

**(2011) 06 PAT CK 0051**

**Patna High Court**

**Case No:** CWJC No. 4961 of 2008

Namonath Jha @ Nabo Nath Jha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision:** June 27, 2011

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### **Judgement**

@JUDGMENTTAG-ORDER

V.N. Sinha, J.

Heard learned counsel for the petitioner and the State.

2. Petitioner at the relevant time served as constable with the Railway Police, Katihar at Jogbani. He is aggrieved by the dismissal order dated 28.3.1995, Annexure-7, whereunder in the light of the report of the Inquiry Officer dated 2.2.1994, Annexure-4, he has been dismissed from service. He is also aggrieved by the appellate order dated 29.3.1996, Annexure-9 and the order dated 29.8.2000, Annexure-11 whereunder his memorial was also dismissed. Perusal of the memo of charge dated 16.11.1992, Annexure-3 would indicated that on 9.8.1992 he was found drinking liquor in the company of Mina Devi @ Basanti Baie whose character is said to be questionable in the ante-room of the Government Railway Police Station, Jogbani. After discovery of the misconduct, he is also alleged to have abused Ashok Mishra and Ramdhari Yadav on the Railway platform in front of Jogbani Rail P.S. and thereafter is further said to have entered the chamber of Assistant Station Master, A.K. Sharma and abused him as ASM refused permission for use of railway telephone. The third charge levelled against the petitioner is that he remained under unauthorized absence from 10.8.1992 as he reported for duty on 18.8.1992. The charge-sheet indicates the name of nine witnesses who were sought to be examined in the departmental proceeding namely the Police Officer who witnessed the occurrence including M/s Ashok Mishra, Ramdhari Yadav and A.K. Sharma, ASM, Jogbani. Having received the charge-sheet petitioner submitted his written defence, copy whereof has not been annexed with the writ petition but was produced for my perusal. It appears thereunder petitioner refuted all the charges levelled against

him as he was never found drinking liquor on 9.8.1992 in the ante-room of the Government Railway Police Station, Jogbani alongwith Mina Devi @ Basanti Baie and that he never abused Ashok Mishra, Ramdhari Yadav and A.K Sharma, Assistant Station Master on 9.8.1992. Petitioner however admitted in his written defence and the show cause dated 31.3.1993 copy whereof was also produced for my perusal that on 9.8.1992 he came to the chamber of the ASM to use the Railway telephone with his permission for informing the superior officer(s) about the gambling going on behind the Jogbani Rail P.S. He also refuted the charge that he remained under unauthorized absence from 10.8.1992 to 17.8.1992 as during the said period he had gone to Katihar to deliver letter(s) in compliance of the instructions issued by the superior authorities under command dated 10.8.1992. Having reached Katihar he had fallen ill, was treated in the Katihar Hospital and was advised rest for five days. After availing rest as advised by the doctor at Katihar he joined duty on 18.8.1992. In this connection it was further submitted in the show cause reply that aforesaid aspect of the matter was brought to the notice of the then Superintendent of Police, Railway, Katihar, who having appreciated the contents of the command authorizing his travel to Katihar on 10.8.1992 in connection with official work as also the fact that petitioner did travel to Katihar on 11.8.1992 as is evident from the command where he fell ill and was advised rest which is evident from the prescription, dropped charge no. 3: The inquiry officer considered the aforesaid written defence but submitted inquiry report dated 2.2.1994, Annexure-4 holding the petitioner guilty of all the three charges. Petitioner was thereafter served with second show cause notice dated 21.3.1994, Annexure-5 in response where to petitioner filed reply dated 28.4.1994 in which he again reiterated his earlier stand taken in the show cause reply dated 31.3.1993 and the written defence and asserted that the allegation against the petitioner that he was found drinking alcohol with Mina Devi @ Basanti Baie on 9.8.1992 is wholly false and imaginary. He also denied in the second show cause reply the allegation that he abused M/s Ashok Mishra, Ramdhari Yadav and Assistant Station Master, A.K. Sharma on 9.8.1992 and again reiterated that on the alleged date of occurrence he had gone to the chamber of ASM to use the Railway telephone with the permission of the ASM to inform the superior police officers about the gambling going on behind the Jogbani Rail P.S. As regards charge no. 3, petitioner categorically stated in his second show cause reply that on 10.8.1992 he was never given any duty to escort passenger train but was sent to Katihar at the instance of the Police men union for delivery of letters. Having reached Katihar he became ill and got treated in Sadar Hospital, where doctors advised him for five days rest. In respect of the aforesaid contention petitioner annexed the copy of command dated 10.8.1992 asking him to go to Katihar and prescription granted by the doctor, at Katihar as Annexure-1 and 2 to the second show cause reply. Disciplinary authority considered the second show cause reply but without adverting to the command dated 10.8.1992 whereunder petitioner travelled to Katihar on 10.8.1992 for discharging official duty as also the medical certificate granted by the doctor of Katihar Hospital dismissed the petitioner from service

