

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3849 of 2020

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Mukesh Kumar Singh Son of Late Raghubar Singh Resident of Maulabagh,
Ward No.11, P.O.- Ara, P.S.- Ara (Nawada), District- Bhojpur (Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Home Department, Government of Bihar, Patna.
2. Principal Secretary, Home Department, Government of Bihar, Patna.
3. Director General of Police, Government of Bihar, Patna.
4. Deputy Inspector General of Police, Magadh Range, Gaya (Bihar).
5. Superintendent of Police, Nawada, District- Nawada (Bihar).
6. Inquiry Officer-cum-Sergeant Major, Police Centre, Nawada, District- Nawada (Bihar).

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Raju Giri, Advocate Mr. Harsh Vardhan, Advocate
For the Respondent/s	:	Mr. Md Irshad, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT

Date : 29-11-2024

This Court has heard Mr. Raju Giri, learned Advocate for the petitioner and Mr. Md. Irshad, learned Advocate for the State.

2. The writ petitioner has prayed for issuance of writ in the nature of certiorari for quashing of the order dated 30.11.2018, passed by the Superintendent of Police, Nawada, as contained in Memo No. 3968 dated 05.12.2018, by which the petitioner has been dismissed from service. The petitioner further sought quashing of the order contained in Memo No.



499 dated 18.03.2019, whereby this appeal preferred by him against the order of dismissal also came to be rejected. The petitioner also preferred memorial before the Director General of Police, Bihar, Patna, which also did not find any favour and finally rejected vide order dated 11.11.2019 by the Director General of Police, Bihar, Patna. This order has also been put to challenge.

3. The brief facts of the case are that while the petitioner was posted as Reserve Guard (constable) in Nawada Town P.S., an FIR bearing Nagar P.S. Case No. 757 of 2018 was instituted against him under Section 37 (b)(c) of the Bihar Prohibition and Excise Act, 2016 along with other provisions of the Indian Penal Code.

4. Allegedly, the petitioner was found in an inebriated condition in the police station; he used un-parliamentary language and misbehaved with other constables and senior officials. The petitioner was apprehended with the help of other constables but he did not co-operate in the Breath Analyzer Test, whereupon he was brought to Sadar Hospital and medically examined by the doctor, who opined that the petitioner had consumed liquor.

5. On account of the aforesaid act, leading to



institution of the FIR, the petitioner was put to suspension with immediate effect. A charge memo was issued on 16.10.2018 by the Superintendent of Police, Nawada with a specific charge of consuming liquor and of unruly behaviour. Since the petitioner was taken to judicial custody, thus request was made to the Jail Superintendent, Divisional Jail, Nawada to make available the charge memo and other papers to the petitioner, enabling him to submit his explanation.

6. Learned Advocate for the petitioner while assailing the impugned order of dismissal and its affirmance by the appellate authority has vigorously contended that since the departmental proceeding has been initiated in a hot haste manner, while the petitioner was under judicial confinement, no proper opportunity has been afforded to him and thus, the entire departmental proceeding is in complete violation of the principles of natural justice.

7. Irrespective of the aforesaid facts, the petitioner had been in judicial custody, he filed his explanation before the Inquiry Officer during the departmental proceeding with a categorical denial of consuming liquor. Despite his request for cross examination of one of the witness, namely, Mahendra Sah, against whom the petitioner raised mala fide, he has not been



allowed to do so. The memo of charge contains the name of 11 witnesses, including the Medical Officer of Sadar Hospital, Nawada; but surprisingly, the entire enquiry has been completed within 20 days, followed with the submission of enquiry report on 07.11.2018. Even from the enquiry report, it does not get proved that the petitioner had consumed liquor, as the respondents have failed to appreciate that there was no evidence either of Breath Analyzer Test or Blood and Urine Test to ascertain that the petitioner had consumed liquor, is the contention of the learned Advocate for the petitioner.

