the learned single Judge, Mr. Sanjay Kumar, learned counsel appearing for the appellant submitted that though all the charges in the criminal case and the departmental proceeding were exactly not identical, the main charge in both the cases was of dereliction of duty, misconduct, misbehaviour with colleagues and higher officers. He contended



that since the appellant has been acquitted in the criminal case, it was incumbent upon the respondents to have reinstated him in service with back wages. According to him, the learned single Judge failed to appreciate that after the acquittal in criminal case, the appellant ought to have been reinstated in service as the law is settled that if on the same and similar set of charges the criminal court acquits the delinquent employee then in that situation the punishment order passed in the departmental proceeding should be recalled.

11. *Per contra*, learned counsel appearing for the State submitted that there is no error in the judgment passed by the learned single Judge. He contended that admittedly charges were not identical. That apart, the considerations are different in departmental proceeding and the criminal case. The criminal case has to be decided on the basis of proof beyond reasonable doubt whereas in the departmental proceeding the conclusion regarding the guilt or innocence is taken on the basis of preponderance of probability. He contended that the learned single Judge has elaborately recorded each and every submissions raised by the appellant and giving sound reasons rejected the writ petition, which requires no interference.

12. We have heard learned counsel for the parties



and carefully perused the record.

13. We find substance in the submission of the learned counsel for the State. Admittedly, all the charges in the departmental proceeding are not identical in the criminal case. That apart, on going through the judgment passed in the criminal case, we find that out of the eight charge-sheet witnesses, only two witnesses were examined. The injured informant and other material witnesses including the investigating officer were not examined during trial. In absence of the examination of most of the relevant witnesses, learned Magistrate has acquitted the appellant in the criminal case whereas in the departmental proceeding the charges were duly proved. The challenge to the order passed by the Disciplinary Authority failed before the Appellate Authority as also before the Director General of Police in memorial. The challenge to the order passed by the Director General of Police also failed before this Court in the writ petition. The order passed by the learned single Judge was upheld by the Division Bench in the Letters Patent Appeal. The further challenge to the order passed by the Division Bench in Letters Patent Appeal also failed before the Supreme Court.

14. In the aforesaid background, the appellant



cannot plead that there was any illegality or impropriety in the departmental proceeding. The only ground on which he is advancing his argument is that though the charges in criminal case and the departmental proceeding were exactly not similar, most of the charges were identical and the appellant has already been reinstated in service.

15. The law is well settled that the criminal trial and the departmental proceeding operate in different fields. As noted above, the acquittal in the criminal case was a result of non-examination of most of the material witnesses whereas in the departmental proceeding the charges were duly proved.

16. In **Govind Das vs. State of Bihar and Ors. [(1997) 11 SCC 361]**, the Supreme Court has categorically held that an acquittal in the criminal trial would have no determinative effect. The standard of proof required in departmental inquiry was preponderance while in criminal trial guilt was to be proved beyond reasonable doubt.

17. To the similar effect is the judgment of the Supreme Court in **Senior Superintendent of Post Offices, Pathanamthitta and Ors. vs. A. Gopalan [(1997) 11 SCC 239]**.

18. In **NOIDA Entrepreneurs Association v.**



NOIDA and Ors., [(2007) 10 SCC 385], the Supreme Court held that mere acquittal in criminal case would not affect outcome of the inquiry proceeding, which is based on the evidence recorded during the domestic inquiry.