holding him guilty of all the three charges. Later the appeal and memorial filed by the petitioner against the dismissal order was also rejected under orders dated 29.3.1996 and 29.8.2000, Annexures-9 and 11. Meanwhile First Information was lodged on 19.10.1996 alleging the same misconduct which constituted charge nos. 1 and 2 in the departmental proceeding initiated against the petitioner that he was found consuming liquor alongwith Mina Devi @ Basanti Baie on 9.8.1992 in the ante-room of the Government Railway P.S., Jogbani and after discovery he abused M/s Ashok Mishra, Ramdhari Yadav and A.K. Sharma, Assistant Station Master on the same day. After conclusion of the investigation pursuant to the lodging of the F.I.R. charge-sheet was submitted and the matter went to trial. Under judgment dated 1.6.2005 petitioner was however acquitted of the allegation that he was found drinking liquor with Mina Devi @ Basanti Baie on 9.8.1992 in the ante-room of Jogbani Rail P.S as also of the further allegation that on the same day he abused M/s Ashok Mishra, Ramdhari Yadav and Assistant Station Master, A.K. Sharma. In this connection the trial court relied on the evidence of the Assistant Station Master, A.K. Sharma who could not recognize the petitioner but stated in the trial that on 9.8.1992 gambling was going on behind Jogbani Rail P.S. and a constable/person had come to him asking for the railway telephone so as to inform the Superior Police Officer(s) about the incident of Gambling. The Assistant Station Master further categorically stated in his evidence before the trial court that petitioner never abused him. In the light of the finding recorded in paragraph 7 of the judgment the trial court doubted the very occurrence of 9.8.1992 including the allegation that petitioner abused M/s Ashok Mishra, Ramdhari Yadav and Assistant Station Master, A.K. Sharma on 9.8.1992 after he was found drinking liquor in the company of Mina Devi @ Basanti Baie in the anteroom of Jogbani Rail P.S. In the light of the finding recorded by the trial court petitioner requested Superior Police Officer i.e. Director General of Police, Bihar, Patna in his representation dated 23.9.2005, Annexure-3 to reinstate the petitioner in service. Under order dated 16.6.2006, Annexure-14 Director General of Police rejected such request observing that once the memorial of the petitioner against the dismissal order has been rejected, there is no occasion to reconsider his reinstatement in service. By filing the present writ petition petitioner has challenged the order dated 16.6.2006, Annexure-14, in the light of the finding recorded in the criminal trial as also the fact that charge no. 3 with regard to unauthorized absence was dropped by the Superintendent of Police himself in the light of the command dated 10.8.1992 issued to the petitioner directing him to travel to Katihar on 10.8.1992 and further endorsement made on the command that he reached Katihar on 11.8.1992 at 10 AM whereafter he became ill and was treated at Katihar Hospital and was advised rest for five days by the doctor attending on the petitioner. Copy of the command and prescription was produced before the enquiry officer as also annexed with the second show cause reply. Aforesaid two documents was also produced for my perusal.

