

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1989 of 2021

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Upendra Kumar Singh S/o of Nard Deswar Singh Resident of Village-Sedha,
P.S.-Trari, District-Bhojpur, (Arrah)

... .. Petitioner/s

Versus

1. The State of Bihar through the Home Secretary, Bihar, Patna.
2. The Director General-Cum-Inspector General of Police, Bihar, Patna.
3. The Deputy Inspector General of Police, Central Range, Patna.
4. The Superintendent of Police, Gopalganj.
5. The Samadeshtaa-Cum-Principal M.P.T.C. Dumraon.
6. The Deputy Superintendent of Police-Cum-Enquiry/Operating Officer
M.P.T.C. Dumraon.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Upendra Mishra, Advocate Mr. Bhaskar Sandilya, Advocate Mr. Sanjeeb Kr. Sanju, Advocate
For the Respondent/s	:	Mr. Md. Irshad, AC to SC-1

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

9 09-07-2024 The petitioner is a dismissed constable of police. On 15.10.2009 the petitioner was posted as a constable in P.T.C.T. Dumraon. It was his duty to impart training to the newly recruited members of the police force. On 15.10.2019, Dumraon P.S. Case No.364 of 2019 was instituted against the petitioner under Sections 341, 323, 504, 506/34 I.P.C. and Section 37(C) of the Bihar Prohibition and Excise Act, 2016. On the allegation that in course of training he abused and assaulted P.T.C. Trainee Sipahi Yogendra Nath Kumar under the influence of liquor. After having the said complaint the principal of the said training centre suspended the petitioner by Memo No.856 dated



15.10.2019. His suspension was followed by submitting a charge sheet under the relevant provision of CCA Rules, 2005. Subsequently, in course of inquiry he was found guilty, the disciplinary authority passed an order of punishment for his misconduct, dismissing him from service. He preferred an appeal before the Appellate Authority but his appeal was dismissed. Subsequently, he has challenged the administrative order of dismissal by filing the instant writ petition.

2. It is submitted by the learned advocate for the petitioner that the charge memo clearly suggests that no presenting officer on behalf of the prosecution was appointed during inquiry. The allegation against was that under influence of liquor he abused and assaulted a Trainee Sipahi. The disciplinary authority came to the finding that the petitioner was under influence of liquor while imparting training, on the basis of a report of a local medical officer that smell of Alcohol was coming from his mouth. However, his blood sample was sent to the Forensic State Science Laboratories, the forensic report suggests that there was no evidence that the petitioner consumed Alcohol on the date and time of occurrence.

3. Moreover, at the time of argument, it is submitted by the learned advocate for the petitioner that on the self same



allegation/same set of facts and same set of witnesses, a criminal case being Dumraon P.S. Case No.364 of 2019 was registered and the petitioner was acquitted from the charge under Section 37 of the Bihar Prohibition and Excise Act, 2016 on the ground that no witness on behalf of the prosecution supported the case of the prosecution. Therefore, the order of dismissal was illegally passed in violation of natural justice against the petitioner and the same is liable to be quashed and set aside.

4. In *Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Anr.* reported in (1999) 3 SCC 679, it is held by the Hon'ble Supreme Court as hereunder :-

“(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, the administration may get rid of him at the earliest.”

5. Observing as stated above, it is held by the Hon’ble Supreme Court that where criminal and departmental proceedings were based on identical set of facts and the witnesses invoke the departmental proceeding and the criminal case are same and identical, if the accused was acquitted by throwing out the whole case of the prosecution, in such situation the departmental proceedings cannot be sustained. Subsequently, in *G.M. Tank Vs. State of Gujarat & Ors.* reported in (2006) 5 SCC 446, the Hon’ble Supreme Court decided the question of sustainability of the dismissal of a



employee in departmental enquiry where he was acquitted on the same charge. It is held by the Hon'ble Supreme Court that where no evidence against the employee is produced by the prosecution and he is Honourably acquitted in criminal trial, he cannot be held guilty for misconduct on the same incident in departmental proceeding.

6. In the instant case, the departmental proceeding was initiated against the petitioner on the charge that he in violation of Section 37 of the Bihar Prohibition and Excise Act, 2016 consumed liquor. Special Case Dumraon P.S. Case No.364 of 2019 was also initiated under the same charge of illegally consuming liquor, which is prohibited in the State of Bihar. During criminal trial, not a single witness on behalf of the prosecution supported the prosecution case and the petitioner was honourably acquitted.

7. In view of such acquittal in criminal case, the order of dismissal passed by the disciplinary authority and affirmed by the appellate authority is unjust, unfair and oppressive against the petitioner.

8. The same principles has been reiterated by the Hon'ble Supreme Court in a recent decision in the case of ***Ram Lal Vs. State of Rajasthan & Ors.*** reported in ***(2024) 1 SCC***



175. Thus, this Court is of the considered opinion that in the instant case, the charges in the departmental enquiry and criminal court are identical, evidence, witnesses and circumstances are also same and this Court in exercise of judicial review finds that the Special Court acquitted the petitioner on his finding that the prosecution miserably failed to prove the charge and no witness supported its case against the petitioner.

9. Under such circumstance, this Court can interfere with the order passed by the disciplinary authority.

10. For the reasons stated above, the orders dated 25.01.2020 and 20.05.2020 passed by the Disciplinary Authority and affirmed by the Appellate Authority are quashed and set aside. The petitioner be reinstated in service and he is entitled to get all consequential benefits from the date of order of suspension.

11. The instant writ petition is thus, allowed on contest without cost.

(Bibek Chaudhuri, J)

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