

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.9512 of 2019**

Rajpati Shekhar @ Constable 06 Rajpati Shekhar Sex- Male, aged about 30 years, Son of Surendra Singh then Posted at Rail District Jamalpur Under Control of Superintendent of Rail Police Jamalpur, Permanent resident of West Tola saidpur, P.O. Saidpur Police Station- Mansi District- Khagaria, Bihar.

... .. Petitioner

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Home, Government of Bihar, Old Secretariat Patna, Bihar,
2. The Additional Chief Secretary Department of Home, Government of Bihar Old Secretariat, Patna, Bihar.
3. The Principal Secretary, Department of Home Government of Bihar, Old Secretariat, Patna, Bihar.
4. The Director General of Police Old Secretariat, Patna, Bihar.
5. The Inspector General of Police (Administration) Police Head Quarters, Old Secretariat, Patna, Bihar.
6. The Additional Director General of Police (Railways), Police Head Quarters, Old Secretariat, Patna, Bihar
7. The Inspector General of Police (Railways), Police Head Quarters, Old Secretariat Patna, Bihar
8. The Deputy Inspector General of Police (Railways), Police Head Quarters, Old Secretariat Patna, Bihar
9. The Superintendent of Rail Police Jamalpur, Rail District Jamalpur, Bihar,
10. The Deputy Superintendent of Rail Police, Jamalpur, Rail District Jamalpur, Bihar.
11. The Deputy Superintendent of Rail Police, Kiul, Rail District, Jamalpur, Bihar.
12. The Inspector Police Cum Station House Officer Rail Police Station Kiul, Rail District Jamalpur, Bihar.
13. Mr. Kameshwar Singh Inspector of Police Cum In-Charge Sergeant Major Cum Conducting Officer of Rail District Departmental Proceeding No. 08 of 2017.

... .. Respondents

**Appearance :**

|                    |   |                                                                                    |
|--------------------|---|------------------------------------------------------------------------------------|
| For the Petitioner | : | Mr. Y. V.Giri, Sr. Adv. with Mr. Manish Kumar<br>No.13, Mr. Rohit Kumar, Advocates |
| For the State      | : | Md. N.H.Khan, SC-1 with Mr. Fazle Karim AC to<br>SC-1                              |

**CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD**  
**CAV JUDGMENT**



**Date : 16-08-2022**

Heard learned senior counsel for the petitioner and learned counsel for the State.

2. The petitioner has prayed for quashing of the entire proceedings based on charge memo dated 21-01-2017, including the order of dismissal dated 12-07-2018 passed by the Superintendent of Rail Police, Jamalpur bearing District Order No. 521/2018. He has also assailed the Appellate Order contained in Memo No. 584/Go dated 31.12.2018 issued by the Deputy Inspector General of Police (Railway) Patna, rejecting the petitioner's appeal against the final order of dismissal from service.

3. The brief facts are that the petitioner was posted as a Constable in the Government Railway Police ( for short 'GRP') at the Kiul Railway Station. Along with three other constables, he was residing in a three storied building next to Platform No.4 of the Kiul Railway Station. The residence is being referred to as "Barrack". On 27-12-2016 a secret information was received regarding persons indulging in illicit trade of liquor. One sub Inspector along with two Constables proceeded towards the Railway yard to verify the information. Two persons were apprehended along with 351 pouches of liquor. Kiul Rail P.S.



Case No. 247 of 2016 was lodged for the offences under Sections 30(a)/38(i) of the Bihar Prohibition and Excise Act, 2016.

4. One of the F.I.R. named accused, namely, Shambhu Thathera, in his confessional statement, has stated that on 26-12-2016 he along with two others, namely, Yatish Kumar and Fantush Kumar were bringing liquor from Jharkhand to Kiul by Janshatabadi Express. The escort party in the train comprising of three uniformed constables searched the bag, in which, they were carrying the illicit liquor and demanded money from the said accused. The train reached Kiul Railway Station and the constables took the three accused persons to a three storied building near the yard where constables used to reside. Three constables in plain cloth emerged and demanded 7000/- Rs. for releasing the illicit liquor, failing which the FIR would be lodged and the accused would be forwarded to jail. The said accused persons along with co-accused Yatish Kumar came with 7000/- Rs next morning i.e. on 27-12-2016 and paid Rs. 6600/- as illegal gratification. Thereafter, the accused persons along with illicit liquor were released. The said accused persons along with Yatish Kumar proceeded for Lakhisarai through the railway yard when they were apprehended by the police. The amount of illegal gratification ( Rs. 6,600/-) has been recovered and seized from



one of the inmates of the barracks, namely, Havildar Lalan Ram.

