

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1200 of 2022

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Amit Kumar, Son of Mithilesh Kumar, Resident of House No. 50, Amma Bazar, P.S. Harpur, District Munger (Bihar)

... .. Petitioner/s

Versus

1. The South Bihar Power Distribution Company Limited through its General Manager, Registered Office- Vidyut Bhawan, Bailey Road, Patna - 21.
2. The Chairman-cum-Managing Director, The South Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna - 21.
3. The General Manager, The South Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna - 21.
4. The Deputy General Manager, The South Bihar Power Distribution company Limited, Vidyut Bhawan, Bailey Road, Patna - 21.
5. The Electrical Superintending Engineer, The South Bihar Power Distribution Company Limited, Bhagalpur.
6. The Electrical Executive Engineer, The South Bihar Power Distribution Company Limited, Electric Supply Division, Banka.
7. The Assistant Electric Engineer, Electric Supply Sub-Division, Katoriya (Banka).

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Raju Giri, Advocate Mr. Harsh Vardhan, Advocate
For BSPHCL	:	Mr. Kumar Priya Ranjan, Add. SC Mr. Vibhuti Kumar, Advocate Mr. Sandeep Kumar, Advocate
For the Respondent/s	:	Mr. Vinay Kirti Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

8 26-06-2024 The petitioner was a Junior Electrical Engineer sometimes in the year 2021, he was posted as Junior Electrical Engineer, Electric Supply Division, Chandan (Banka). On 13.06.2019, one Md. Khursid Alam, sub-Inspector submitted a



complaint before the SHO, Chandan Police Station stating, *inter alia*, that on 12th June, 2019 at about 5:00 pm, he was conducting vehicle checking duty near Dardmara, *Madheya Nishedh* check post along with Homeguards BHG No. 9572 Chandra Kishore Yadav, BHG No. 9514 Shri Shailendra Prasad Singh and BHG 10400 Bahadur Takua at about 07:00 pm, he detained motor-cycle bearing No. BHG 9514 coming from the side of Deoghar on suspicion. The driver of the said motor-cycle stated his name as Amit Kumar, Junior Electrical Engineer, attached to the Office of Electric Supply Division, Chandan at Banka. The complainant and sub-Inspector of Police alleged that he found smell of alcohol from the mouth of the said Amit Kumar. The search party conducted a search of his personal belongings and allegedly, recovered 03 cans of beer from the bag of the petitioner. The petitioner was arrested under Bihar Prohibition and Excise Act, 2016 and a case was registered against him being Chandan P.S. Case No. 106 of 2019 under Section 37 (b), 30(a)(g), 32(2) of the Bihar Prohibition and Excise Act, 2016. On being arrested, he was suspended with effect from 13.06.2019 and he was granted bail on 15.06.2019 by the Court of learned Magistrate. On 19.06.2019, he joined his duty on revocation of the order of suspension. Subsequently, on



27th June 2019, the Deputy Secretary of South Bihar Power Distribution Company Limited initiated a departmental inquiry on formulating a charge against the petitioner alleging, *inter alia*, that on 12.06.2019, during vehicular search at Dardmara, Madheya Nished check post by police personnel, the petitioner was apprehended while driving a motor-cycle and smell of alcohol detected from his mouth and seized three beer cans, as a result of which, a criminal case was instituted against the petitioner.

2. The petitioner was directed to give his reply against the departmental charge framed against him.

3. The petitioner pleaded that he never consumed liquor. The concerned police officer stated falsely that smell of alcohol was coming from his mouth or the three cans of beer were recovered from the possession of the petitioner. It is specifically pleaded that the petitioner was subjected to a false prosecution because of the fact that he conducted raid and took legal steps against theft of electricity within his jurisdiction. The said reply was, however, not accepted and a disciplinary proceeding was initiated against him. On 05th June, 2020, the Inquiry Officer submitted a report stating, *inter alia*, that during departmental inquiry BHG No. 9572 Shailendra Prasad Singh



