

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17585 of 2019

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Lalan Kumar Sharma Son of late Tapeswar Prasad Sharma, Resident of
Village- Khaira, P.O. Dihaira, P.S. Naubatpur, District- Patna.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Home,
Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Inspector General of Police, Patna Range, Patna.
4. The Deputy Inspector General of Police, Patna Range, Patna.
5. The Superintendent of Police, Nalanda.
6. The Deputy Superintendent of Police, Nalanda.
7. The Inspector of Police(O.S.D.), Superintendent of Police Office, Nalanda.
8. The S.H.O., Harnaut Police Station, Harnaut, Nalanda.

... .. Respondents

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Appearance :

For the Petitioner : Mr. Prabhakar Singh, Advocate
For the Respondent State: Mr. Ajay Kumar, AC to GP-4

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

Date : 23-10-2019

The petitioner was a Constable and, at the relevant point of time, he was posted at Chero Out Post under Harnaut Police Station in the district of Nalanda. Allegedly, on 07.02.2019, he was found creating ruckus in inebriated condition, while on duty. His conduct led to institution of a criminal case for the offence punishable under the provisions of Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as 'the Act'), and initiation of a departmental proceeding under Bihar Government Servant (Classification, Control & Appeal) Rules, 2005. An Enquiry



Officer and a Presenting Officer were appointed for the purpose of the departmental enquiry. Enquiry Officer submitted his report on 12.04.2019 (Annexure-P/6) holding the charge framed against the petitioner to be proved. He noticed in his report that breath analyzer test, conducted on the petitioner, after he was apprehended, was found to be positive. Noticing the aspect that consumption of alcohol is prohibited in the State of Bihar under the Act, the Enquiry Officer found the charge of misconduct, against the petitioner of having consumed alcohol against law, that too while on duty, to have been proved. It appears that three witnesses supported the allegation made in the charge-sheet before the Enquiry Officer to prove the case that the petitioner was under the influence of alcohol making rumbling utterances.

2. Agreeing with the finding of the Enquiry Officer, the disciplinary authority, by order dated 12.04.2019, imposed upon the petitioner punishment of dismissal from service. The order of the disciplinary authority was subsequently affirmed by the appellate authority by an order dated 31.05.2019, on an appeal preferred by the petitioner. The petitioner's revision application, preferred against the said order dated 31.05.2019 was not entertained as not maintainable. This is the circumstance in which the petitioner has questioned the legality of the order imposing



punishment dated 12.04.2019 and subsequent orders passed by the appellate authority dated 31.05.2019 and the order dated 29.06.2019 passed by the Inspector General of Police, Patna Range, Patna.

3. A counter affidavit has been filed on behalf of respondent State of Bihar.

4. Learned counsel appearing on behalf of the petitioner assailing the impugned order has made two submissions. He has submitted that result of breath analyzer test is the only basis for holding the petitioner guilty of the charge of having consumed alcohol, which cannot be said to be conclusive to prove the charge, as the petitioner had in fact taken certain homeopathic medicine. He has secondly argued that the Enquiry Officer has not conducted himself fairly and has acted as a prosecutor to establish the charge against the petitioner as it is evident from the report of the Enquiry Officer itself that the Presenting Officer, though appointed, was not present on behalf of the department, to prove the charge against petitioner.

5. Learned counsel appearing on behalf of the State, on the other hand, while defending the impugned action of imposition of punishment of dismissal from service, has contended that the department was able to prove before the Enquiry Officer not only



the fact that the petitioner was under influence of alcohol, his bizarre and incoherent behaviour under that condition was noticed by others, present there. He has submitted that a charge in a disciplinary proceeding is not required to be proved beyond all reasonable doubts as required under a criminal proceeding. Finding of the Enquiry Officer cannot be said to be without any basis as there was some material before him to hold the charge proved, on the standards of preponderance of probabilities. He has thus submitted that impugned action does not require any interference by this Court.

