

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1076 of 2021

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Vipin Kumar Sharma @ Bipin Kumar Sharma, Son of Late Ram Binod Sharma, Resident of Village-Bhatwaliya, P.O.-Bhatwaliya, P.S.-Kopa, District-Chapra.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Home Department, Government of Bihar, Patna.
2. The Director General of Police (DGP), Bihar, Patna.
3. The Deputy Director General of Police (DIG) of Police, Bihar, Patna.
4. The Deputy Inspector General (DIG) of Police, Champaran Range, at Bettiah.
5. The Superintendent of Police (SP), Motihari.
6. The Senior Superintendent of Police (SP), Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner	:	Mr. Bindhyachal Singh, Sr. Advocate Mr. Saroj Kumar Sharma, Advocate Mrs. Kiran Kumari Sharma, Advocate
For the State	:	Mr. Sheo Shankar Prasad, S.C.-8 Mr. Sanjay Kumar, AC to S.C.-8

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 28-09-2022

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

2. The petitioner is aggrieved by the order dated 18.03.2020 issued by the Deputy Inspector General, Champaran Range, Bettiah, whereby and whereunder he has been dismissed from the service on the post of Assistant Sub-Inspector of Police. He has also assailed the order dated 17.07.2020, whereby and whereunder his appeal against the order of dismissal dated



18.03.2020 has been rejected. The petitioner has also prayed for consequential relief of reinstatement and other benefits.

3. The undisputed facts are that on account of being found in an inebriated condition, the petitioner was made an accused in Ahiyapur P.S. Case No.444 of 2019, alleging violation of the provisions contained in Bihar Prohibition and Excise Act, which are penal offences. Based on the same set of charges, he was visited with a charge memo dated 01.05.2019.

4. Learned counsel for the petitioner submits that the charge memo as well as the enquiry report dated 03.02.2020 of the enquiry officer, based on which the impugned order of dismissal has been passed, is unsustainable as being violative of principles of natural justice. The submission is that other than the statement of four witnesses, the enquiry officer has not considered any other material whatsoever before arriving at the conclusion of the charges having been proved. Based on such unsustainable conclusion the petitioner has been visited with the extreme consequence of dismissal.

5. The learned State Counsel, on the other hand, submits that after observing the requisite procedure under Rule 824-A of the Bihar Police Manual, the impugned order has been passed. The petitioner has been allowed an opportunity. He was



present in the enquiry and has chosen not to cross-examine the four witnesses. The petitioner, therefore, is not in a position to assail the conclusion of charges having been proved, based on statement of these four witnesses. He has also exhausted his remedy of appeal. After due consideration of the petitioner's version, the impugned order of dismissal as well as the order of appellate authority has been passed. Since the procedure has been followed, this Court exercising jurisdiction under Article 226 of the Constitution would not interfere in the matter.

6. Considering the rival submissions and upon consideration of the materials on record, this Court would find that the charge memo dated 01.05.2019 enumerates four witnesses. The charge memo does not mention any breath analyser report or medical report for supporting the allegation regarding the petitioner being apprehended in an inebriated condition. The enquiry officer has also examined only these four persons who have been named as witnesses in the charge memo.

7. From perusal of the enquiry report, it is obvious that these four persons have not stated anything, apart from the fact that they are parties to institution of the FIR at different stages. One is the informant, the second has put his initial on the FIR and the other two persons have verified the signature on the FIR. The



witnesses have not stated about seeing the petitioner in an inebriated condition or the fact that he was subjected to any breath analyser test or medical report. Apart from verifying the facts arising out of the criminal investigation in Ahiyapur P.S. Case No.444 of 2019, these four witnesses have not testified any other fact.

8. Lodging of FIR *per se* cannot be made the basis of holding the charges proved. The Apex Court in the case of ***Roop Singh Negi v. Punjab National Bank***, reported in **(2009) 2 SCC 570**, in paragraph 14 has held as follows:

"14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence."

9. The evidence of these four persons, who have only stated about lodging of the FIR, is hardly relevant for establishing the allegation that the petitioner was apprehended in an inebriated condition, even on preponderance of probabilities. Otherwise, this Court would find that the enquiry officer has not brought in the



proceedings either the breath analyser report or the medical examination report. He, however, has referred to the breath analyser report and medical examination report in his conclusions. The said conclusions are thus baseless and unsustainable in the eyes of law.

10. Since there is no material on record to sustain the allegation of petitioner having been apprehended in an inebriated condition, the findings of the enquiry officer, accepted by the disciplinary authority and affirmed by the appellate authority, to say the least, are perverse. They cannot be made the basis for visiting the petitioner with the order of dismissal. The order of dismissal dated 18.03.2020 as well as the order of the appellate authority dated 17.07.2020 is hereby quashed.

11. The writ application is allowed. As a result of quashing of the impugned orders, the petitioner would be entitled to all consequential benefits.

(Madhuresh Prasad, J)

PNM

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

