

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2838 of 2022

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Nirmal Kumar Singh Sipahi 3542, Son of Late Sachidanand Singh, Resident of New Police Line, P.S. Budha Colony, District- Patna, at present residing at Lamhang Dumariya, P.S. Bihiya, District- Bhojpur.

... .. 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 Deputy Inspector General of Police, Central Range, Patna.
4. The Senior Superintendent of Police, Patna.
5. The Enquiry Officer-cum- Deputy Superintendent of Police, (PCR) Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Upendra Mishra, Advocate
For the State	:	Mr. Md. Nadim Seraj, GP 5
	:	Mr. Shailesh Kumar, Ac to GP 5

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL JUDGMENT

Date : 27-08-2024

The petitioner has filed the instant writ petition
praying for following reliefs:-

“(1) For quashing the Charge dated 05.05.20217, including the enquiry report dated 18.01.2021 submitted against the petitioner by the Deputy Superintendent of Police -cum-Enquiry Officer, Patna (Respondent no.5) in Departmental Proceeding No.75/17.

(II) For quashing the order of dismissal, dated 11.06.2021, contained in memo no.6917 dated 15.06.2021 passed by the Senior Superintendent of Police Patna (Respondent no.4) whereby and where under the petitioner has been dismissed from service with effect from 11.06.2021 holding him guilty of the charges leveled against him in the Departmental Proceeding No.75/17.



(III) For quashing the order contained in DO/No.3133/2021 dated 28.06.2021 passed by the D.I.G., Patna (Respondent no.3) whereby and where under the appeal filed by the petitioner against the order of dismissal dated 11.06.2021 has been rejected and order of dismissal has been affirmed.

(IV) For quashing the Departmental Proceeding No.75/17 Patna Police.

(V) For directing the Respondents to reinstate the petitioner in service with all consequential and monetary benefits.

(VI) For any other relief/reliefs for which the petitioner may be found entitled to.”

2. The factual matrix of the instant writ petition is as follows: The petitioner was appointed as a Constable in Bihar Police Service in the year 1982. He has rendered service for more than 35 years, and as a result of his satisfactory service record, he was promoted to the post of Havaldar. The petitioner was also elected as the President of the Bihar State Police Men's Police Association. On the 04th May 2017 under the instruction of the Senior Superintendent of Police, Patna, Buddha Colony, P.S. Case No. 146 of 2017 was registered under Section 290/34 of the IPC and Section 37(b)(c) of the Bihar Excise Act, 2016 on the allegation that the petitioner and one Shamsher Khan were found in drunken condition, creating nuisance in the Police Line, Patna. On the following date, i.e., on 5th May 2017, the petitioner was



suspended in contemplation of a departmental proceeding. On the same day, the Senior Superintendent of Police, respondent no. 04, initiated Departmental Proceeding No. 75 of 2017 against the petitioner and one PTC Constable no. 3013, Shamsheer Khan, framing a memorandum of charge jointly, against them. It is submitted by the petitioner that on 4th May 2017 after being arrested by police, he was taken to Patna Medical College and Hospital, Patna, for medical examination. The Medical Officer submitted his preliminary opinion that the petitioner was smelling alcohol by breath analyzer examination. It is also contended by the petitioner that on 12th May 2017, the petitioner's blood sample was taken for pathological examination, and the said blood sample was sent to the Forensic Science Laboratory (hereinafter, described as 'FSL') for examination, though, in the forwarding report issued by the learned Special Judge, Excise, Patna. The date of obtaining a blood sample of the petitioner and referral to FSL was recorded as on 11th May 2017. Be that as it may. After disciplinary inquiry, the petitioner was dismissed from service on 20th November 2017. The order of dismissal was challenged by the petitioner by filing a writ petition bearing no. CWJC No. 19318 of 2018. The said writ petition was disposed of by a Co-ordinate Bench *vide* an order dated 6th September 2019 by virtue of which the impugned order



of dismissal from service, passed against the petitioner, was set aside. The petitioner was reinstated in service and be paid his back wages and other consequential benefits as if he was never dismissed from service. The writ court further directed:

“It will, however, be open to the disciplinary authority to proceed against the petitioner after giving him reasonable opportunity of at least a fortnight to submit his written statement of defence and thereafter, conclude the proceeding thereafter, in accordance with the extant Rules.”

3. On the basis of the above-mentioned order passed by this Court in CWJC No. 19318 of 2018, the petitioner was reinstated in service. Subsequent to his reinstatement, the Senior Superintendent of Police, Patna issued an order dated 26th November 2019, directing the petitioner to file the final show-cause/ defence witnesses against the same Departmental Proceeding No. 75/2017. The petitioner filed his reply to the show-cause and names of the defence witnesses on 22nd January 2020. In the reply to show-cause, the petitioner prayed to examine witnesses on behalf of defence in the departmental proceeding. Pursuant to such prayer, he also submitted the statement of the eye-witnesses in support of his defence, swearing affidavits before the notary. Subsequently, the respondent no. 4 as well as the



Inquiry Officer directed the petitioner to file reply to the second show-cause again and the witnesses on behalf of the defence. The petitioner complied with the said directions. Subsequently on 11th July 2020, the Director General of Police passed an order which was communicated by the respondent no. 4 to the petitioner mentioning that the petitioner was again suspended from his service. It is contended on behalf of the petitioner that the said order of suspension was passed illegally in violation of the order passed by this Court in CWJC No. 19318 of 2018. Subsequent to 11th July 2020, the respondents initiated a fresh departmental proceeding against the petitioner without providing him the memorandum of charge, breathe analyzer report, medical reports, FSL reports, list of witnesses and other relevant documents related to the said fresh departmental inquiry. In the subsequent departmental inquiry, the Inquiry Officer relied on the same documents which were relied on by the first Inquiry Officer and he also held the petitioner guilty of misconduct. The respondent no. 04 accepted the said Inquiry report and recommended for dismissal of the petitioner from his service. Against the said order of dismissal, the petitioner filed an appeal before the appellate authority which was dismissed. Thereafter, he filed memorial appeal with a prayer to review the orders of the disciplinary



authority as well as the appellate authority but the said memorial was also dismissed. Challenging the aforesaid orders, the petitioner has filed the instant writ petition.