8. Upon submission of the enquiry report, the second show-cause along with the enquiry report was issued vide Letter dated 11.11.2018, but not by the disciplinary authority rather by the Sergeant Major, Nawada and, as such, contrary to Rule 18 (3) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as "Rules, 2005"). The learned Advocate for the petitioner thus contended that it is only the disciplinary authority, empowered under the Rules, 2005 to issue second show-cause; violation of this rule vitiates the entire disciplinary proceeding being illegal against the petitioner. It is also the contention of the petitioner that neither second show-cause notice nor the enquiry report were ever



served to him. However, before finalization of enquiry report, the enquiry officer has noted that the petitioner refused to accept the report; thus, serious prejudice has been caused to the petitioner. The service report is nothing but prepared in connivance with some police constables.

9. Taking this Court through the impugned order as contained in Annexure-7 to the writ petition, it is urged by the learned Advocate for the petitioner that the disciplinary authority has only reiterated the finding of the enquiry officer in a most mechanical manner without appreciating the facts and circumstances of the case. Similar mistake has been committed by the appellate authority as well as the authority, who rejected the memorial of the petitioner.

10. Per contra, learned Advocate for the State countering the submission of the learned Advocate for the petitioner contended that on account of the criminal act of the consuming liquor and improper behaviour and causing scuffle with other fellow constables, FIR was instituted against the petitioner and he was put to departmental proceeding, in terms of Rules, 2005. The memo of charge along with the relevant documents have been served upon the petitioner through the jail authorities.



11. Sri Ramesh Kumar Saw, R.S.M. Nawada was appointed as enquiry-cum-conducting officer, whereas, Sri Ashutosh Kumar, S.I.-cum-G.P. Sergeant was appointed as presenting officer. During the course of enquiry, the charges levelled against the petitioner were found prove. Accordingly, the enquiry officer vide his Memo No. 3699 dated 07.11.2018 submitted the enquiry report. On being satisfied with the enquiry report, the disciplinary authority has passed the order of punishment of dismissal. The appeal preferred by the petitioner as well as the memorial also came to be rejected, after having found no merit therein.

12. Learned Advocate for the State also contended that the petitioner deliberately refused to receive the enquiry report and copies of statement of witnesses. Several opportunities were given to the petitioner for submitting his defence explanation, but he did not do so. In such circumstances, the relevant enquiry report and copies of statement of witnesses were sent to the petitioner on his home address, but he refused to receive the same. The petitioner being a police personnel, has tarnished the image of the police, as he committed unruly act in the police station premises under the influence of alcohol attracting the penal provisions of Bihar



Prohibition and Excise Act, 2016 as well as the Indian Penal Code. The doctor, who examined the petitioner, has opined that the petitioner was under alcoholic intoxication and the level of alcohol in blood can't be ascertained here, as the petitioner was not found in control.

13. This Court has anxiously heard the learned Advocates for the respective parties and also meticulously perused the materials available on record.

14. Before parting with this case, it would be pertinent to observe that rule 17(3) of the Rules 2005 casts an obligation on the disciplinary authority to draw a charge against a delinquent government servant or cause it to be drawn up against the delinquent officer. Sub rule (4) thereof mandates the delivery of such charge memo through the disciplinary authority or an officer duly authorized. The disciplinary authority is under obligation to satisfy himself whether the explanation so tendered by a delinquent on the proposed charge, an enquiry requires by the Enquiry Officer or requires a closure. This power exclusively vested in the disciplinary authority under rule 17 (4) of the Rules 2005 cannot be delegated. It would be worth noting that the Enquiry Officer is not the competent authority to consider the reply to



the charges. It is for the disciplinary authority to consider the reply to the charges and on consideration of the causes shown in the reply to decide as to whether to close or to continue with the proceedings by holding the domestic enquiry into the charges.[*vide Ravindra Nath Singh vs. Bihar State Road Transport Corporation, (1996)2 PLJR 95*].

15. The Hon'ble Supreme Court on various occasions in different decisions held that the Enquiry Officer could not have assumed the duty of the Presenting Officer either to lead or to prove evidence whatsoever collected against the petitioner. It is the Presenting Officer who is obliged to examine the evidence to hold it sufficient enough for upholding the charges. This Court also thinks it apt to refer paragraph no. 14 of the judgment of the Hon'ble Supreme Court in the case of *Roop Singh Negi v. Punjab National Bank* reported in *(2009) 2 SCC 570* wherein the Court 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.”

