
(2008) 02 PAT CK 0073

Patna High Court

Case No: None

Sudhir Kumar Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision: Feb. 28, 2008

Final Decision: Dismissed

Judgement

Sudhir Kumar Katriar and Kishore K. Mandal, JJ.

This appeal in terms of Clause 10 of the Letters Patent of the Patna High Court has been preferred by the petitioner of C.W.J.c. No. 5120 of 1998 Sudhir Kumar Singh v. The State of Bihar and Ors. and is aggrieved by the judgment dated 30.9.1999, whereby the writ petition was dismissed and the various orders leading to dismissal of the petitioner from the Bihar Police Force have been upheld. We shall go by the description of the parties occurring in the writ petition.

2. The writ petitioner (the appellant herein) was a permanent Constable in the Bihar Police Force of the Bihar Government and was, at the relevant point of time, posted in the Rail Police Centre, Patna. The D.S.P., Railways, Patna, had submitted a complaint against him on 31.7.1996, wherein it was stated that he had on 30.7.1996 reached Patna junction station at 7.00 A.M. by Shramjeevi Express, He found the petitioner checking the railway ticket of a passenger on platform no. 1. On being questioned, the petitioner had kept quiet. The complainant was accompanied with two constables, namely, Bishwanath Sharma and Ram Bachan Kumar. On sensing trouble, the petitioner took to his heels. With the help of other constables present there, the petitioner was identified leading to a report to the superior authorities. This was followed by a departmental proceeding against the petitioner. Chargesheet dated 31.7.1996 was served on him. The learned enquiry officer had issued notice to the petitioner but he refused/failed to appear and also did not file his written statement, as a result of which the enquiry proceeding was held ex-parte.

3. After conclusion of the enquiry, but before submission of his report, the learned enquiry officer had issued another notice to the petitioner calling him upon to

submit his written submissions, along with copies of the statements of all the witnesses examined during the course of enquiry. The petitioner had submitted his written submissions on 7.5.1997 (Annexure-4). On a consideration of the entire materials on record including the stand taken in the written submissions (Annexure-4), the learned enquiry officer had submitted his report dated 30.6.1997 (Annexure-5), wherein he found the petitioner guilty of the charges. This was followed by a second show-cause notice dated 24.7.1997 (Annexure-6). The petitioner had shown cause on 4.8.1997 (Annexure-7), leading to the impugned order of dismissal dated 23.9.1997 (Annexure-8). The petitioner's appeal was dismissed by order dated 13.11.1997 (Annexure-11). His memorial in the nature of revision application has also been dismissed by order dated 20.4.1998 (Annexure-14).

4. While assailing the validity of the impugned action, it is submitted on behalf of the petitioner that he was never afforded any opportunity to cross-examine the witnesses of the department, particularly the complainant who had allegedly caught the petitioner red-handed and whose report has led to the departmental proceedings. He relies on the judgment reported in 1996 (1) All P.L.R. 446 Panchanand Kumar v. The Bihar State Electricity Board and Ors. He next submits that three out of the five witnesses deposed in favour of the petitioner, but their testimony has been discarded on the tenuous ground that they have been gained over by the petitioner. He next submits that the petitioner as well as Ganga Sagar Singh, a fellow constable, were together allegedly caught red-handed extorting money from passenger (s), and different departmental proceedings were initiated against both on identical charges. Whereas Ganga Sagar Singh has been let off with a minor penalty of deprivation of one increment, the petitioner has been visited with the extreme penalty of dismissal from service. He relies on a judgment of the Supreme Court reported in 1997 (1) SLR 549 J.S. Brah v. Central Warehousing Corporation. He next submits that another departmental proceeding against the petitioner, namely, Proceeding No. 33/96 pursued against the petitioner with respect to a different occurrence of identical nature, has been taken into account for the purpose of determining the quantum of punishment. In any view of the matter, in his submission, the punishment inflicted on the petitioner is disproportionate to the gravity of the charges proved against the petitioner. He lastly submits that the orders of the appellate authority and that of the memorial are products of non-application of mind.

