

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3073 of 2022

=====

Bhagwan Singh, Son of Late Sheo Nath Singh, Resident of Village - Kalani,
P.O. - Thakura, P.S. - Ramgarh, District - Kaimur, Bhabhua.

... .. 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, Muzaffarpur Range, Muzaffarpur.
4. The Deputy Inspector General of Police, Tirhut Range, Muzaffarpur.
5. The Senior Superintendent of Police, (Town) Muzaffarpur.
6. The Deputy Superintendent of Police (Town) - Cum - Operating/Enquiry Officer, Muzaffarpur.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Upendra Mishra, Advocate
For the Respondent/s : Mr. Manish Kumar (GP- 4)

=====

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

4 12-07-2024 The petitioner was a Sub-Inspector of Police attached to Vishwavidyalaya Police Station, Muzaffarpur on 28.10.2016. On that day after midnight at about 01:15 A.M. the Sub-Inspector of Police attached to the said police station and other members of the force conducted a search as to whether foreign liquors and wines were stored and consumed by any of the members of the said club. During search, the petitioner was apprehended and the police officer himself conducted Breath Analyzer Examination and reportedly found 40.1 mg./100 ml. Alcohol in his breath. Accordingly, the petitioner was suspended, a police case was registered under Section 37 of the



Bihar Prohibition and Excise Act, 2016 and finally charge sheet has been filed in the said case. It is found from the record that after arrest the petitioner was examined by a Medical Officer attached to the local health centre and on examination he was found physically fit and mentally alert. He did not examine the petitioner through Breath Analyzer. He also did not take samples of blood and urine of the petitioner to ascertain as to whether he consumed liquor or not. Subsequently, on the self same allegation, the petitioner was suspended, departmental proceeding was commenced on the basis of memorandum of charge formulated against him by the department. The Inquiry Officer held him guilty for consuming liquor on 28.10.2016 in violation of Section 37 of the Bihar Prohibition and Excise Act. The petitioner preferred an appeal against the order of dismissal from service passed by the Disciplinary Authority, the appeal was also dismissed. In the meantime, the petitioner attained the age of superannuation. By filing the instant writ petition, the petitioner has prayed for quashing of the order of dismissal passed against him by the Disciplinary Authority and affirmed by the Appellate Authority.

2. The learned advocate on behalf of the respondents submits that the Disciplinary Authority passed the order on the



basis of Breath Analyzer Report of the petitioner and relying on the said report, the petitioner was dismissed from service. The learned counsel for the respondents have left the matter for the decision of this Court as to whether the order of dismissal is to be sustained or the said order requires quashment.

3. Having heard the learned counsels of the parties and on careful perusal of the materials on record, I am surprised to note that when a police officer arrested the petitioner and conducted Breath Analyzer Test and found 40.1 mg./100 ml. quantity of Alcohol in his smell, he did not recommend blood and urine test of the petitioner to ascertain as to whether he consumed liquor or not. The medical examination report, on the other hand, states that the petitioner was physically fit and mentally alert at the time of medical examination after his arrest.

4. 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 petitioner breath was smelling Alcohol. Consumption of Alcohol can only be detected



and conclusively asserted by way of blood and urine test of a person suspected to have consumed Alcohol.

5. In the instant case, blood and urine examination was not done and on the basis of mere smelling of Alcohol, the concerned authority issued major penalty of dismissal from service.

6. Relying on the decision of the Hon'ble Supreme Court, this Court also holds that Breath Analyzer Report is not a conclusive proof of consumption of liquor by the petitioner.

7. The Disciplinary Authority as well as Appellate Authority failed to consider such aspect of the matter and solely on the basis of the said report, that too conducted by the seizing officer, passed the strict test punishment provided in CCA Rules, 2005 against the petitioner.

8. In my considered view, the order of dismissal is an instance of violation of natural justice because of non-consideration of medical documents and failure on the part of the prosecution to have blood and urine tests of the petitioner done.

9. For the reasons stated above, this Court is of the view that the order of dismissal passed by the Disciplinary Authority dated 24.07.2017 and affirmed by the Appellate



Authority on 24.11.2017 are liable to be quashed and set aside.

10. The petitioner is entitled to get all financial and consequential reliefs from the date of his suspension till the date of attainment of the age of superannuation. It is also directed that his pensionary benefit shall be calculated and paid on the basis of the financial benefit, which has been directed to be paid to the petitioner in the instant order.

11. Accordingly, the instant writ petition is allowed.
However, there shall be no order as to cost.

(Bibek Chaudhuri, J)

mdrashid/-

U			
---	--	--	--