5. In this background, the petitioner has been served with a charge memo dated 21-01-2017 alleging that he was residing in the three storied building near the Kiul Railway Yard along with Havildar Lalan Ram and constable Dinesh Kumar Singh and that he along with these two persons had taken illegal gratification for releasing the said accused Shambhu Thathera and Yatish Kumar along with their consignment of illicit liquor. In the proceedings, the Inquiring Officer has relied upon the material collected during the course of investigation arising out of Kiul Rail P.S. Case No. 247 of 2016 dated 21-01-2017. He has submitted an inquiry report dated 20-05-2018 holding the charges proved. The Superintendent Rail Police, vide his communication dated 29-05-2018, has considered the fact that witnesses have proved the various documents in the file relating to the criminal proceedings arising out of Kiul Rail PS Case No. 247 of 2016 and asked the petitioner to submit his second show cause against the proposed punishment of dismissal. After considering the second show cause filed by the petitioner, the Rail Police Superintendent, Jamalpur has dismissed the petitioner from service with immediate effect vide order dated 12-07-2018. The petitioner, thereafter, has preferred an appeal



before the Deputy Inspector General of Police, which has been rejected by order dated 31-02-2018.

6. The learned senior counsel appearing on behalf of the petitioner submits that the charges are based on confessional statement of one Shambhu Thathera (accused) of Kiul Rail P.S .Case No. 247 of 2016. The said accused has not named the petitioner. He has only stated that three police officials/personnel were residing in the three storied building where he had been taken by the train escort party. On reaching there, illegal gratification was demanded and upon payment of the same, he was released along with his co-accused, namely, Yatish Kumar and the consignment of illicit liquor. Petitioner has been proceeded against merely because he happens to be one of the constables, resident of the place of occurrence. There is no material to show that petitioner was actually present or that he actually participated in the accepting of illegal gratification or release of the accused persons along with illegal consignment of liquor. Actually, four constables were residents of the place of occurrence. Three have been made accused and proceeded against. One of them has not been proceeded against as he was on leave on that day. Thus, it is apparent, that the petitioner has been proceeded against merely based on suspicion arising from the fact that he is resident of the



three storied building where the occurrence, as per confessional statement of accused, has taken place. The charge memo contained details of nine witnesses. None of these witnesses have, in their depositions, assigned any specific allegation against the instant petitioner. In their depositions, witnesses, however, have referred to the petitioner's name with reference to the fact that he is a named accused in Kiul Rail P.S. Case No. 247 of 2016 based on confessional statement of accused Shambhu Thathera. Merely because the petitioner was a resident of the place of occurrence, his name has emerged in the allegations and he has been proceeded against.

7. The Enquiry Officer has relied mainly on document which form part of the investigation in the criminal case, veracity of which is yet to be determined at the trial. The documents, including the FIR, confessional statement of accused Shambhu Thathera, seizure list as well as recovery of the alleged illegal gratification from Havildar Lalan Ram, are all documents forming part of the criminal investigation and cannot be said to be material based on which charges can be held to be proved against the petitioner in departmental proceedings. Accused Shambhu Thathera, whose confessional statement, forms basis of the petitioner's implication, has also not been examined. It is, thus,



submitted by the learned Senior counsel that in view of the settled legal position based a decision of the Hon'ble Apex Court in case of ***Roop Singh Negi vs. Punjab National Bank and others*** reported in ***(2009)2 SCC 570***, the conclusion of the Enquiry Officer based on these documents is unsustainable to hold the charges proved against the petitioner.

8. One of the other inmates of the three storied building, namely, Shivnath Turi @ Shiv Nath Turi @ Constable 08 Shiv Nath Turi, who was accused of apprehending the accused Shambhu Thathera in the Jansatabadi Express, was also proceeded against and held guilty in the departmental proceedings based on similar material. The punishment awarded to the said Shivnath Turi @ Shiv Nath Turi @ Constable 08 Shiv Nath Turi, has been quashed in CWJC No. 12210 of 2019. The petitioner also claims parity with the said Shivnath Turi @ Shiv Nath Turi @ Constable 08 Shiv Nath Turi, to contend that findings based on such documents forming part of the criminal investigation, against the petitioner are also unsustainable. As per allegation, none of the nine witnesses were present at the time of alleged acceptance of illegal gratification or release of the accused Shambhu Thathera. Depositions of the nine prosecution witnesses, therefore, are irrelevant and unreliable.



