

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7756 of 2020

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Chandan Kumar Son of Late Jawahar Prasad, resident of Vill.- Raghapur,
P.S. Bakhtiyarpur, Distt. - Patna.

... .. Petitioner

Versus

1. The State of Bihar through the Additional Chief Secretary, Home Department, Government of Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Additional Director General of Police (Law and Order), Bihar, Police, Patna.
4. The Inspector General of Police, Magadh Range, Gaya.
5. The Superintendent of Police, District - Nawada.
6. The Additional Superintendent of Police, Nawada.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar Choudhary, Adv.
: Mr. Akshansh Ankit, Adv.
For the Respondent/s : Mr. Lalit Kishore (Ag)

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

6 15-03-2021 1. Heard .

2. This writ petition has been filed against the order dated 16.03.2020 passed by the Inspector General of Police, Magadh Range, Gaya, whereby the records of the case has been remitted to the Disciplinary Authority with a direction to continue further with the departmental proceeding against the petitioner.

3. Mr. Ashok Kumar Choudhary, learned Advocate for the petitioner has submitted that while the petitioner was



posted as S.H.O. at Akbarpur Police Station, he was made accused in a case by the Vigilance Department on the charge of accepting a bribe of Rs. 90,000/-. For the aforesaid act, Vigilance P.S. Case No. 41 of 2014 dated 10.06.2014 was instituted against him for offences under Sections 7/13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. A departmental inquiry also was initiated against him in which, he was held guilty. However, another departmental inquiry was initiated under Rule -17 of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 and a fresh inquiry commenced on 09.02.2018. Finally, the Departmental Inquiry Officer prepared a report. However, before the same could be placed before the Disciplinary Authority, the petitioner approached this Court vide C.W.J.C. No. 14656 of 2014 for quashing of the charge memo on the ground that in the criminal case which was lodged against the petitioner, he has been acquitted of all charges.

4. This court vide order dated 03.09.2019 passed in C.W.J.C. No. 14656 of 2014 directed that if the petitioner seeks consideration of the Disciplinary Authority of the fact



of his acquittal in a criminal case for the same charge, he would be at liberty to bring to the notice of the Disciplinary Authority the judgment of acquittal as also a representation placing reliance on the decision of ***Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. & Ors.*** reported in ***(1999) 3 SCC 679 and G.M. Tank vs. State of Gujarat & Ors.*** reported in ***(2006) 5 SCC 446***. The Disciplinary Authority was directed to consider whether the petitioner would be entitled to any benefit on account of his acquittal.

5. It appears from the pleadings in the writ petition as also from the counter affidavit that pursuant to the aforesaid order, the records of this case was sent by the Disciplinary Authority / the Superintendent of Police, Nawada to the Regional Inspector General of Police, Magadh Range, Gaya for a decision in the matter.

6. This practice, it has been urged on behalf of the petitioner and which contention is accepted by this Court, is uncalled for.

7. What this Court had directed was that the Disciplinary Authority would take into account the factum of acquittal of the petitioner before passing any order.



8. By the time this order was passed, the inquiry had already been concluded. The observation made in C.W.J.C. No. 14656 of 2014 had to be considered by the Disciplinary Authority, namely, the Superintendent of Police, Nawada who had to take a call in the matter.

9. The law with respect to conducting a departmental inquiry simultaneously with the criminal case and the impact of an acquittal or conviction in a criminal case in a departmental inquiry is too well settled by now to be recounted in the present case.

10. However, for the sake of completeness the relevant paragraph of Capt. M. Paul Anthony (supra) is being extracted herein below:-

"The conclusions which are deducible from various decisions of this Court referred to above are :

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves



complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the Departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest."

11. In G.M. Tank (supra), the appellant who had been charged for the offence of acquisition of movable and immovable properties disproportionate to his known sources of income had been dismissed from service in the



departmental inquiry, which order of dismissal was upheld by the High Court. However, in the criminal case with respect to the same charge, the appellant had been acquitted and such order of acquittal was never subjected to any challenge which therefore became final and conclusive. It was urged by the appellant before the Supreme Court that there would be no justification for holding him guilty and sustaining his dismissal in the departmental proceeding in view of his honourable acquittal by the Trial Court, which fact was not considered by the Division Bench of the concerned High Court which was assessing the correctness of a Single Judge's order upholding the dismissal of the appellant in the departmental proceeding. In that case, the Hon'ble Supreme Court had held that if a departmental proceeding and a criminal case are based on identical and similar set of facts without there being any iota of difference, the distinction which is usually made between the departmental and criminal proceeding on the basis of approach and burden of proof would not be applicable and the decision in the case of Capt. M. Paul Anthony (supra) will apply. What is relevant is that there should not be any difference in the charge in the



departmental proceeding and the charge before the criminal court and that there should be an honourable acquittal in a criminal case for deciding whether the decision in the criminal case ought to impact the decision in the disciplinary proceeding.

12. In **Suresh Pathrella vs. Oriental Bank of Commerce; AIR 2007 Supreme Court 199**, the Hon'ble Supreme Court has restated the principle and has held that acquittal in a criminal case would be no bar for drawing up of a disciplinary proceeding against a delinquent officer, the reason being that the standard of proof in a criminal case is a proof beyond all reasonable doubt but in a departmental proceeding, preponderance of probabilities prevail.

13. Thus, the position of law is that a departmental proceeding and a criminal case can continue together but the decision in the criminal case would impact the disciplinary proceeding only if the charges are one and same in both the cases. In case there is no honourable acquittal, the discretion would be with the authorities and if in the facts and circumstances of the case, the authorities feel that notwithstanding the acquittal, departmental inquiry should



continue and be brought to a logical end, it could be done. The guiding factor would be to find out the expediency to continue with the inquiry or to bring it to a logical end independently of the result of the criminal trial. If the charges are same in both the proceedings and there is complete exoneration and honourable acquittal, that ought to be taken into account. However, this decision has to be taken on a strong and sound reasons.

14. This Court vide order dated 03.09.2019 passed in C.W.J.C. No. 14656 of 2014 had directed the Disciplinary Authority to take a decision on the representation within two weeks from the date of the order. Instead of the Disciplinary Authority taking a decision in the matter, he transmitted it to a superior authority, namely, the Inspector General of Police, Magadh Range, Gaya.

15. This was not the mandate of the order.

16. For the aforesaid reason, the order dated 16.03.2020 is set aside. The matter is remitted before the Disciplinary Authority to act in accordance with the direction passed by this Court vide order dated 03.09.2019 passed in C.W.J.C. No. 14656 of 2014.



17. The disciplinary authority is expected to pass an order positively within a period of three months from the date of receipt / production of a copy of this order.

18. The petition stands allowed to the extent indicated above.

(Ashutosh Kumar, J)

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