

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5140 of 2023

Amrit Kumar Jha Son of Bambhola Jha @ Bamabhloa Jha, Resident of
Village-Parsarma, Ward No. 08, P.s. and District-Supaul.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Information and Public Relations, Government of Bihar, Patna.
2. The Secretary, Department of Information and Public Relations, Government of Bihar, Patna.
3. The Under Secretary, Department of Information and Public Relations, Government of Bihar, Patna.
4. The Director, Department of Information and Public Relations, Government of Bihar, Patna.
5. The Deputy Director, Department of Information and Public Relations, Government of Bihar, Patna.
6. The District Magistrate, Supaul.
7. The District Public Relations Officer (D.P.R.O.) Supaul.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ranjit Jha, Advocate Mr. Rahul Jha, Advocate
For the State	:	Mr. Rajesh Kumar, AC to GP 3

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 11-11-2024

Heard Mr. Ranjit Jha along with Mr. Rahul Jha,
learned counsels appearing on behalf of the petitioner and Mr.
Rajesh Kumar, learned AC to GP 3 for the State.

2. Petitioner has *inter alia* prayed for following reliefs
in the paragraphs No.1 of the writ petition:-

*“1. That the petitioner above named
craves for indulgence of this Hon’ble Court by
way of issuance of any appropriate order/orders,
direction/directions or writ/writs as follows:-*



(i) *A certiorari setting aside the 'Reasoned Order' passed from the level of Respondent No.3, the Under Secretary, Department of Information and Public Relations, Government of Bihar, Patna (hereinafter referred to as P.R.D. only), contained in Memo No.1108 dated 26.08.2022, whereby and whereunder the Respondent authority has in a very casual, mechanical, prejudiced and illegal manner, inflicted a punishment of Dismissal from service resulting in disqualifying for any future employment in the Government service; only on the basis of an F.I.R. lodged against this petitioner for the offence under Excise Act and prohibition relying only upon the reports of Breathe Analysis done by the police, which cannot sustain in the eye of law, since the punishment is evidently disproportionate to the charges.*

(ii) *A mandamus commanding and directing the Respondents to concerned to reinstate the petitioner in service with all its consequential benefits as the authorities concerned has in a very one-sided monotonous and prejudiced manner inflicted a punishment which is disproportionate to the charges as framed, while the enquiry has been conducted in a very casual manner without supplying the list of witnesses or examination of any witness only relying upon the reports collected by the Police at the time of lodging F.I.R., or in alternative a direction may be given to the Respondent Secretary to pass final order in the pending Department Appeal of the petitioner.*

iii) *And/or any other relief or reliefs to which the petitioner is found entitled to, in the facts and circumstances of the case."*

Brief facts:

3. Brief facts of the case are that the petitioner was allegedly found in an inebriated condition and had created ruckus in the said state of mind. A case under Section 37(b) of the Bihar Prohibition and Excise Act, 2016 was registered against the petitioner vide P.R. No.7/2021 and charge memo was



issued to the petitioner. Departmental inquiry was initiated against the petitioner on the charge based on the medical evidence that 114.6mg/100 ml. blood alcohol count was found in the body of the petitioner. The explanation submitted by the petitioner was found to be unsatisfactory and after holding of departmental inquiry, an order contained in Memo No.1108 dated 26.08.2022 was passed imposing major penalty against the petitioner, dismissing the petitioner from the service. The petitioner preferred appeal against the said order. The appellate authority *vide* order contained in Memo No.164 dated 15.06.2023 confirmed the said order of penalty.

Submission on behalf of the parties:

4. Learned counsel appearing on behalf of the petitioner submitted that the petitioner was served with charge memo on the allegation that he in an inebriated condition had created ruckus, however, the said charge memo, as would appear from memo no.1134 dated 25.11.2021, is without any evidence and list of witnesses in support of the charge against the petitioner which is against the provision of Rule 17 of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as C.C.A. Rules, 2005), therefore, any conclusion derived on the basis of the medical



report adduced with the charge memo in support of the charge that the petitioner had consumed liquor is not sustainable in want of proved evidence. Regarding the total count of alcohol in the blood sample of the petitioner which has been informed to be 114.6 mg/100 ml., is also not supported with the breath analyzer test report, which was also not made evidence to the charge memo. The petitioner at the relevant point of time was posted as Clerk in District Information and Public Relation office Supaul. It has been further contended that no witness was examined in course of the Departmental Enquiry, nor the petitioner was given any witness in defence. The recommendation of the Inquiry Officer in want of any evidence supported by any witness for dismissal from service is vitiated in eye of law.

5. *Per contra*, learned counsel appearing on behalf of the State submitted that the dismissal order cannot be interfered with in absence of any procedural lapses in conduct of departmental inquiry. It is further submitted that the procedure prescribed under Rule 17 of the C.C.A. Rules, 2005 has duly been followed and petitioner was given adequate opportunity to defend the charges. He availed the said opportunity and participated in the departmental inquiry but he never requested



for examination of witness nor he demanded any document at any point of time. The defense of the petitioner for consumption of alcohol during his duty period was found not acceptable considering the quantity of alcohol consumed by him. The conduct of the petitioner was found not in accordance with Rule 3(1)(i),(iii) and Rule 4 of Bihar Government Servant Conduct Rules, 1976 as a case under the Bihar Prohibition and Excise Act, 2016 was registered against the petitioner. The punishment of dismissal from service commensurate to the charges and as such in absence of any inherent jurisdiction or perversity in the order, the punishment order cannot be vitiated.