4. It is contended by the learned Advocate for the petitioner that subsequent disciplinary proceeding which was directed to be initiated afresh was improper, unjust, unfair and illegal because of the principle of 'Double Jeopardy'. In support of his contention he refers to a decision of the Division Bench of Ranchi Bench of this Court, in the case of ***Kameshwar Singh v. Bihar State Road Transport Corporation***, reported in ***1995 SCC OnLine Pat 145***. In the aforesaid report, a bus conductor in Bihar State Road Transport Corporation (BSRTC) was found guilty of misconduct after departmental proceeding and ordered to be dismissed by disciplinary authority. The dismissed bus conductor filed an appeal against the order of dismissal. The appeal was allowed and the bus conductor was ordered to be re-engaged on the same terms and conditions almost three years later but denied any salary from the date of dismissal till the date of re-engagement. Another disciplinary proceeding was initiated against the said bus conductor after re-engagement on substantially the same charge of misconduct. In view of the fact that bus conductor has been re-engaged by the BSRTC, the charge of misconduct



must be held to have being condoned or wiped out and “the Doctrine of Double-Jeopardy as envisaged under Article 20(2) of the Constitution is attracted an initiation of departmental proceeding for the second time for the same period and for the same misconduct is unjust and barred.” Thus, the Division Bench quashed and set-aside the subsequent disciplinary proceeding on the ground of Double Jeopardy.

5. It is submitted by the learned Advocate appearing on behalf of the petitioner that the instant case is factually the same as that of the above-mentioned reported decision of the Division Bench. Therefore, the subsequent disciplinary proceeding ought to be held to be not maintainable and was vitiated on the principle of Double-Jeopardy.

6. The factual aspect of the case is distinguishable from the fact of *Kameshwar Singh* (supra). In *Kameshwar Singh*, the order of dismissal from service was set-aside by the departmental appellate authority. In the instant case, a Co-ordinate Bench, while setting aside the order of disciplinary authority in CWJC No. 19318 of 2018, gave liberty to the disciplinary authority to proceed against the petitioner after giving him reasonable opportunity of at least a fortnight to submit his written statement of defence and, thereafter, in accordance with the extant Rules.



7. On the basis of the order passed by the writ court, the petitioner was reinstated. As soon as an employee facing departmental proceeding is reinstated, departmental proceeding against him ends. When the writ court gave liberty to the respondent authority to proceed against the petitioner on the same charge giving him reasonable opportunity to submit written statement, the disciplinary authority is under obligation to submit memorandum of charge afresh. The old disciplinary proceeding cannot continue, therefore, the subsequent disciplinary proceeding was rightly initiated by the disciplinary authority.

8. Learned Advocate appearing on behalf of the petitioner vehemently urges that the alleged incident took place on 4th May 2017. The petitioner was arrested on 12th May 2017, i.e., after a lapse of 8 days, blood sample was taken from the petitioner and it was sent to FSL for examination as to whether there was any alcohol contained in blood. The FSL submitted its report, stating, *inter alia*, that the blood sample of the petitioner contained alcohol.

9. Referring to a decision of the Hon'ble Supreme Court in ***IFFCO-Tokio General Insurance Co. Ltd. v. Pearl Beverages Ltd.***, reported in ***(2021) 7 SCC 704***, it is contended by the learned Advocate appearing on behalf of the petitioner that the appropriate



test for detecting the percentage of alcohol is Widmark's formula which states that the basis for concluding the approximate quantity of alcohol in the body, after equilibrium between the blood and tissues has been reached, is by Widmark's formula:

$$a = cpr$$

(i) a represents the amount of alcohol expressed in grams;

(ii) c , the amount of alcohol in grams per kg estimated in the blood;

(iii) p is the weight of the person in kg, and

(iv) r is the value obtained by dividing the average concentration of alcohol in the body by the concentration of alcohol in the blood. This is constant and the average is + 0.085 for men and + 0.055 for women.

10. Learned Advocate for the petitioner submits that the FSL Report does not say that Widmark's formula was applied for obtaining the percentage of alcohol available in the blood of the petitioner.

11. It is no longer *res integra* that in departmental proceeding strict rule of evidence is not applicable. In the case instituted under the Bihar Prohibition and Excise Act, 2016 against the petitioner, the FSL expert may be cross-examined on the point of the mode and manner of examination of the blood sample of the petitioner. Since, the law of evidence is not strictly applicable in the instant case, it is sufficient for the disciplinary authority to



have the scientific report of blood specimen of the petitioner to find out as to whether the petitioner consumed alcohol or not. The FSL report supports the case of the departmental authority. The Police Department is disciplined Force under the State to maintain law and order. Consumption of alcohol is prohibited in the State of Bihar and if a police person acts contrary to law and violates the legal provision under the Bihar Prohibition and Excise Act, 2016 this amounts to a gross misconduct.

12. Therefore, on careful perusal of entire materials on record, I do not find any illegality or material irregularity in the decision taken by the disciplinary authority. The decision cannot be said to be unfair, unjust or illegal.

13. For the reasons stated above, I do not find any merit in the instant writ petition and accordingly, the instant writ petition is dismissed on contest, however, there shall be no order as to costs.

(Bibek Chaudhuri, J)

Suraj Dubey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.08.2024
Transmission Date	29.08.2024

