

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4496 of 2023

Radheshyam Ram S/o Late Ram Darash Ram, R/o- Village Jignee, P.S. Bhabhuua, P.O. Manihari, District Kaimur at Bhabhua.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Home Department, Government of Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Deputy Inspector General of Police, Begusarai Range, Begusarai.
4. The Senior Superintendent of Police, Khagaria.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Suman Kumar Jha, Adv.
For the Respondent/s : Mr. Sanjay Parasmani AC to GP-4

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 11-09-2023

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

2. While posted as a House Guard at the official residence of the District Magistrate, Khagaria, it is alleged that the petitioner was in an inebriated condition and was creating a ruckus. He, thereafter, has been arrested and sent to jail after being subjected to breath analyzer test. The petitioner, upon his release after grant of bail, has been proceeded against by a charge memo dated 17.05.2021, as contained in Annexure-4 to the writ petition. The result of the inquiry is petitioner's dismissal by an order dated 31-08-2021 passed by the Superintendent of Police, Khagaria as contained in Annexure-7



to the writ petition. The petitioner has assailed the order of dismissal in appeal before the Deputy Inspector General of police. The appeal of the petitioner has been rejected on 09-03-2022, as contained in Annexure-8 to the writ petition. His memorial against the order of the Appellate Authority has also been rejected by the Director General of Police, Bihar under order dated 22-08-2022, as contained in Annexure-9 to the writ petition. The order of dismissal, the order of the appellate authority and the order passed on his memorial are all assailed by way of the instant proceedings.

3. It is submitted by the learned counsel for the petitioner that the present case is a case of dismissal without any evidence in support of the charge whatsoever. The charge memo (Annexure-4) as well as the impugned orders suggest that the petitioner was subjected to breath analyzer test to confirm that he was under influence of alcohol. Therefore, the entire issue hinges on whether the petitioner was under the influence of alcohol or not. The submission is that for determination of such a fact the breath analyzer report *per se* cannot be made the basis as beyond breath analyzer report, it is also required that a person, who is facing charges of indiscipline under influence of alcohol, is required to be medically examined with reference to



pathological reports of his urine and blood samples. In the instant case, however, even the breath analyzer report has not been placed in the inquiry and merely based on statement of three witnesses, who have deposed in the inquiry, the petitioner has been visited with the extreme punishment of dismissal from service (Annexure-7). It is submitted that the dismissal order is founded on no evidence, as there is no evidence to suggest that the petitioner was under influence of alcohol other than statement of three witnesses.

4. The learned counsel for the State submits that the procedural formalities required to be observed in a departmental proceedings have been observed by the authorities. The impugned orders are reasoned and speaking orders, after due opportunity to the petitioner. In support of allegations that the petitioner was creating a ruckus under influence of alcohol, at least there is one person, who is witness to the petitioner's misdeed i.e. the witness, namely, Ranjeet Kumar, who has come to the place where the disturbance was being created by the petitioner and apprehended him after subjecting him to breath analyzer test. The order of dismissal (Annexure-7), therefore, is after duly complying with the requirements of natural justice and based on evidence, and requires no interference.



5. On considering of rival submission, the Court would find that three persons have deposed in the inquiry against the petitioner. The first witness is the Sub Divisional Police Officer of Sadar, Khagaria. He has stated about receiving intimation of disturbance being created at the official residence of the District Magistrate, by the petitioner under inebriated condition. He, therefore, has directed the Sub Inspector of Police, Officer- in-charge of Muffasil PS, to take appropriate action in the matter. The Officer- in -charge, Muffasil PS, namely, Ranjeet Kumar, has also deposed, confirming the fact that he was intimated by the Sub Divisional Police Officer, Khagaria, to proceed to the official residence of the District Magistrate, Khagaria and take appropriate steps. He has reached the place where he found the petitioner in inebriated condition and after subjecting him to breath analyzer test for confirming the fact that he was under alcoholic influence, he has been taken into custody and forwarded to jail. The third witness is one Sub Inspector of police, who was posted at the police headquarters, Khagaria. He has verified and confirmed the signature of the Superintendent of Police on the suspension order of the petitioner. The Court, therefore, finds that the 1st and 3rd witness examined by the Department have not made any statement that the said two



persons have witnessed either the petitioner's misdeed or subjecting him to breath analyzer test to confirm that he was under influence of alcohol. The Sub Inspector of Police, Officer-in-charge of Muffasil PS has stated that he had witnessed the petitioner creating distance in inebriated condition and for confirming the allegation of him being under influence of alcohol, he has subjected him to test. Only on the fact being confirmed by a breath analyzer test, the petitioner has been taken into custody and FIR was lodged against him under the provisions of Sections 37 (A) and 37(C) of the Bihar Prohibition and Excise Act. The Court finds that for confirmation of the petitioner being under influence of alcohol, even as per the deposition of the second witness, the test was conducted. The report of test, however, does not form part of the documents enclosed along with the charge memo. The charge memo encloses two other documents. The Presenting Officer, in the entire proceedings, has not placed the alleged breath analyzer report or any test report, based on which, it is alleged that the fact of petitioner being under influence of alcohol was confirmed. The Court would, therefore, record that the instant case is a case of no evidence in support of the allegation of petitioner being under influence of alcohol as it is



the case of the 2nd witness also that confirmation of this fact was only by virtue of a “test”, even that test report, however, is not to be found in the proceeding. In absence of the test report, the case would come under the purview of a case of no evidence.

6. Insofar as the interference with the findings in a proceedings are concerned, the decision of the Apex court in the case of *Union of India & Ors. vs. P. Gunasekaran* reported in *(2015) 2 SCC 610* is worth consideration in the instant case. The Hon’ble Apex Court has time and again reiterated the contours of exercise of judicial review in matters arising out of a departmental proceedings. It has been emphasized that review is confined to the decision making process and not the decision itself. Such proposition of law, however, is subject to certain exception such as where in a case the findings are perverse or founded on no evidence. In the instant case, this Court has already held that it is a case of no evidence. The order of the Superintendent of Police dated 31.08.2021 (Annexure-7), visiting the petitioner with extreme punishment of dismissal is, therefore, unsustainable in law as well in fact. The order of the Appellate Authority (Annexure-8) confirming such illegal order, therefore, must also collapse and is hereby quashed. This Court would also quash the order passed by the D.G.P. dated



22-08-2022, as contained in Annexure-9 to the writ petition on the memorial filed by the petitioner. The petitioner is to be reinstated forthwith and the Disciplinary Authority should proceed after the stage of service of charge memo, in accordance with law.

7. Petitioner’s entitlement to consequential benefits would be subject to result of the enquiry, which must be concluded within eight weeks from the date of receipt/production of a copy of this order.

8. The writ petition is allowed.

(Madhuresh Prasad, J)

shyambihari/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	30-09-2023
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