

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13549 of 2018

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Jawahar Kumar Singh, Son of Late Ram Narayan Singh, Resident of Village/Mohallah - Bheriya Rahika, P.O. - B.M.P.-07, Katihar, P.S. - Muffassil (Sahayak), District - Katihar (Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Home Department, Government of Bihar, Patna.
2. Principal Secretary, Home Department, Government of Bihar, Patna.
3. Director General of Police, Government of Bihar, Patna.
4. Inspector General of Police, Bhagalpur Range, Bhagalpur, District- Bhagalpur (Bihar).
5. Deputy Inspector General of Police, Eastern Range, Bhagalpur, District- Bhagalpur (Bihar).
6. Senior Superintendent of Police, Bhagalpur, District- Bhagalpur (Bihar).
7. Inquiry Officer-cum-Deputy Superintendent of Police (Muffassil)-2, Bhagalpur, District- Bhagalpur (Bihar).

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Raju Giri, Adv.
Mr. Santosh Kr. Mishra, Adv.

For the Respondent/s : Mr. Manish Kumar - GP4

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date : 19-02-2019

The petitioner, who served as Assistant
Sub-Inspector of Police, has challenged the order dated



05.01.2018, contained in Memo No. 25, passed by the Deputy Inspector General of Police, Eastern Range, Bhagalpur (respondent No. 5), whereby the petitioner has been dismissed from service as also the order dated 17.04.2018, contained in Memo No. 414, passed by the Inspector General of Police, Bhagalpur Range, Bhagalpur (respondent No. 4) by which the appeal of the petitioner has also been rejected.

2. The challenge to the aforesaid orders, referred to above, is on the ground that without any evidence, the Enquiry Officer has recommended for dismissal of the petitioner and no evidence was adduced during the inquiry for proving the charges against him. The other ground on which the order of punishment has been challenged is that the consumption of liquor by him could not be proved and the only basis for coming to the conclusion that the petitioner had consumed liquor was the Breath Analyzer Test and, lastly, the punishment of dismissal is disproportionate to the charges levelled and said to be proved against the



petitioner.

3. It is the case of the petitioner that while he was serving as Assistant Sub-Inspector of Police in Nathnagar Police Station, the Inspector-cum-Officer-in-Charge was not favourably disposed towards him and he was made victim of circumstances and was made accused in Nathnagar P.S. Case No. 155 of 2016 for having created ruckus after consuming liquor.

4. The petitioner was suspended by the Senior Superintendent of Police *vide* order dated 28.05.2016 and a departmental proceeding was initiated against him. Before the issuance of the charge, the petitioner was asked for his reply to the aforesaid charge of misdemeanor of consuming liquor, to which the petitioner replied. The charges were framed a day after.

5. During the course of inquiry, the informant was not examined and the witness to the occurrence, who was named in the F.I.R., was also not examined. The report of the Breath Analyzer was taken



as conclusive evidence without the petitioner being subjected to any blood or urine test, which was necessary to prove consumption of liquor. The Inquiry Report dated 20.11.2017, as has been urged, was based on no evidence at all.

6. A second show-cause notice was issued to the petitioner to which the petitioner replied, but a grievance has been raised that since the Disciplinary Authority of the petitioner is the Deputy Inspector General of Police, Eastern Range, Bhagalpur, only he could have issued the second show-cause notice and not the Senior Superintendent of Police, Bhagalpur.

7. The order of dismissal dated 05.01.2018 clearly reflects that the opinion of the Enquiry Officer has been accepted and the recommendation made by him for dismissing the petitioner from service has been accepted and same punishment has been awarded to the petitioner without any application of mind as to what would have been the commensurate punishment for such a charge against the petitioner.



8. The appeal of the petitioner was also disposed off on 31.01.2018 with a cryptic order, affirming the order of dismissal dated 05.01.2018, passed by the Deputy Inspector General of Police, Eastern Range, Bhagalpur. The Memorial of the petitioner, which was pending before the Director General of Police, Bihar Patna, was also rejected during the pendency of the writ petition *vide* order dated 03.10.2018.

9. What is evident from the records is that the second show-cause notice to the petitioner was issued by the Senior Superintendent of Police, Bhagalpur and not by the Deputy Inspector General of Police, Eastern Range, Bhagalpur, who is the controlling authority of the petitioner and that no evidence appears to have been adduced in support of the charge against the petitioner.

10. The subject F.I.R. was lodged by one Md. Kaisar Alam, who has not been examined. Even the complainant/Santosh Sah was not examined. The only



evidence, therefore, is the report of Breath Analyzer without any corresponding blood or urine test.

11. Mr. Raju Giri, the learned counsel for the petitioner, apart from other grounds, has seriously canvassed the non-observance of the principle of proportionality while imposing punishment to an employee. It has been submitted that the award of the punishment in the present case does not take into account the proportionality of the punishment *vis-a-vis* the offence and for a fleabite, the most serious of the punishments has been imposed.

12. The power of punishment is always within the employers' discretion and Courts do not normally interfere with where there is no infirmity with the procedure. However, weighing all the factors, *viz.*, the nature of charges against the petitioner, the manner in which it is sought to be proved, no evidence of any past conduct of similar nature and perhaps lack of sensitivity in dealing with the case of the petitioner, this Court feels that the punishment is rather



disproportionate. This Court says so for the reason that nothing but pandemonium is said to have been created and that also not during the period when the petitioner was on duty. This Court is conscious of the fact that the petitioner is an employee of a uniformed service; nonetheless the gravity of the misconduct is not such that he be dismissed from the service. This Court feels that an unduly harsh punishment has been meted out to the petitioner and that also when the charges were sought to be proved in a most rudimentary manner by relying upon the Breath Analyzer report, which report could well be wrong as well.

13. The grossly excessive/disproportionate punishment to the petitioner goads this Court in setting-aside the order of dismissal by the Deputy Inspector General of Police, Eastern Range, Bhagalpur (respondent No. 5) and the order passed in appeal by the Inspector General of Police, Bhagalpur Range, Bhagalpur (respondent No. 4) as well as the order rejecting the Memorial of the petitioner by the Director



General of Police, Bihar, Patna (respondent No. 3).

14. The matter is, therefore, remitted to the Deputy Inspector General of Police, Eastern Range, Bhagalpur (respondent No. 5) for writing out a fresh order in accordance with law, taking into account whether the petitioner has ever been charged of such offence and whether the charges against him have been conclusively proved and, if so, what would be the commensurate punishment *vis-a-vis* the nature of charge levelled upon him. The aforesaid order be passed within a period of eight weeks from the date of receipt/production of a copy of this order.

15. With the aforesaid observation and direction, the writ petition stands allowed.

(Ashutosh Kumar, J)

Praveen-II/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	27.02.2019
Transmission Date	N/A