6. Whereas I find substance in submission made on behalf of the State of Bihar that a charge in a disciplinary proceeding is not required to be established on the same standards as is required in a criminal proceeding and a charge can be said to be proved on the standards of preponderance of probabilities, at the same time, I find force in submission made on behalf of the petitioner that an Enquiry Officer discharges the function of a *quasi* judicial authority. It is incumbent upon him to act fairly and impartially. He cannot be treated to be a representative of the disciplinary authority and he cannot assume the role of prosecutor himself.



7. Reference may be made to Supreme Court's decision in case of *Union of India & Ors. vs. Prakash Kumar Tandon* (AIR 2009 SC 1375) wherein it has been unambiguously held that an Inquiry Officer is a *quasi-judicial* authority and, therefore, he must perform his functions fairly and reasonably, which are essential requirements of the principles of natural justice. Similar view has been taken by the Supreme Court in case of *M.V. Bijlani vs. Union of India & Ors.*, reported in (2006) 5 SCC 88.

8. In the background of the law clearly laid down in case of *State of Uttar Pradesh vs. Saroj Kumar Sinha* (supra), *Union of India vs. Prakash Kumar Tandon* (supra) and *M.V. Bijlani* (supra) I do not have any hesitation in arriving at a definite conclusion that an Inquiry Officer appointed under Rule 17 of the Rules to enquire into the charges framed in a departmental proceeding discharges the functions of a *quasi-judicial* authority and he is expected to have the same level of impartiality which any functionary must have, while exercising *quasi-judicial* function. He cannot become a representative of the department or the employer of the Disciplinary Authority in a departmental enquiry. He cannot summon the documents and the witnesses for evidence unless he is requested for. The requirement of appointment of a presenting officer under Clause (c) of sub-rule (5) of Rule 7, in my



view, is a requirement to adhere to principles of natural justice and fairplay, and, therefore, mandatory. The said requirement cannot be held to be either 'discretionary' or directory.

9. From the enquiry report itself, I notice that despite the fact that date of the departmental enquiry was communicated to the Presenting Officer, he was not present during enquiry to prove the case on behalf of the disciplinary authority. Absence of Presenting Officer during the departmental enquiry, in my opinion, vitiates the adverse finding recorded by the Enquiry Officer. Requirement of appointment of a Presenting Officer is not a mere formality rather it serves a definite purpose in a departmental proceeding, where the charges are not being enquired by the disciplinary authority himself but by an enquiry officer appointed by the disciplinary authority. His role is to represent the disciplinary authority before an Enquiry Officer, who is supposed to act as an impartial *quasi-judicial* functionary. For the said reason, the impugned decision, which is based on a report of the Enquiry Officer and has been found to be unsustainable, requires interference by this Court.

10. The impugned order of dismissal of the petitioner from service, dated 12.04.2019, and all subsequent orders, passed by the appellate authority, dated 31.05.2019, and the order dated



29.06.2019, passed by the Inspector General of Police, Patna Range, Patna, rejecting the revision application of the petitioner, are hereby set aside. The matter is remanded back to the disciplinary authority to proceed afresh from the stage of enquiry. The same Enquiry Officer and the Presenting Officer shall form part of the departmental enquiry in respect of the charge against the petitioner unless the same is not found to be possible in view of any subsequent developments. For the said limited purpose, the petitioner shall be required to be reinstated. The disciplinary authority shall be at liberty to place the petitioner under suspension during the pendency of the enquiry in the light of the present order. Since this Court has interfered with the impugned order on technical ground of violation of principles of natural justice, it is directed that the petitioner's entitlement to back wages shall depend upon the final decision of the disciplinary authority to be taken after conclusion of the disciplinary proceeding.

11. In the facts and circumstances of the case, it is directed that on remand by the present order, the disciplinary proceeding must be concluded within three months from the date of receipt/production of a copy of this order.

12. This application is allowed with the observations and directions as noted above.



13. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	25.10.2019.
Transmission Date	N/A