16. In the case in hand the petitioner was served with the second show cause on the enquiry report but admittedly the same has not been done by the disciplinary authority. The issuance of show cause notice by the Sergeant Major who has no jurisdiction to do so in view of the provision underlined in rule 18(3) of the Rules 2005 which casts this obligation only on the disciplinary authority to seek a show cause on the enquiry report from the delinquent. This issue has also been crystallized by this Court in the case of Shankar Dayal vs. State of Bihar & Ors (CWJC No. 7207 of 2016) wherein the Court while considering the issue held that the second show cause issued by a person other than the disciplinary authority, to be a void document.

17. Now coming to the charge of unruly behaviour, under the influence of alcohol, this Court does not find that there is any evidence on record of the departmental enquiry to support the allegation that the petitioner had consumed alcohol in absence of any Breath Analyzer Test or urine/blood sample report of the petitioner which was taken for chemical examination to substantiate such allegation. Identical issue was



considered in the case of ***Dharmraj Singh @ Dhamraj Singh vs. State of Bihar & Ors. (CWJC No. 14846 of 2021)***, wherein the learned coordinate Bench while allowing the writ petition held that even the Breath Analyzer Test is not a conclusive proof for consumption of alcohol by the petitioner. However, the case in hand here is neither Breath Analyzer Test nor urine/blood report suggesting that the petitioner was under intoxication or consumed alcohol. This Court, however, deems it appropriate to encapsulate the relevant paragraphs of the said decision:

“12. Having heard the learned counsels for the parties and on careful perusal of the materials on record, I am surprised to note that the petitioner was arrested on the allegation that he consumed alcohol on 16th of January, 2020 from Barrack No. 3 of Reserve Police Line, Motihari. It is presumed that in Barrack No. 3, there were other personnel sleeping at that point of time. The arresting officer did not get the petitioner superficially examined by other inmates of Barrack No. 3 to ascertain as to whether smell of alcohol was coming from the mouth or not.

*13. It is needless to say that breath analyzer report is not a conclusive proof of consuming the liquor by a person in **Bachubhai Hassanalli Karyani vs. State of Maharashtra** reported in (1971) 3 SCC 930. The Hon'ble Supreme Court held that no conclusion with regard to consumption of alcohol by a person can be made on the facts that the appellants breath was smelling of alcohol, that his gait was unsteady, that his speech was incoherent and that his pupils were dilated. Consumption of alcohol can only be ascertained by way of blood and urine test of a person, suspected to have consumed alcohol.”*

18. Indisputably the petitioner was in judicial



custody till 02.11.2018, the date on which he was released on bail and as such on account of his custody he has been deprived from defending himself in a proper manner. In an identical situation, where the department proceeded with the disciplinary proceeding, nonetheless, the delinquent was under judicial custody, this Court in the case of Shravan Kumar vs. The State of Bihar & Ors. in CWJC No. 17881 of 2016 held that it was a case of violation of the principles of natural justice and the petitioner has not been provided opportunity of hearing in the enquiry to defend his case and thus set aside the enquiry report as well as the supplementary enquiry report reserving liberty to initiate the disciplinary proceeding afresh.

19. This Court is also of the view that the charge against the petitioner was of serious act of unruly misbehaviour in the influence of alcohol with his colleague but once charge of consuming liquor does not stand proved, offence of unruly behaviour even if proved was not grave enough to dismiss the petitioner from service. It would be worth notice that any penalty disproportionate to the gravity of misconduct would be violative of Article 14 of the Constitution of India.

20. On all the aforesaid reasons, this Court does not



find the impugned orders are sustainable in law and accordingly the impugned order(s) as contained in Annexures 7, 8 and 11 are hereby set aside. The authorities are directed to reinstate the petitioner in service. However, the authorities are free to proceed further, in case the respondents decide to proceed. Suffice it to observe that the departmental proceeding shall continue from the charge memo onwards and the said exercise is directed to be concluded within a time frame but not beyond the period of six months from the date of receipt/production of a copy of this order.

21. The writ petition stands allowed to the extent indicated hereinabove.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	24.10.2024.
Uploading Date	30.11.2024.
Transmission Date	NA