5. Learned Counsel for the respondents submits that there was no violation of the principles of natural justice. He next submits that the deposition of the complainant read with his complaint (Annexure-1), and the deposition of Mangal Paswan, are adequate to prove the charges against the petitioner. In his submission, the depositions of the remaining three witnesses of the department are not in any manner inconsistent with the charge-sheet, or the deposition of the two witnesses. He next submits that in view of the proven charges against the petitioner coupled

with his past conduct, he pre-eminently deserves the extreme penalty of dismissal from service. He also submits in the same vein that the cases of the present petitioner and Ganga Sagar Singh stand on different footing. He next submits that, if the Court is satisfied in view of the findings recorded against the petitioner that appropriate punishment has been inflicted on the petitioner, then a mistake in awarding punishment to an allegedly similarly circumstanced person, cannot ensure to the benefit of the petitioner. A writ petition can never be maintained to extend protection to the wrongdoers. He has also taken us through paragraphs 20 and 23 of the counter affidavit in the present appeal. He relies on the following reported judgments:

- (i) [State of Mysore Vs. K. Manche Gowda](#) , [Akhilesh Kumar Singh Vs. State of Jharkhand and Others](#) ;
- (ii) [Akhilesh Kumar Singh Vs. State of Jharkhand and Others](#) .

6. We have perused the materials on record and considered the submissions of learned Counsel for the parties. In so far as the petitioner's first grievance is concerned, the learned writ court has found that, in spite of information, the petitioner did not appear before the learned enquiry officer, did not file his written statement, and did not contest it until the department had examined all the witnesses and closed its evidence. After the evidence had closed, the learned enquiry officer had issued another notice to the petitioner forwarding therewith copies of the depositions. The petitioner responded to the same by submitting his communication in the nature of written submissions dated 7.5.1997 (Annexure-4). On a consideration of the entire materials on record including Annexure-4, the learned enquiry officer submitted his report and held that the charges had been proved against the petitioner. This was followed by the communication in the nature of second show-cause notice dated 24.7.1997 (Annexure-6), calling upon the petitioner to explain as to why penalty of dismissal from service be not inflicted on him. The petitioner had shown cause to the same by his communication dated 4.8.1997 (Annexure-7), leading to the impugned order of punishment. It is thus manifest that the petitioner, in spite of full knowledge of the enquiry proceedings, had abstained from the same, did not file his written statement, and did not contest at all. He had, therefore, every opportunity to cross-examine the witnesses of the department which he denied to himself by his own conduct. Excepting making oral submissions, no material at all, let alone any contemporaneous material, has been brought to our notice to satisfy us that the petitioner wanted to cross-examine the witnesses but was declined permission by the learned enquiry officer. It is relevant to state that he had the earliest opportunity of raising this grievance in his aforesaid communication dated 7.5.1997 (Annexure-4), wherein it has not been raised at all. The contention is, therefore, completely without substance and is clearly an after-thought.

6.1 Learned Counsel for the petitioner has relied on the judgment of a learned Single Judge of this Court in Panchanand Kumar v. The Bihar State Electricity Board and Ors. (supra). I do not find the remotest connection between the propositions of law enunciated in the judgment and the facts and circumstances of the present case. That was a case where the enquiry officer had also acted as the presenting officer, as a result of which this Court held that such behaviour of the enquiry officer was not consistent with the principles of natural justice. This question does not arise at all in the facts and circumstances of the present case. The contention is rejected.

7. The second grievance raised by learned Counsel for the petitioner is in the realm of appreciation of evidence. Law is well settled that this Court in exercise of its power of judicial review does not sit as a Court of appeal in so far as departmental proceedings are concerned. The scope of scrutiny and interference is well recognised. This Court has to satisfy itself that the principles of natural justice were fully observed, the delinquent employee had been afforded a reasonable opportunity to meet the charges and defend his position, and the prescribed procedure was followed. This Court would normally be bound by the findings of facts recorded by the departmental authorities. The learned enquiry officer and the disciplinary authority have found, which have been upheld by the learned appellate authority as well as the learned revisional authority, that the charges have been held to have been proved on the basis of the materials on record. Furthermore, we are of the view that the deposition of the complainant read with his report (Annexure-1), as well as the deposition of Mangal Paswan, are sufficient to hold that the charges have been proved against the petitioner. Adequacy of materials is normally not a factor to be reckoned with in writ jurisdiction. Reference in this connection may be made to the judgment in the case of [State Bank of India and Others Vs. Ramesh Dinkar Punde](#), .