was examined. He did not support the case of the prosecution. He stated before the Inquiry Officer that during vehicular search on 12th June 2019, Amit Kumar and other motor-cyclist were detained, their motor-cycle and belongings were checked but no alcohol or cans of beer were recovered from Amit Kumar, as alleged. The witness also stated that Md. Khursid Alam, the complainant was not present at the time of checking, he came to the spot after half an hour of the checking and took Amit Kumar to the police stating thereafter, a false case was alleged against the petitioner. One Pankaj Kumar, Executive Engineer, Electric Supply Division, Banka was also examined, he stated before the Inquiry Officer that Amit Kumar got an information of theft of electricity on 12th June 2019 and he left the office to conduct raid against theft of such electricity and subsequently, he was implicated in a false case with the help of some police personnel, at the instance of illegal consumption of electricity. It is also stated by him that he did not find Amit Kumar coming to the office in intoxicated condition. The other two employees of the said Electricity Supply Division, namely, Pappu Yadav and Khuvlal Yadav were examined. From their evidence before the Inquiry Officer, it is found that they accompanied the petitioner on 12th June 2019 during raid, the petitioner did not



consume liquor and that no can of beer was recovered from the possession of his motor-cycle. The Inquiry Officer also states that during inquiry the presenting Officer failed to produce any document relating to consumption of alcohol in the form of breath analyzer report or blood and urine test of the petitioner. Thus, the Inquiry Officer concluded that the charge against the petitioner was not proved.

4. The petitioner was, however, submitted a second show-cause by the disciplinary authority without stating the fact as to why the disciplinary authority did not want to accept the report of the Inquiry Officer and asked the petitioner to file a second show-cause. The petitioner was compelled to file a reply to the second show-cause.

5. In the meantime, he was also acquitted from the criminal case being Special Excise Case No. 247 of 2019 *vide* a judgment and order of acquittal by the learned Judge, Special Excise Court-I, Banka. Surprisingly enough, without assigning any reason, the disciplinary authority held the petitioner guilty in respect of the above mentioned departmental charge and passed an order of dismissal from service. The petitioner preferred a statutory appeal under Rule 24 of the Bihar Government Servants (Classification, Control and Appeal)



Rules, 2005. The petitioner also filed the instant writ petition before this Court. The appellate authority passed an order on 26th June 2022, holding, inter alia, that he was not in a position to pass any order in the appeal during the pendency of the writ petition.

6. Having heard the learned Advocate on behalf of the petitioner and the learned Advocate appearing on behalf of the State, I am surprised to note that this court did not pass any order of stay of hearing of the departmental proceeding. The appellate authority did not take the burden to pass a conclusive order and left the entire issue for decision before this Court.

7. It is needless to say that when a service rule contains a provision of appeal and the said appeal is pending, the petitioner again filed a writ petition during pendency of appeal. The appellate authority must pass a conclusive order in the aforesaid disciplinary proceeding.

8. This Court has found from the record that the petitioner was acquitted on the ground that the prosecution failed to produce any evidence before the Court. Secondly, one of the Homeguards who admittedly conducted raid on 12th June 2019 deposed before the Inquiry Authority that the petitioner did not consume any liquor. The officer and the members of



staff of the concerned office where the petitioner was posted, stated that they did not find the petitioner on any occasion coming to the office in intoxicated condition or that alcohol was recovered from his possession. No medical report was placed before the Inquiry Officer during disciplinary proceeding to prove that the petitioner consumed liquor at the time of his apprehension.

9. This Court in *CWJC No. 14846 of 2021 (Dharmraj Singh vs. The State of Bihar and others)* held on *09th May 2024* relying on a decision of the Hon'ble Supreme Court in *Bachubhai Hassanalli Karyani v. State of Maharashtra, reported in (1971) 3 SCC 930* that breath analyzer report is not a conclusive evidence to prove that a person had consumed alcohol.

10. The appellate authority is directed to pass his final order taking into consideration all the efforts and aspects as delineated hereinabove and pass a final order within 60 days from the date of communication of this order.

11. In the meantime, the respondents no. 03-06, are directed to permit the petitioner to join his duties as Junior Electrical Engineer in his office and grant all consequential benefits to him till the final result of the appeal.



12. Accordingly, the instant writ petition is disposed
of.

(Bibek Chaudhuri, J)

Suraj Dubey/-

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