

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15331 of 2018

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Shashi Kant Sharma, Son of Sri Satya Narayan Sharma, resident of Village-
Darihat, P.O.- Darihat, P.S.- Darihat, District- Rohtas, Pin Code- 821306
Bihar.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Home 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. Deputy Inspector General of Police, Eastern Range, Bhagalpur, District- Bhagalpur Bihar.
5. Senior Superintendent of Police, Bhagalpur, District- Bhagalpur Bihar.
6. Inquiry Officer-cum- Deputy Superintendent of Police Muffassil-2, Bhagalpur, District- Bhagalpur

... .. Respondent/s

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Appearance :

For the Petitioner	:	Mr. Raju Giri, Advocate
		Mr. Santosh Kumar Mishra, Advocate
For the Respondents	:	Mr. N.H.Khan -SC-1

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 18-04-2019

I.A. No. 8926 of 2018

1. By the aforesaid Interlocutory Application

the petitioner has sought modification in Paragraph-1 of

the writ petition whereby amongst other prayers, a request

has been made to include in the prayer, setting aside the

order dated 24.10.2018 passed by the Director General of

Police Bihar, Patna by which the memorial preferred by the

petitioner/applicant has been rejected.



2. There is no opposition to the aforesaid prayer by the State and there is no reason why such prayer be not allowed.

3. The request of the petitioner for modification of the prayer by incorporating sub-clause 1(v) of Paragraph 2 of the Interlocutory Application be added as prayer no. V in paragraph 1 of the writ petition.

4. The I.A. No. 8926 of 2018 stands allowed accordingly.

C.W.J.C. No. 15331 of 2018

5. The petitioner, who at the relevant time was a Constable in Bihar Police, has challenged the order dated 29.12.2017 contained in Memo No. 5407, passed by the Senior Superintendent of Police, Bhagalpur by which he has been dismissed, the order dated 11.05.2018 passed by the Deputy Inspector General of Police, Eastern Range, Bhagalpur contained in Memo No. 523 whereby the appeal preferred by the petitioner against the order of Senior Superintendent of Police, Bhagalpur referred to above has



been dismissed and the order dated 24.10.2018 passed by the Director General of Police, Bihar whereby the memorial preferred by the petitioner has been rejected.

6. All the above orders which have been impugned in the present petition have been challenged and assailed on the ground that there was no evidence before the inquiry officer to hold the petitioner guilty of charge of (I) being drunk in public; (II) no evidence having been adduced to prove the charges against the petitioner and (III) the conclusion arrived at by the authorities being based on hearsay evidence by formal witnesses (IV) the decision having been arrived at by relying upon the Breath Analyzer Report without any confirmatory blood/urine test and without any certification by the maker of the Breath Analyzer Machine regarding the correctness of the report or that at the time when the same was used, it was working properly; (V) non-supply of inquiry report to the petitioner before he was asked to furnish his reply to the second show cause notice and finally (VI) on the



proportionality of the sentence of dismissal against the nature of charges framed against him.

7. The petitioner was made accused in Kotwali P.S. Case No. 398 of 2017 registered under Section 37 (b) of the Bihar Prohibition and Excise Act, 2016 in which it was alleged that the petitioner was found sitting in a car drunk and on his being tested positive by the help of breath analyzer, he was arrested for having violated the Excise Law.

8. It has specifically been stated by the learned counsel for the petitioner that at the time of the arrest of the petitioner, no liquor bottle or glasses were found in the car.

9. A departmental proceeding was initiated against him with the charge of having consumed liquor despite the existence and operation of the Bihar Prohibition and Excise Act, 2016 and thereby he has committed a misconduct unbefitting a government employee.



10. The inquiry report submitted before the disciplinary authority indicted the petitioner for having consumed liquor, which conclusion was only derived from the Breath Analyzer Report and the existence of a criminal case against the petitioner.

11. The disciplinary authority viz. Senior Superintendent of Police, Bhagalpur after perusing the reply to the second show cause notice furnished by the petitioner, agreed with the report of the inquiry officer and dismissed the petitioner from service, which order was sustained in appeal as also in memorial, the details of which have been stated in the preceding paragraphs.

12. From the perusal of the order of dismissal passed by the disciplinary authority, it appears that during the course of inquiry, the officer-in-charge of the Kotwali police station and two other witnesses from the police department were examined. None of them have stated before the inquiry officer that they had seen the petitioner consuming liquor and hence only the Breath Analyzer



Report was relied upon for holding him guilty of the charge. It was also not taken note of that nothing incriminating was found in the car in which the petitioner is alleged to have been sitting along with others.

13. After having perused the orders impugned in the present petition, it becomes clear that the disciplinary authority, the appellate authority as also the reviewing authority have accepted the findings of the inquiry officer and the disciplinary authority has awarded the maximum punishment which could be awarded to a Government servant and which sentence has been upheld by the superior authorities.

14. After having argued the matter with respect to the departmental proceeding not being conducted fairly but only in a biased manner, Mr. Raju Giri, learned advocate for the petitioner limited his argument to the issue of the proportionality of the sentence *vis-a-vis* the charge. It was argued that non-observance of the principle of proportionality while imposing punishment to an



employee, is indicator of lack of application of mind. For the offence of a flee-bite, the most serious of the punishments has been imposed.

15. The power of punishment is always within the employers' discretion and Courts do not normally interfere with them 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 is of the view that the punishment is rather disproportionate. 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 is of the view 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.

16. The grossly excessive/disproportionate punishment to the petitioner goads this Court in setting aside the order of dismissal by the Senior Superintendent of Police, Bhagalpur (respondent no. 5), the order passed in appeal by the Deputy Inspector General of Police, Eastern 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).

17. The orders impugned are set aside.

18. The matter is, therefore, remitted to the Senior Superintendent of Police, 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.

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

(Ashutosh Kumar, J)

krishna/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	27.04.2019
Transmission Date	