19. The relevant paragraphs 15 and 16 of the judgment are reproduced hereinunder:-

“15. The position in law relating to acquittal in a criminal case, its effect on departmental proceedings and reinstatement in service has been dealt with by this Court in *Union of India v. Bihari Lal Sidhana* [(1997) 4 SCC 385 : 1997 SCC (L&S) 1076] . It was held in para 5 as follows:

“5. It is true that the respondent was acquitted by the criminal court but acquittal does not automatically give him the right to be reinstated into the service. It would still be open to the competent authority to take decision whether the delinquent government servant can be taken into service or disciplinary action should be taken under the Central Civil Services (Classification, Control and Appeal) Rules or under the Temporary Service Rules. Admittedly, the respondent had been working as a temporary government servant before he was kept under



suspension. The termination order indicated the factum that he, by then, was under suspension. It is only a way of describing him as being under suspension when the order came to be passed but that does not constitute any stigma. Mere acquittal of government employee does not automatically entitle the government servant to reinstatement. As stated earlier, it would be open to the appropriate competent authority to take a decision whether the enquiry into the conduct is required to be done before directing reinstatement or appropriate action should be taken as per law, if otherwise, available. Since the respondent is only a temporary government servant, the power being available under Rule 5(1) of the Rules, it is always open to the competent authority to invoke the said power and terminate the services of the employee instead of conducting the enquiry or to continue in service a government servant accused of defalcation of public money. Reinstatement would be a charter for him to indulge with impunity in misappropriation of



public money.

16. The standard of proof required in departmental proceedings is not the same as required to prove a criminal charge and even if there is an acquittal in the criminal proceedings the same does not bar departmental proceedings. That being so, the order of the State Government deciding not to continue the departmental proceedings is clearly untenable and is quashed. The departmental proceedings shall continue.”

20. A three Judge Bench of the Supreme Court in

Ajit Kumar Nag v. General Manager (P), Indian Oil Corporation Ltd. [(2005) 7 SCC 764] held:-

“11. ... In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with the Rules and Regulations in force. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or



before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused “beyond reasonable doubt”, he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of “preponderance of probability”.”

21. In **Nelson Motis v. Union of India and Anr.**

[(1992) 4 SCC 711], the Supreme Court held:-

“5. ... The nature and scope of a criminal case are very different from those of a departmental disciplinary proceeding and an order of acquittal, therefore, cannot conclude the departmental proceeding.”

22. In **Divisional Controller, Karnataka State**

Road Transport Corporation v. M.G. Vittal Rao [(2012) 1 SCC 442], the Supreme Court held:-



“11. The question of considering reinstatement after decision of acquittal or discharge by a competent criminal court arises only and only if the dismissal from services was based on conviction by the criminal court in view of the provisions of Article 311(2)(b) [*sic* Article 311(2) second proviso (a)] of the Constitution of India, or analogous provisions in the statutory rules applicable in a case. In a case where enquiry has been held independently of the criminal proceedings, acquittal in a criminal court is of no help. The law is otherwise. Even if a person stood acquitted by a criminal court, domestic enquiry can be held, the reason being that the standard of proof required in a domestic enquiry and that in a criminal case are altogether different. In a criminal case, standard of proof required is beyond reasonable doubt while in a domestic enquiry it is the preponderance of probabilities that constitutes the test to be applied.”

23. In view of the ratio laid down by the Supreme Court in aforementioned cases, there can be no doubt regarding the settled proposition of law that the standard of proof in departmental proceeding and criminal trial are quite different. The acquittal of the delinquent in a criminal case cannot by itself result into reinstatement of the delinquent in



service, who has been punished in a departmental proceeding and dismissed from service.

24. In the case in hand, as admitted by the appellant himself that the charges and the evidence in both the proceedings, namely, the departmental proceeding and the criminal case were not the same. Without there being any iota of difference, we are of the opinion that the learned single Judge rightly rejected the writ petition wherein a prayer was made by the appellant for reinstatement in service on the ground of acquittal in the criminal case. As the charges were duly proved by leading cogent evidence in the departmental proceeding, the challenge to the order of dismissal at different levels had failed.

25. In view of the discussions made hereinabove, we see no merit in the present appeal. It is dismissed, accordingly.

(Ashwani Kumar Singh, J.)

(Anil Kumar Sinha, J.)

Sanjeet/-

AFR/NAFR	NAFR
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