3. The State respondents have filed counter affidavit but has not disputed the aforesaid assertion of the petition that charge no. 3 was dropped by the Superintendent of Police, Rail, Katihar, in the light of the documents annexed as Annexures-1 and 2 with the second show cause reply together with the fact that the disciplinary authority chose not to deal with Annexures-1 and 2 while passing dismissal order dated 29.3.1995, Annexure-7.

4. The counter affidavit filed in the instant case being silent on the aforesaid aspect of the matter, I have no option but to accept the plea of the petitioner that while passing the dismissal, appellate order, order rejecting the memorial the authorities chose not to consider the document annexed by the petitioner to refute charge no.

3. For the failure of the authorities not to consider the relevant material in connection with charge no. 3 the finding recorded by the authorities with regard to charge no. 3 does not inspire confidence, which is accordingly set aside.

5. Having set aside the finding of the authorities with regard to charge no. 3 the finding recorded by the authorities in connection with charge nos. 1 and 2 is required to be considered in the light of the findings recorded by the criminal court as ASM, A.K. Sharma denied the assertion of the Police Officer(s) of Jogbani Rail P.S. that petitioner was found drinking liquor on 9.8.1992 in the company of Mina Devi @ Basanti Baie in the ante-room of Jogbani Rail P.S. ASM also stated that on 9.8.1992 a constable had come to his chamber seeking permission to use the Railway telephone to inform the superior officers about the gambling which was going on just behind the Jogbani Rail P.S. under the protection of Officer In-charge, Jogbani Rail P.S. and others. ASM further stated that his statement to the contrary in the departmental proceeding was under influence of the then Officer Incharge, Jogbani P.S. as he apprehended false implication in criminal case at his instance. The trial court having concluded that no such occurrence as alleged against the petitioner ever took place on 9.8.1992 as on that date behind Jogbani Rail P.S. gambling was going on and petitioner had come to the chamber of the ASM, A.K. Sharma to avail the facility of the railway telephone for informing the higher authorities about gambling going on behind the Railway Police Station. In the light of the evidence of ASM, A.K. Sharma recorded in the trial court as also the finding recorded by the trial court with reference to the evidence of ASM, A.K. Sharma there is no difficulty in concluding that the trial court while acquitting the petitioner had thrown out the entire prosecution case that petitioner was found drinking liquor on 9.8.1992 in the ante-room of Jogbani Rail P.S. and he abused the then ASM, A.K. Sharma and others on that day. In such situation therefore where the petitioner is acquitted by judicial pronouncement with the finding that he was neither found drinking liquor in the ante-room of Jogbani Rail P.S. on 9.8.1992 alongwith Mina Devi @ Basanti Baie nor he had abused ASM and others on that day, it would be unjust, unfair and rather oppressive to allow the finding recorded in the departmental proceeding to stand. In this connection I am tempted to refer to the case of [Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another](#), Accordingly, I set aside the order dated

16.6.2006, Annexure-14 and direct the Director General-cum-Inspector of Police, Bihar, Patna to reconsider the matter in the light of the assertion of the petitioner that charge no. 3 with regard to unauthorized absence from 10.8.1992 to 17.8.1992 has no substance in view of the command dated 10.8.1992 and the endorsement made thereon and the prescription of the doctor produced before the enquiry officer as also enclosed with the show cause reply. Finding with regard to charge nos. 1 and 2 be also reconsidered in the light of the findings of the criminal court which has been arrived at on the basis of the evidence of the ASM, A.K. Sharma who is alleged to have been abused by the petitioner on 9.8.1992 which allegation he himself did not support before the trial court. In this connection authorities will bear in mind that petitioner was not subjected to any medical examination on 9.8.1992 to conform the fact that he was found drunk in the company of Mina Devi @ Basanti Baie. Necessary reconsideration in the light of this order be made as early as possible in any case within two months from the date of receipt/production of a copy of this order.

6. Writ application stands disposed of.