CONCLUSION:

6. Having considered the rival submissions as well as having considered the charge memo contained in Memo No.1134 dated 25.11.2021, I find that the blood test report, confirming that the blood of the petitioner contained 114.6 mg/100 ml. of alcohol, is not supported by any chemical examination report from any government laboratory or from any other laboratory and no any evidence confirming the said information contained in the charge memo is provided which formed the basis of proceeding against the petitioner. Considering the fact that the documents which were provided to



the petitioner along with the charge memo are mentioned in part 4 of the charge memo, which is reproduced hereinafter:-

क्र०	संबंधित पत्र/अभिलेख	पृष्ठों की संख्या
1	अधीक्षक, मद्य निषेध, सुपौल के पत्रांक-866/म०नि० दिनांक 09.10.2021 (पी०आर० सं०-07.10.2021 एवं चिकित्सीय जाँच सहित)	03 (तीन)
2	बिहार मद्य निषेध और उत्पाद अधिनियम-2016 के अध्याय-iii नियम-13 एवं अध्याय- vi नियम-37	03 (तीन)
3	बिहार सरकारी सेवक आचार नियमावली-1976 के नियम-03 (1) (i) एवं (iii) तथा नियम-04 (संशोधित नियमावली-2017)	02 (दो)

7. The above list of documents don't contain the blood sample report to confirm that 114.6 mg/100 ml. was present in the body of the petitioner. It appears that from the very beginning the authority had proceeded with *predetermined* mind to impose penalty against the petitioner. I find that the charge cannot be sustained in the eye of law, being not in conformity with the provision of C.C.A. Rules, 2005, the same is fit to be set aside and quashed leading to the further proceeding vitiated in the eye of law and in this regard I find it apt to refer the order dated 29-10-2024 passed in **CWJC No. 8071 of 2023** wherein it has been held that if any disciplinary action is taken with a pre-determined mind, the same is in violation of principle of natural justice calling for interference of this court.

8. The Hon'ble Apex Court in ***Bachubhai Hassanalli Karyani Vrs. State of Maharashtra***, reported in (1971) 3 SCC



930, held that no conclusion with regard to consumption of alcohol by a person can be made on the facts that the appellant's breathe 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 by a person suspected to have consumed alcohol.

9. The above stated principle has been retrieved by the Co-ordinate bench of this court in **C.W.J.C. No. 2590 of 2022**, wherein it was held that breath analyzer report is not a conclusive proof of a person's consumption of liquor and also held that blood sample and urine tests are the correct method to determine if a person has consumed liquor.

10. A reference can be made to the law laid down by the Hon'ble Supreme Court in the case of **Union of India Vs. H. C. Goel**, reported in **1964 AIR 364/1964 SCR (4) 718**, in which, it has been held that:

"It still remains to be considered whether the respondent is not right when he contends that in the circumstances of this case, the conclusion of the Government is based on no evidence whatever. It is a Conclusion which is perverse and, therefore, suffers from such an obvious and patent error on the face of the record that the High Court would be justified in quashing it. In dealing with writ petitions filed by public servants who have been dismissed, or otherwise dealt with so as to attract Art. 311 (2), the High Court under Art. 226 has Jurisdiction to enquire whether the conclusion of the Government on which the impugned order of dismissal rests is not supported by any evidence at all. It is true that the



order of dismissal which may be passed against a Government servant found guilty of misconduct, can be described as an administrative order; Nevertheless, the proceedings held against such a public servant under the statutory rules to determine whether he is guilty of the charge framed against him are in the nature of quasi judicial proceedings and there can be little doubt that a writ of certiorari, for instance, can be claimed by a public servant if he is able to satisfy the High Court that the ultimate conclusion of the Government in the said proceedings which is the basis of his dismissal is based on no evidence. In fact, in fairness to the learned Attorney-General, we ought to add that he did not seriously dispute this, position in law.....”

11. The above proposition was determined by the Apex Court in the case of **Roop Singh Negi vs Punjab National Bank & Ors.** reported in **2009 (2) SCC 570**, which is reproduced hereinafter:-

“10. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled 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. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the Enquiry Officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. Appellant being an employee of the bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the Enquiry Officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.”



12. In light of the recorded facts, evidence, and law, if the Disciplinary Authority finds that any corrective measures are to be required to be carried out in accordance with the provisions of Bihar CCA Rules, 2005 and the manner prescribed under Article 311 (2) of the Constitution of India, the State must take such corrective steps in accordance with the law.

13. The writ petition stands disposed of.

14. Interlocutory Application(s), if any, also stands disposed of.

(Purnendu Singh, J)

Sanjay/-

AFR/NAFR	N.A.F.R
CAV DATE	NA
Uploading Date	20.11.2024
Transmission Date	NA