7.1 We must deal with the criticism advanced by the learned Counsel for the petitioner that the depositions of the remaining three witnesses, namely, Ram Bachan Kumar, Bishwanath Sharma, and Indrajit Mandal, have been discarded by the learned enquiry officer on the tenuous ground that those witnesses were won over by the petitioner. We do not agree with the criticism. Their depositions have been summarised in the enquiry report and we are, on a plain reading of the same, of the view that their depositions may not have fully gone whole hog to prove the charges, but they have not stated anything materially inconsistent with the charges or the deposition of the aforesaid two witnesses and the report. Therefore, even if the learned enquiry officer may have assigned a wrong reason for not relying upon the deposition, we reject the contention in view of our own reading of the depositions.

8. In so far as the petitioner's third contention is concerned, it appears to us that the petitioner as well as Ganga Sagar Singh, a fellow constable, were proceeded for similar charges. In so far as the petitioner is concerned, he was caught red-handed

on platform No. 1 of Patna Junction station. He attempted to run away but was identified followed by the complaint which led to the enquiry proceedings. The charges have been fully proved against him. Secondly, the evidence on record show that he was not posted on the railway platform but was posted in the Railway Police Lines. The petitioner was illegally checking the tickets of the passengers in plain dress in an attempt to extort money. It appears that Ganga Sagar Singh was posted on the platform itself. It is true that he had no authority to check the tickets of the passengers. Except oral submissions of the learned Counsel for the petitioner, no material has been brought to our notice to satisfy us that the proven charges against them stood on the same footing calling for parity of treatment. The petitioner was simultaneously proceeded against departmentally for identical charges in Departmental Proceeding Case No. 33/96, wherein also he has been found guilty. Furthermore, the learned Government Counsel has brought to our notice the following paragraphs of his counter affidavit in the present appeal:

1. The petitioner on previous occasion has also been caught red-handed impersonating as fake T.T.E. and checking tickets in an unauthorised manner and bringing bad name to the Railway Police due to his indiscipline and malafide practices. Some of the charges of indiscipline and malafide practices leveled against the petitioner on previous occasions are as follows:

(a) On 15.12.1989 he caught and misbehaved with an Inspector of C.I.D. on plat-form No. 2 of Patna Junction Railway Station, while he was to travel in Ranchi Patna Express. The Inspector was sitting in plain clothing in a Coach when the petitioner misbehaved with him, bluntly for which act a criminal case No. 52/89 was lodged against the petitioner under Sections 143/342/379/353/323 I.P.C. and also a Departmental Proceeding was initiated. The petitioner was found guilty in the proceeding and was awarded a black mark, which is a major punishment.

(b) On 5.10.1994 he was on leave and he was to report for duty on 13.10.1994 after availing leave. But he did not join on duty and was found moving in plain clothing on platform of Patna Junction Railway Station in a suspicious manner.

(c) On 20.10.1994 he was found checking ticket in an unauthorised manner impersonating as fake T.T.E. at 13.00 hours in Patna Tata Super Express. On being caught red-handed he admitted that he was on leave. Being on leave and still checking tickets in an unauthorised manner and impersonating as fake T.T.E. speaks of his character.

(d) Vide Patna Railway D.O. No. 1443/94 he was transferred from Patna to Rajgit. He did not join his posting in Rajgit and willfully overstayed. During over stayal, he used to harass innocent and poor passengers in the garb of fake T.T.E.

For this conduct mentioned in (b) to (d) a departmental enquiry was set-up vide Patna Rail District Proceeding No. 44/94 in the Departmental Proceeding he was found guilty and was awarded a black marks which is major punishment.

(e) In the night of 24/25.5.1998 he was found checking tickets in plain clothing at 1.50 A.M. in 8476 DN Neelanchal Express, where he was extorting money from the passengers and was misbehaving with the passengers when Assistant Sub-Inspector, Ali Imam reprimanded him for his act the petitioner misbehaved rudely with the officer. The said act of the petitioner speaks of his character and indiscipline act.

For this act a Departmental Proceeding No. 33/96 was initiated against the petitioner. The petitioner was found guilty of the charges levelled against him. The final order in this proceeding is yet to be passed as the petitioner was dismissed during the conduction of this departmental enquiry.

In the case of constable Ganga Sagar Singh perusal of his service book records shows that this was his first act of indiscipline he committed with this officer along with the petitioner. Since, it was his first act of indiscipline he was awarded a major punishment in the form of a black mark. The principle of same natural justice has also been applied with this petitioner for his first offence.

