

(2012) 09 JH CK 0058

Jharkhand High Court

Case No: Writ Petition (S) No. 7662 of 2011

Jai Mangal Prasad Mandal

APPELLANT

Vs

The State of Jharkhand, Director
General of Police, Deputy
Inspector General of Police,
Railway and Railway
Superintendent of Police

RESPONDENT

Date of Decision: Sept. 18, 2012

Acts Referred:

- Constitution of India, 1950 - Article 226
- Penal Code, 1860 (IPC) - Section 394, 411

Citation: (2013) 1 JLR 36

Hon'ble Judges: Alok Singh, J

Bench: Single Bench

Advocate: S.N. Pathak and Mr. Rishikesh Giri, for the Appellant; M.K. Dubey, J.C. to A.G.,
for the Respondent

Judgement

Alok Singh, J.

By invoking Article 226 of the Constitution of India, the petitioner, Ex-Constable is assailing the order of dismissal passed by the Superintendent of Police, Railways, Jamshedpur dated 24.09.2005 as well as the order dated 05.02.2011 passed by Director General of Police, Jharkhand dismissing the appeal. Petitioner was posted in the Railway Police Station, Tatanagar as Constable and was on patrolling duty in the intervening night of 1/2nd May, 2002 along with the Constables Shiv Darshan Ram and Rajiv Kumar Ranjan under the command of Hawaldar Saheb Bahadur Singh. Hawaldar Saheb Bahadur Singh had directed all the three Constables to remain with him in the same compartment of Ahmedabad Howrah Express. However, violating his command, the petitioner and another Constable, Rajiv Kumar Ranjan had boarded in the different compartment of Ahmedabad Howrah Express. Both of

them had assaulted the passengers, including a businessman, Kailash Chandra Jaina, the resident Village-Sudeshwarpur, P.S.-Basudeopur, District-Bhadrak (Orissa) and had extorted Rs. 550/- from him and Rs. 200/- from another passenger. When the train reached Kharagpur station, all the passengers of that compartment, including the businessman, Kailash Chandra Jaina, reported the matter to the Railway Police Station, Kharagpur, wherein F.I.R. No. 28 of 2002 was registered under Sections 394 /411 of the Indian Penal Code. Petitioner was duly identified by the passengers and Kailash Chandra Jaina in the Railway Police Station, Kharagpur and he was arrested by the Railway police, Kharagpur. From the pocket of the petitioner, Rs. 750/- were recovered, which he had allegedly extorted from the businessman, Kailash Chandra Jaina and other passengers. After thorough investigation, charge sheet was submitted against the petitioner in the Court of Judicial Magistrate, 1st Class, Paschim Medinipur. Petitioner was charge-sheeted in the departmental proceeding on 01.08.2002. Before the Enquiry Officer, Hawaldar Saheb Bahadur Singh stated that by flouting: his command to remain in the same compartment, the petitioner along with another Constable, Rajiv Kumar Ranjan had boarded in the another compartment and had assaulted the passengers therein and had looted Rs. 750/- from one Shri Kailash Chandra Jaina, who had reported the matter to the Railway Police Station, Kharagpur, wherein, F.I.R. No. 28 of 2002 was registered against the petitioner and Rajiv Kumar Ranjan under Sections 394 /411 of the Indian Penal Code. Inspector Vidhan Chandra Saha, Railway Police Station, Kharagpur had stated that before him all the passengers and Kailash Chandra Jaina had identified the petitioner and Rajiv Kumar Ranjan, and stated that both of them were involved in the extortion and have looted money from them.

2. Having perused the entire materials, Enquiry Officer had found the charge against the petitioner proved. Disciplinary Authority i.e. Superintendent of Police, Jamshedpur, having found the petitioner guilty, was pleased to dismiss him from the services. However, in a criminal case under Sections 394 /411 of the Indian Penal Code, the petitioner was acquitted, since the original complainant/passenger did not appear before the criminal court to support the prosecution story. Having got acquittal, the petitioner had applied for recalling the order of dismissal, which was not accepted. Thereafter, he has filed the present writ petition.

3. I have heard Dr. S.N. Pathak, learned Senior Advocate assisted by Mr. Rishikesh Giri, Advocate as well as Mr. M.K. Dubey, J.C. to A.G.

4. Dr. Pathak, learned Senior Advocate appearing for the petitioner has vehemently argued that since the petitioner has been acquitted in the criminal case, therefore, the order of dismissal should be quashed and should not be allowed to continue against the petitioner.

5. Dr. Pathak has placed reliance on the judgment of Apex Court in the case of [G.M. Tank Vs. State of Gujarat and Another](#), wherein Hon"ble Apex Court, in Paragraph Nos. 30 and 31, has observed as under:

30....In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a departmental case against the appellant and the charge before the criminal court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge-sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts, namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer Mr. V.B. Raval and other departmental witnesses were the only witnesses examined by the enquiry officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by its judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed that the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

31. In our opinion, such facts and evidence in the departmental as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed....

6. Hon"ble Apex Court in the case of [Depot Manager, Andhra Pradesh State Road Transport Corporation Vs. Mohd. Yousuf Miya, etc.,](#) has observed as under:

The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service.

7. Hon"ble Apex Court in the case of [Ajit Kumar Nag Vs. General Manager \(P.J.\), Indian Oil Corporation Ltd., Haldia and Others,](#) has held as under:

As far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. 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". Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation.

8. In the present case, charge against the petitioner, who was police Constable, was that he had violated the command of Hawaldar Subedar Bahadur Singh, to the effect that he had directed the petitioner to remain together in the same compartment, but despite his clear-cut command, he had boarded in another compartment, which amounts to gross misconduct and insubordination. This part of the charge was not in question before the criminal court, therefore, the charge and evidence in the disciplinary authority as well in the trial was altogether different. Moreover, the acquittal was for non-appearance of the material witness i.e. the complainant (businessman), however dismissal from the services is on account of insubordination as well as on account of boarding in another compartment and for extorting money from the passengers, giving bad name to the disciplined Police Force.

9. In view of clear-cut dictum of the Apex Court in the case of Depot Manager, A.P. State Road Transport Corporation (Supra) and Ajit Kumar Nag (Supra) as cited hereinabove, dismissal from the services, after the elaborate departmental proceeding, wherein, misconduct and insubordination were proved against the petitioner, should not be set aside, merely because he has been acquitted from the offence under Sections 394 /411 of the Indian Penal Code. On facts, judgment of Apex Court in the case of G.M. Tank (Supra), as cited by Dr. Pathak is distinguishable. Accordingly, the present writ petition fails and is hereby dismissed.