

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14846 of 2021

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Dharmraj Singh @ Dhamraj Singh, Son of Chanarik Singh, Resident of village - Kera, P.O. - Samser Nagar, P.S. Daudnagar, District- Aurangabad.

... .. 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 Additional Director General of Police, Bihar, Patna.
4. The Deputy Inspector General of Police, Champaran Range, Betiya.
5. The Superintendent of Police, West Champaran, Motihari.
6. The Additional Superintendent of Police - cum- Operating/ Enquiry Officer, Head Quarter, West Champaran, Motihari

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Upendra Mishra, Advocate
		Mr. Bhaskar Sandilya, Advocate
For the Respondent/s	:	Mr. Manish Kumar (GP4)

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

3 09-05-2024 1. The petitioner has invoked extraordinary jurisdiction of this Court under Article 226 of the Constitution praying for the following reliefs:-

“i. For quashing the enquiry report dated 14.05.2020 submitted against the petitioner by the Additional Superintendent of Police -cum- Operating / Enquiry officer, Motihari (Respt.No.6) holding him guilty of the charge dated 28.01.2020 levelled against him in Departmental Proceeding No. 03/ 20, Motihari District police.

ii. For quashing the Appellate order contained in Champaran Range, Betiya



Motihari, District order No. 1036 / 20, vide memo no.650 dated 02.07.2020 passed by the D.I.G. Champaran Range, Betiya (Respt.no.4) the recommendation of The Superintendent of Police, west Champaran Motihari, whereby and where under the petitioner has been dismissed from service.

iii. For quashing the order contained in Motihari District order No. 1973 / 20, dated 30.09.20 passed by the A.D.G.P. (Respondent No.3) Bihar, Patna, and also quash the Motihari District order No. 1522 / 21, dated 29.06.2021 passed by the D.G.P. Bihar, Patna, (Respondent No.2)

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

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

Factual Matrix

2. The petitioner was initially appointed as a Constable of Police under the Home Department, Government of Bihar, Patna and after rendering satisfactory service for about 32 years, he was promoted to the post of Assistant Sub-Inspector in the year 2020. The petitioner was posted in the Reserve Force at Motihari Police Line. On that date, when he was sleeping in Barrack No. 3 at about 10:00 PM after taking



medicines for Tuberculosis, police attached to Motihari Town Police Station conducted a raid in the Barrack to find out as to whether any police personnel consumed liquor or not. The petitioner was examined by police personnel and the raiding party allegedly found that the petitioner consumed liquor. Accordingly, he was arrested and Motihari Town P.S. Case No. 59 of 2020, dated 16th of January, 2020 was registered against him under Section 37 (B) of the Bihar Prohibition and Excise Act, 2018.

3. It is contended on behalf of the petitioner that after his arrest, he was taken to Sadar Hospital, Motihari and his medical examination was done with the help of breath analyzer and the medical officer opined that the petitioner consumed liquor which is a banned article in the State of Bihar. The petitioner was immediately suspended w.e.f., 17th of January, 2020, by the Superintendent of Police, West Champaran and a departmental proceeding was initiated on the basis of the solitary charge of consuming liquor by him in violation of the Bihar Prohibition and Excise Act. The petitioner filed a reply to the show cause wherein he clearly stated that he did not consume liquor as alleged. On the contrary, he was suffering from Tuberculosis and he took some medicines and cough syrup



and went to bed when he was apprehended by police attached to Motihari Town Police Station. The petitioner's explanation was not considered and at the instance of the Superintendent of Police, West Champaran, departmental inquiry was initiated. During inquiry, only the breath analyzer report was filed in support of the charge by the Presenting Officer and on the basis of the same report, the petitioner was held guilty for gross misconduct and he was dismissed from service.

4. I have perused the impugned order of dismissal issued by the Deputy Inspector of Police, Champaran, dated 2nd of July, 2020 (Annexure 7).

5. I have also perused the order of the Additional Director General of Police, dated 30th of September, 2020 (Annexure 9), affirming the order of the dismissal dated 2nd of July, 2020.

6. It is pertinent to note that the Director General of Police vide an order dated 29th of June, 2021, dismissed the memorial appeal filed by the petitioner.

Submission on behalf of the petitioner

7. Learned Advocate on behalf of the petitioner submits that on 16th of January, 2020, the petitioner was picked up from Barrack No. 3 by police attached to Madhubani Town



Police Station, alleging, *inter alia*, that smell of alcohol was coming from the breath of the petitioner. On the same date, medical examination of the petitioner was done at Motihari Sadar Hospital and the Medical Officer submitted his report on the basis of his examination by breath analyzer that the petitioner consumed liquor.

8. It is submitted by the learned Advocate for the petitioner that during inquiry the petitioner submitted all medical papers to prove that at the relevant point of time he was suffering from Tuberculosis and was under medication. He took his medicines at the night of 16th of January, 2020 and went on to bed at about 10:00 PM. The inquiry officer failed to consider such report. The petitioner was dismissed only on the basis of breath analyzer report submitted by the Medical Officer of Sadar Hospital, Motihari and in order to ascertain whether he consumed alcohol, his blood and urine specimen were not examined.

9. The learned Advocate for the petitioner contends that without blood and urine examination a person cannot be said to have consumed liquor.

Submission on behalf of the Respondents.

10. 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.

11. The learned counsel for the respondents has left the matter for the decision of this Court as to whether the order of dismissal was to be sustained or the same requires quashment.

Conclusion

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.

14. The Hon'ble Supreme Court found that the blood and urine examination of the appellant was not done and finally held that the mere smelling of alcohol is not enough to hold that the petitioner consumed alcohol on the date of his apprehension i.e., on 16th of January, 2020.

15. Thus, this Court holds that breath analyzer report is not a conclusive proof of consumption of alcohol by the petitioner.

16. The disciplinary authority as well as the appellate authority failed 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.

17. For the reasons stated above, this Court is of the view that the order of dismissal, passed by the Deputy Inspector



of Police, Champaran Range, Bettiah, dated 2nd of July, 2020; the order of the Additional Director General of Police, Bihar, Patna, dated 30th of September, 2020, affirming the order of dismissal; and order, dated 29th of June, 2021 passed by the Director General, Bihar, Patna, dismissing the memorial appeal of the petitioner, are quashed and set aside.

18. I have been told that in the meantime, the petitioner has retired.

19. In view of my above finding, the petitioner is held to be in service on 16th of January, 2020 till the date of his retirement and the respondents are directed to give all his retiral dues and financial benefits to the petitioner during the period from 16th of January, 2020 till the date of his superannuation and even thereafter which constitutes his retiral benefit.

20. The instant writ petition is accordingly allowed on contest.

21. However, there shall be no order as to costs.

(Bibek Chaudhuri, J)

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