It is thus evident that the petitioner is a habitual offender and is particularly given to unauthorised ticket checking and extortion of money from railway passengers.

8.1 It is relevant to state that the contents of the extracted paragraph of the counter affidavit in this appeal has not been answered in the petitioner's rejoinder.

8.2 We must at this stage note that the duly sworn counter affidavit of respondent No. 4 is not to be found in the present appeal, although copy thereof has been served by the State Government on the petitioner and he has filed a rejoinder to the same. Learned Counsel for respondent No. 4 has provided us with a copy of his counter affidavit which has been kept on record. Learned Counsel for the petitioner has no objection to the same.

9. We must at this stage notice the provisions of Rule 826 of the Bihar Police Manual suo-motu, though the same has not been canvassed at the Bar. The same is reproduced here-in-below for the facility of quick reference:

826. Discrimination necessary in awarding punishments. The punishment awarded should be in confirmity with the gravity of offence with which the officer is charged and offences involving moral turpitude shall be carefully discriminated from smaller wrong doings. It should also be borne in mind that the previous record of service of the officer concerned, if it is not already included in the charge of the proceeding shall not be taken into account for determining the quantum of punishment.

The objective of awarding punishment is firstly to keep a record of the wrong doings of the officer and secondly as a measure of correction to alert him to improve his work and conduct. Several punishments awarded in one lot such as during inspections which do not provide an opportunity to the delinquent officer to improve himself are not likely to be helpful. In any case, the punishment cannot be

awarded without carefully considering the defence of the delinquent officer.

Before issuing orders of minor punishment, it is necessary to apprise the delinquent of the substance of the charge against him and he should be given adequate opportunity for defence. After this has been ensured, the punishment can be awarded. However, in the case of major punishments (see Rule 828) formal proceedings in P.M. Form No. 178 will have to be drawn up.

On a plain reading of the same, it appears to us that, in order that the past conduct of the delinquent employee can be taken into account, the same should form part of the charges which is not the case here. However, in view of the width of power of the extraordinary prerogative writ jurisdiction, we have taken the same into account to satisfy ourselves whether or not the petitioner has been meted out discriminatory treatment. In view of the admitted position that the petitioner is a habitual offender of the same nature and he seems to have developed specialization in this kind of illegal acts, he is unfit to continue in the police force, in order to maintain the requisite discipline and devotion to public cause, and the high level of expectation from the police. Protectors cannot become perpetrators. Even if we omit the petitioner's past conduct from consideration, we are convinced on the basis of the proven charges that the petitioner can validly be visited with the penalty of dismissal from service. We are equally convinced that no discriminatory treatment has been meted out to the petitioner. In that view of the matter, the judgment of the Supreme Court in *J.S. Brah v. Central Warehousing Corporation* (supra) is not applicable to the facts and circumstances of the present case. That was a case where the learned Single Judge of the Madhya Pradesh High Court had come to the conclusion as an issue of fact that another officer was also found guilty on similar lapses as the petitioner therein, but was given a lesser punishment was not approved by the Madhya Pradesh High Court. The present in the present case has not been able to prove that both the employees stood on the same footing.

10. In view of the proven charges, we are convinced that appropriate punishment has been inflicted on the petitioner. Law is well settled that quantification of punishment is basically an administrative function which is left to the discretion of the employer, and this Court would always be reluctant to interfere with the same except in cases where it comes to the conclusion that the punishment meted out to the employee is seriously disproportionate to the gravity of the proven charges and shocks the conscience of the Court. In view of the facts and circumstances of the present case, the petitioner has not been able to make out a case of discriminatory treatment, nor or disproportionate punishment. The contention is rejected.

11. In view of the foregoing discussion, we are convinced that appropriate punishment has been inflicted on the petitioner and he is not fit to be retained in service.

12. In so far as the petitioner's last contention is concerned, we have perused the orders of the learned appellate authority and the revisional authority. We are of the view that they have applied their minds, their orders do not suffer from non-application of mind, they have taken into account the materials on record and the contentions raised by the petitioner in the memorandum of appeal/memorial. In any case, the learned writ Court as well as we have in appeal considered all the grievances of the petitioner and find them to be without substance.

In the result, there is no merit in this appeal and is accordingly dismissed. There shall, however, be no orders as to costs.