

SUPREME COURT OF INDIA

Ram Tawekya Sharma

Vs.

State of Bihar

C.A.No.5186 of 2008

(Dr. Arijit Pasayat, P. Sathasivam and Aftab Alam JJ.)

21.08.2008

JUDGMENT

Dr. Arijit Pasayat, J.

1. Leave granted.
2. Challenge in this appeal is to the judgment of a Division Bench of the Patna High Court dismissing the writ petition filed by the appellant.
3. Background facts in a nutshell are as follows:

“Alleging that appellant and his companions committed robbery on certain persons on 12.10.1991; they were chased by the local people and were apprehended. The three accused persons were police constables. They were handed over to the police and the money which was robbed by them was also recovered from their possession. Police registered Case No. Budha Colony Police Case No.319 of 1991 for alleged commission of offences punishable under Sections 392 and 411 of the *Indian Penal Code, 1960* (in short the `IPC'). The departmental authorities almost simultaneously initiated departmental proceedings. On 6.1.1992 a Writ Petition filed by the appellant and the few others were listed before the Patna High Court. The same was numbered as CWJC No. 7846 of 1991. Challenge was to the initiation of the proceeding. In the meantime the criminal court had taken cognizance. During the pendency of the departmental proceedings, the trial was concluded and the appellant was acquitted by order dated 18.12.1992. The Writ Petition was disposed of on the ground that the departmental proceeding has since been concluded. The appellant was terminated by order dated 4.7.1992. The internal remedy i.e. departmental appeal was availed. Three writ petitions were filed by the three accused persons. Petitioner's Writ petition was numbered as CWJC No. 5457 of 1994. All the three writ petitions were disposed of by a common order on 22.5.1995. Two points were urged before the High Court. The first was that in view of the acquittal, no order of termination could be passed; secondly, the copy of the enquiry report was not supplied. First point was rejected by

the High Court and so far as the second point is concerned the High Court directed supply of the copy of the enquiry report. The copy was supplied by the DIG and subsequently the order of dismissal was upheld. Another writ petition was filed, in which the stand taken was that in terms of Rule 847 of the Bihar Police Manual (in short the `Manual') no departmental proceedings could have been initiated till the time for preferring an appeal expires. Reliance was placed on the view expressed in another Writ petition.

Learned Single Judge who heard the matter took a different view and referred the matter to the Division Bench. The stand of the appellant in the writ petition was that there was violation of Rule 828 (b) and 847 as there was no scope for dismissal unless informed in writing. Reliance was also placed on a decision of this Court in *Capt. M. Paulanthony v. Bharat Gold Mines Ltd. & Anr.*¹. The High Court did not accept the stand of the appellant and dismissed the writ petition. It was held that the Rules in question form the part of the Manual and form part of the caption "Criminal Prosecution". Referring to Rule 847 it was held that if the criminal case has terminated in conviction, in that case the departmental proceedings shall not be taken until the appeal or order of conviction has been heard, or the time allowed of the appeal has expired. But there is nothing in the rules that once there is an allegation against the police personnel for which a criminal case has been instituted, then no departmental proceeding shall be instituted till the criminal case is concluded. As regards the non-observance of certain formalities in the departmental proceedings, the High Court noted that in the earlier Writ Petition only two points were urged and there was no complaint of the defects in the enquiry. As regards non-observance of the provisions contained in Rule 828(b) of the Manual, the High Court noted that all the requisite formalities have been observed and adequate opportunity of defending himself was given to the appellant.”

4. In support of the appeal learned counsel for the appellant reiterated the stand taken before the High Court.

5. Learned counsel for the State on the other hand supported the impugned judgment of the High Court.

6. The relevant rule reads as follows:

"844. Superintendent to examine records of cases against police officers. - The Superintendent shall go through the record of every case brought against a Police Officer in the courts, and shall take/initiate departmental cognizance of every criminal case in which a Police Officer is convicted or acquitted or discharged (except when the case is declared false) and record an order in writing (see Rule 843).

845. Effect of imprisonment - Every Police Officer imprisonment for an offence implying moral turpitude, such as theft, perjury, etc., or for a serious breach of discipline such as allowing a prisoner to escape, sleeping on sentry duty, etc., shall be

proceeded against with a view to dismissal, and shall ordinarily be dismissed. He shall receive his pay up to the date of ceasing to perform his duties.

846. Effect of a fine- When a Police Officer is sentenced to fine by a criminal court; it is within the Superintendent's discretion to draw up/initiate proceedings with a view to dismissal.

847. From the charge in such cases - The charge in proceedings under rules 845-and 846 shall be that the accused has been convicted, imprisoned or fined, as the case may be, for the offence concerned. Such proceedings shall not be taken until the appeal against the order of conviction has been heard or the time allowed for appeal has expired."

7. As the factual scenario described above goes to show, only two points were urged before the high Court in the earlier writ petition, one of them related to the effect of acquittal. The High Court had rejected the plea and the matter was not carried forward. Other grievance related to non-supply of the copy of enquiry report. As regards that, the High Court has directed supply of the copy which has in fact been done.

8. So far as the points raised presently are concerned, there is no dispute that only two points were urged in the earlier writ petition and as rightly noted by the High Court the first point related to the effect of acquittal. Other point found acceptance by the High Court and the first plea was rejected. So far as the supply of copy aspect is concerned it is not disputed that the copy was supplied. The stands presently urged admittedly were not urged in the earlier writ petition. There was no challenge to the earlier direction regarding supply of copy only. That was done on the basis of the decisions of this Court in *Union of India & Ors. v. Mohd. Ramzan Khan*² and in *Managing Director ECIL, Hyderabad v. B. Karunakar*³. It is to be noted that Rules 845 and 847 only relate to cases of conviction. It is significant to note that the appellant and the two other employees who were proceeded against in departmental proceeding had written to the authorities that they were not participating in the departmental proceeding, till a decision is given by the criminal court. They also declined to cross examine the witnesses produced in the departmental proceeding. So far as the first writ petition is concerned, the stay order was passed on 6.1.1992 i.e. much after 15.11.1991 when the appellant and the two others had refused to participate in the departmental proceedings. As rightly noted by the High Court, in the earlier Writ petition only two points were urged and no complaint was made of any defect during the enquiry. Therefore, the High Court rightly concluded the stand to be without substance. As regards Rule 828(b) the High Court has categorically concluded that full opportunity was granted and requisite procedure has been complied with. Therefore it was held that there was no violation of the principles of natural justice.

9. Above being the position the appeal is without merit, deserves dismissal, which we direct.

¹[1999 (3) SCC 679]

²(AIR 1991 SC 471)

³[AIR 1994 SC 1074]