

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18415 of 2019

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Nagendra Paswan Son of Sri Bandhu Paswan, Resident of Village Nayakpur
P.O. Ugahni, P.S. Chenari, District- Rohtas at Sasaram, Bihar, Pin - 821104

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Home, Government of Bihar, Patna.
2. The Principal Secretary, Department of Home Government of Bihar, Patna.
3. The Director General of Police, Bihar, Patna.
4. The Inspector General of Police, Patna Zone, Patna.
5. The Deputy Inspector General of Police, Shahabad Range, Dehri-On-Sone, Rohtas at Sasaram.
6. The Superintendent of Police, Kaimur at Bhabhua.
7. The Sub-Divisional Police Officer, Mohania, Kaimur at Bhabhua.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Amit Srivastava, Sr. Advocate Mr. Mritunjay Kumar
For the Respondent/s	:	Mr. Manish Kumar (GP-4) Mr. Sanjay Paras Mani, AC to GP-4

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

5 02-11-2021 Heard Mr. Amit Srivastava, learned Senior Counsel appearing on behalf of the petitioner assisted by Mr. Mritunjay Kumar and Mr. Sanjay Paras Mani, learned Assistant Counsel to Government Pleader No.4.

2. Invoking authority under the second condition (b) of the second proviso to Article 311 (2) of the Constitution of India, the Deputy Inspector General of Police, Shahabad Range, Dehri-on-Sone, Rohtas, who is the Disciplinary Authority, has dismissed the petitioner from service by an order issued *vide*



memo no. 1571 dated 11.10.2018, which is under challenge in the present writ application. The petitioner had preferred appeal against the said order before the Inspector General of Police, Patna Zone, which has been dismissed by an order dated 10.06.2019. The said order dated 10.06.2019 is also under challenge. The petitioner, at the relevant point of time, was in-charge Station House Officer of Kudra Police Station.

3. From the impugned order, it transpires that a secret information to the effect that the petitioner had consumed liquor was received by the superior police officers. In order to verify its correctness, the concerned Sub-Divisional Police Officer had conducted an enquiry and had found the petitioner to have consumed alcohol. The said opinion was formed by the Sub-Divisional Police Officer on the basis of smell coming from the petitioner's mouth. He was taken to a nearby Primary Health Center (PHC). The doctor available at the PHC confirmed that the petitioner had consumed alcohol. On the basis of these facts, an FIR came to be registered against the petitioner, giving rise to Kudra P.S. Case No. 429 of 2018 for the offence punishable under Section 37(i) of the Bihar Prohibition and Excise Amendment Act.

4. Instead of initiating a disciplinary proceeding



against the petitioner for the alleged misconduct, he was put to a show cause notice issued on 05.10.2018, asking him to explain as to why he should not be dismissed from service invoking the provisions under Article 311 (2) of the Constitution of India, without holding any enquiry. The petitioner was given three days time to submit his reply to the said show cause notice. It appears from the impugned order that allegedly the petitioner had not reported to the police lines after he was put under suspension and, therefore, a copy of the show cause notice was received by the petitioner's wife. This is to be noted that the alleged occurrence was of 04.10.2018. The show cause notice was issued on 05.10.2018. As the petitioner failed to submit his reply within three days as stipulated in the show cause notice, the disciplinary authority considered it proper to pass the final order on 11.10.2018, dismissing the petitioner from service, which has been assailed in the present writ application.

5. Mr. Amit Srivastava, learned Senior counsel appearing on behalf of the petitioner has made three fold submissions. He has firstly submitted that unless it is not reasonably practicable to hold an enquiry in the opinion of a person of ordinary prudence, the second condition of the second proviso to Article 311 (2) of the Constitution of India cannot be



invoked. He has secondly submitted that it is obligatory for the disciplinary authority to record in writing that it is not reasonably practicable to hold a departmental enquiry in case it decides to dispense with such enquiry. He has thirdly submitted that the impugned action suffers from the vice of malice in law, inasmuch as the respondents proceeded in utter haste by requiring the petitioner to submit his reply to the show cause notice within three days and passed the harsh order of dismissal from service within one week from the alleged date of occurrence. He has also submitted that the finding that the petitioner had consumed alcohol is based on mere perception, without carrying out any scientific test.

