

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2864 of 2022

=====

Dheeraj Kumar, Son of Naresh Singh, Resident of Village - Mansha, P.S. -
Mufashil Gaya, District - Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through the Home Secretary, Bihar, Patna.
2. The Director General - Cum - Inspector General of Police, Bihar, Patna.
3. The Inspector General of Police, Purnia Range, Purnia, Bihar.
4. The Superintendent of Police, Kishanganj, Bihar.
5. The Enquiry Officer - Cum - Deputy Superintendent of Police (M),
Kishanganj.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Upendra Mishra, Advocate Mr. Bhaskar Sandilya, Advocate Mr. Sanjeeb Kr. Sanju, Advocate
For the Respondent/s	:	Mr. Deepak Kumar AC to GP 4

=====

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

4 10-07-2024 The petitioner was a Constable of police attached to Kishanganj Police Station in the year 2021. On 05th May 2021, police conducted raid in the rented premises of one Suresh Poddar situated at Dumariya Bhatta, Ward No. 29 within the P.S. Kishanganj and recovered 03 empty tetra packets of foreign liquor under the brand named “Officer’s Choice”. The petitioner was arrested from the said tenant’s rent premise. It was alleged that the petitioner consumed liquor in violation of Bihar Prohibition and Excise Act, 2016 and, therefore, a case was registered against the petitioner being Kishanganj Police Station Case No. 207/2021 dated 05th May 2021 for the offence



committed under Section 30(a)/37(b) of the Bihar Prohibition Act, 2016. The petitioner was suspended from his service with effect from 08th May 2021 and subsequently, a departmental charge-sheet was filed against him on the same set of facts. The departmental charge framed by the Superintendent of Police, Kishanganj is as follows:-

“(01) किशनगंज थाना के कार्यालय पत्रांक-1698/21, दिनांक-08.05.2021 के द्वारा एक लिखित प्रतिवेदन के छायाप्रति के साथ अधोहस्ताक्षरी को समर्पित किया गया। जिसमें पु०अ०नि० रामलाल भारती के द्वारा वरीय पदाधिकारी के सूचना पर सि०/119 धीरज कुमार को दिनांक-05.05.2021 को डुमरिया भट्टा वार्ड नं०-29. थाना+जिला-किशनगंज में एक गैरेज के कोठि नुमा घर में, शराब का सेवन किये जैसा पाकर पकड़ा गया जिसे सदर अस्पताल किशनगंज में जाँच हेतु भेजा गया। जहाँ चिकित्सक द्वारा 21% अल्कोहल 100 एम०एल० शराब पीने का बात लिखित दिया गया।”

2. The petitioner submitted his defense against the above-mentioned charge, stating, *inter alia*, that he was suffering from certain ailment and was under medical treatment of a Homeopath doctor. On the date and time when police conducted raid, he was taking rest after consuming Homeopath medicine but police arrested him on false allegation that he



consumed wine.

3. In the departmental inquiry, the petitioner was found guilty and he was dismissed from service. The petitioner preferred an appeal which was also dismissed. Finally, he preferred a Memorial Appeal which also received the same fate. The petitioner has challenged the decision of his dismissal from service passed by the disciplinary authority and affirmed by the appellate authority as well as in Memorial of Appeal by filing the instant writ petition.

4. It is found from the inquiry report that during departmental inquiry, prosecution examined four witnesses. None of the said witnesses supported the charge framed against the petitioner. However, he was held guilty of misconduct for consuming alcohol in violation of Bihar Prohibition and Excise Act, 2016 on the basis of Breath Analyser Report from which it is ascertained that there was 21 % of alcohol revealed in the Breath Analyzer Report from the the breath of the petitioner.

5. Learned Advocate appearing on behalf of the respondents submits that disciplinary authority did not pass the order only on the basis of Breath Analyzer Report, but the prosecution case was that the petitioner was apprehended from tenanted premises of another person from where three numbers



of tetra packets of empty foreign liquor was seized. Immediately the petitioner was sent to the local hospital and through Breath Analyzer Report, it is opined that the petitioner consumed foreign liquor. Therefore, the order of dismissal passed by the disciplinary authority and affirmed by the appellate authority is in accordance with law and there is no reason to interfere.

6. Having heard the learned counsels appearing on behalf of the parties and then on careful perusal of the entire materials on records, I am surprised to note that the petitioner was arrested on the allegation that he consumed alcohol on 05th May 2021 and, therefore, only on the basis of the report of the doctor, and that too by breath analyzer, a case was registered against the petitioner without examining his blood and urine.

7. It is needless to say that Breath Analyzer Report is not a conclusive proof of consuming 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 appellant's breath was smelling of alcohol, that his gait was unsteady, that his speech was incoherent and that his pupils were dilated. The



consumption of alcohol can only be ascertained by way of blood and urine test of a person suspected to have consumed alcohol.

8. The Hon'ble Supreme Court found that the blood and urine examination of the appellant was not done and finally held that mere smelling of alcohol is not enough to hold that the petitioner consumed alcohol on the date of his apprehension.

9. Thus, this Court relying on the above-mentioned decision of the Hon'ble Supreme Court holds that Breath Analyzer Report is not a conclusive proof of consumption of alcohol by the petitioner. The disciplinary authority as well as the appellate authority fail to consider such aspect of the matter and the impugned order of dismissal of the petitioner suffers from manifest arbitrariness. The order of dismissal is an instance of violation of natural justice because of non-consideration of medical documents filed by the petitioner at the time of departmental inquiry.

10. For the reasons stated above, this Court is of the view that the order of dismissal, passed by the disciplinary authority on 25.08.2021 and affirmed by the appellate authority on 05.10.2021 as well as in Memorial Appeal dated 19.05.2022 are quashed and set aside and the respondents are directed to



reinstate the petitioner to his post with all consequential benefits from the date of his suspension.

11. The instant writ petition is, thus, allowed on contest.

(Bibek Chaudhuri, J)

Suraj/-

U			
---	--	--	--