9. State counsel, on the other hand, submits that the proceedings have been held as per procedure. In the enquiry witnesses have supported the allegations made in the charge memo. The petitioner was afforded due opportunity, but has refused to cross-examine the witnesses in the proceedings. He has only filed a request to keep the matter pending till conclusion of the criminal trial arising out of Kiul Rail PS Case No. 247 of 2016. Findings in the proceedings are based on preponderance of probability and not to be guided by the sophisticated rules of evidence. Since at least two witnesses have taken the name of the petitioner in the proceedings, the findings do not require any interference by this Court exercising judicial review under Article 226 of the Constitution of India.

10. On consideration of the rival submissions, this Court would observe that nine witnesses, who have deposed in the proceedings, are all police officials/personnel. As per charge memo, none of these nine witnesses are in any way witness to the events which have occurred at the three storied building. They are also not witness to the petitioner's presence at the barracks at the time of alleged occurrence, where he usually resides. They are also not witnesses to acceptance of illegal gratification, or release of accused Shambhu Thathera and Yatish Kumar along with



consignment of illicit liquor . Even the two witnesses, who have named the petitioner in the enquiry, have merely supported the fact that Shambhu Thathera has given his confessional statement in Kiul Rail P. S. Case No. 247 of 2016 ,wherein, allegations have been levelled against the petitioner. This Court would observe that the fact that Shambhu Thathera accused has given a confessional statement is not a relevant fact for the charges. What is relevant is the allegations/events which arise out of the contents of the confessional statement. It is these allegations and events which are required to be proved on preponderance of probability, which has not been supported by any person claiming to be a witness to the allegations and events narrated by Shambhu Thathera. Even as per confessional statement of Shambhu Thathera, other than him only Yatish Kumar was witness to the alleged occurrence.

11. Shambhu Thathera and Yatish Kumar, however, have also not been examined in the proceedings. They were only two persons competent of deposing in respect of the occurrence alleged at the barrack. It is only these two persons who were competent to state about the petitioner's presence, participation in demand and acceptance of illegal gratification, and subsequent release of the accused persons with the illicit consignment of liquor.



12. Reliance on the confessional statement of accused Shambhu Thathera, the allegations stated in the FIR, seizure of the alleged illegal gratification from Havildar Lalan Ram and statement of police officials/personnel in support of the factum of lodging of the FIR, recording of confessional statement of accused Shambhu Thathera, at best, are proof of the facts leading to lodging of the criminal case and not by any stretch of imagination sufficient to prove the occurrence as stated in the F.I.R. and bring home the charges against the petitioner even on preponderance of probability. The documents forming part of the criminal investigation relied upon by the Enquiry Officer cannot be considered to be material to sustain charges in the departmental proceedings. Law to this effect by now settled as per decision in case of **Roop Singh Negi** (supra) relied upon by the learned senior counsel for the petitioner.

13. The submission of the State counsel regarding procedure being followed and witnesses being examined, therefore, is clearly unsustainable. As noted above, not a single witness competent to depose in respect of any fact forming part of the allegation against the petitioner in the charge memo has been examined. All the witnesses, who have been examined, are, at best, witness to the lodging of the criminal case after the accused



Shambhu Thathera had been apprehended in the Railway yard. The nine witnesses, who have been examined, are not witnesses to the events, prior to arrest of accused Shambhu Thathera, i.e. in the night of 26-12-2016 at the barrack or in the morning of 27-12-2016 when it is alleged that illegal gratification was demanded in presence of the petitioner, accepted and after accepting the illegal gratification the accused Shambhu Thathera and Yatish Kumar released along with consignment of illicit liquor. Even on preponderance of probability it cannot be concluded that based on depositions of these nine witnesses, or material forming part of the criminal investigation arising out of Kiul Rail P.S. Case No. 247 of 2016, the charges have been proved.

14. In view of above consideration, this Court has no hesitation in holding that the conclusion of the Disciplinary Authority based on the depositions of these nine witnesses and documents forming part of criminal investigation is unsustainable. The order of dismissal dated 12-07-2018, passed by the Superintendent of Rail Police, Jamalpur is quashed. The order of the Appellate Authority dated 31.12.2018 issued under the signature of the Deputy Inspector General of Police (Railway) Patna, is also quashed. The petitioner is entitled to be, and must be reinstated along with all consequential benefits.



15. The writ petition stands allowed.

**(Madhuresh Prasad, J)**

shyambihari/-

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