6. Mr. Srivastava, learned senior counsel has placed reliance on a three Bench decision of the Supreme Court in case of **Munna Lal Vs. Union of India** reported in (2010) 15 SCC 399 to contend that merely on the basis of doubt about the presence of alcohol and mild smell of alcohol coming from the petitioner's mouth, the authorities could not have reached a conclusion that the petitioner had consumed alcohol. He has, accordingly, submitted that in case the Court interferes with the impugned order of dismissal for non-compliance of constitutional provisions under Article 311(2) of the



Constitution of India, this Court may not remand the matter back to the disciplinary authority for holding an enquiry as there is no material beyond the opinion formed by the officials and the doctor, without conducting any scientific test.

7. The submission that the matter should not be remanded back to the disciplinary authority as advanced by Mr. Srivastava, learned senior counsel, in the light of the Supreme Court's decision in case of **Munna Lal** (supra) is not acceptable to this Court for the reason that in the said case a departmental enquiry was held. As the department failed to establish the charge against the employee in case of **Munna Lal** (Supra) of having consumed alcohol, the Supreme Court reached a conclusion that the evidence was not satisfactory to prove that he was found to have consumed alcohol.

8. Learned counsel appearing on behalf of the State of Bihar, on the other hand, has submitted that it was not expected of an Officer holding the post of Station House Officer of a police station to have consumed alcohol, which is a prohibited by law in the State of Bihar and is a criminal offence. He has submitted that once the disciplinary authority was satisfied that the petitioner had consumed alcohol, he was right in taking a decision to dismiss the petitioner from service by



invoking the second condition of the second proviso to Article 311 (2) of the Constitution of India.

9. On perusal of the pleadings on record and the submissions advanced on behalf of the parties. I am satisfied that the disciplinary authority has wrongly invoked the second condition (b) of the second proviso to Article 311 (2) of the Constitution of India inasmuch as it has not recorded its satisfaction that it was not reasonably practicable, to hold an enquiry stipulated under Article 311(2) of the Constitution of India, in the facts and circumstances of the case, which is a condition precedent to dispense with the requirement of holding a disciplinary proceeding before imposing punishment of dismissal from service. Further, Mr. Srivastava, learned senior counsel is right in his contention that there was no such allegation against the petitioner, which could not have been inquired into and decided in conformity with the requirements for taking an action after adopting the procedure prescribed for disciplinary action under the Bihar Government Servant (Classification, Control & Appeal) Rules, 2005 or the Bihar Police Manual. He is correct in his submission that the authority did not adopt any scientific method for reaching a conclusion that the petitioner had in fact consumed alcohol. The



records do not indicate that even breath analyzer test was conducted on the petitioner before reaching a conclusion that he had consumed alcohol.

10. Considering the above, I am of the definite opinion that the impugned order passed by the disciplinary authority dispensing with the disciplinary proceeding for invoking provisions under second condition of the second proviso to Article 311(2) of the Constitution of India is unauthorized, arbitrary and patently illegal, in the absence of any reason recorded therefor.

11. The order of the appellate authority, in the Court's opinion, is also unsustainable, for the selfsame reasons.

12. Accordingly, the impugned order dated 11.10.2018 passed by the Deputy Inspector General of Police Shahabad Range, Dehri-on-Sone, Rohtas is, hereby, set aside. The order of the appellate authority dated 10.06.2019 dismissing the petitioner's appeal also stands set aside.

13. Consequently, the petitioner shall be required to be reinstated in service forthwith.

14. Since the impugned order has been held to be unauthorized and illegal, it is directed that the petitioner shall be entitled to receive entire salary for the period during which he



remained out of service because of illegal order of dismissal.

15. The respondent shall proceed to determine the petitioner's entitlements as if no order of dismissal was ever passed against him.

16. The respondent shall, however, be at liberty to take appropriate action against the petitioner by initiating a disciplinary proceeding for the alleged misconduct, in accordance with law.

(Chakradhari Sharan Singh, J)

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