

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9871 of 2023

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Mukesh Sharma S/o Gajendra Sharma, Ward No. 11, Malsar, P.s. Bithan,
District Samastipur, Bihar-848207.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Prohibition, Excise and Registration Department, Government of Bihar, Patna.
2. The Excise Commissioner, Department of Prohibition, Excise and Registration Department, Government of Bihar, Patna.
3. The Secretary to Excise Commissioner Department of Prohibition, Excise and Registration Department, Government of Bihar, Patna.
4. The Joint Commissioner, Prohibition, Excise and Registration Department, Bihar, Patna.
5. District Magistrate, Gaya.
6. Senior Superintendent of Police, Gaya.
7. Deputy Secretary, Prohibition, Excise and Registration Department-cum-Conducting Officer, Bihar, Patna.
8. Assistant Commissioner of Prohibition Department of Prohibition, Excise and Registration Department, Government of Bihar, Gaya.
9. Inspector of Prohibition, Department of Prohibition, Excise and Registration Department, Gaya.
10. SHO, Sherghati (Dhobi) Police Station, Gaya.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Kumar Amit
For the Respondent/s	:	Mr.Vivek Prasad (GP-7)
		Ms. Namish Singh
		Ms.Sanjay Kumar
		Ms. Roona
		Ms. Supragaya, AC to GP-7

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CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA
CHAKRAVARTHY
ORAL JUDGMENT
Date : 12-01-2024

This writ petition has been filed for the following
reliefs:-



(i) for quashing the order issued vide Gyapank No. 2658 dated 22.05.2023 passed by appellate authority and Gyapank No. 1882 dated 11.04.2023 passed by the disciplinary authority whereby and whereunder confirming the orders passed by the disciplinary authority, the petitioner has been dismissed from the service.

(ii) for issuance of mandamus commanding the respondents to reinstate the petitioner with all consequential benefits and

(iii) for passing any other order as may deem fit and proper.

2. The case of the petitioner is that he was working as Sub-Inspector, Prohibition and Excise Department and was posted in Gaya District. On 03.02.2021, Sherghati (Dobhi) PS registered Complaint No. 75 of 2021 under Section 08/20(b)(ii) (c)/25/29/59(2) of the Narcotic Drugs and Psychotropic Substances Act against the petitioner and ten other co-accused persons on the basis of written information of Police Inspector, Economic Offence Wing, Bihar Patna alleging therein that petitioner with other two co-accused who are constables demanded illegal gratification other than valid remuneration in lieu of leaving the accused persons carrying illicit Ganja in pick-up van bearing registration no. JH01X-0342. Copy of complaint/ FIR No. 75 of 2021 dated 03.02.2021 is annexed



with this petition as Annexure-P1.

3. It is alleged that on 02.02.2021, the petitioner conducted raid at Imamganj More, Sherghati and seized one pick-up van laden with illicit Ganja and arrested two persons for the said offence and in lieu of letting the arrested persons go free illegal gratification was demanded. It is also alleged that said seized pick-up van was parked one kilometer away at Jairampur Nahar Road from main GT Road for the purpose of hiding the same. It is further alleged that information of the said seizure was not provided to senior officials of the department by the petitioner and the said pickup van was recovered from Jairampur Nahar road by the Police Inspector, Economic Offence Wing, Bihar, Patna where two constables and the petitioner were arrested and sent to judicial custody.

4. Further departmental proceeding was initiated vide Memo No. 4246 dated 23.08.2022 for which Joint Secretary, Department of Prohibition, Excise & Registration was appointed as conducting officer and Section Officer, Department of Prohibition, Excise & Registration was appointed as presenting officer and the copy of charge memo was supplied to the petitioner with direction to appear before the conducting officer to face the departmental inquiry.



5. It is submitted by the learned counsel for petitioner that the conducting officer was transferred and respondent no. 7 Deputy Secretary, Prohibition, Excise & Registration Department was appointed as the conducting officer in his place who sought written explanation/statement vide letter no. 80 dated 15.11.2022. On 22.11.2022 the petitioner appeared before the conducting officer and submitted detailed written explanation as his defence denying the allegation levelled against him in the chargesheet and prayed for examination of the witnesses to conducting officer, but the conducting officer has not accepted his plea. It is further contended that the conducting officer confirmed the charges against the petitioner and therefore, second show-cause notice was issued to the petitioner vide Patrank No. 6619 dated 14.12.2022 and it is further contended that without examining any witnesses in this case, the conducting officer has passed the order against the petitioner. None of the witnesses who have conducted the raid or lodged the FIR/complaint or the departmental officers who submitted the report against petitioner, were never examined in the said departmental proceeding. Further petitioner was never provided any opportunity to cross examine the witnesses and inspite of that the order of dismissal was passed against him. It



is further contended that petitioner submitted detailed reply to the second show-cause dated 30.12.2022 which was not being considered and major punishment was imposed against him and he was dismissed from the service vide Memo no. 1882 dated 11.04.2023.

6. Being aggrieved by the said order petitioner preferred an appeal dated 25.04.2023 and the appellate authority also confirmed the said orders. Being aggrieved by the same present petition has been filed and therefore, prayed for quashing of the said orders which was issued by the disciplinary authority as well as appellate authority.

7. On the other hand a detailed counter affidavit has been filed by the respondent nos. 1 to 4 and respondent nos. 7 to 9 denying the allegations made in the writ petition.

8. The specific contention raised in the counter affidavit is that petitioner was posted as Sub-Inspector and on 02.02.2021 at 1.20 pm during the raid he seized pickup van loaded with Ganja and in order to release the Driver and Khalasi demanded illegal gratification from the two accused and let them go, therefore, petitioner misused his post by demanding illegal gratification and failed to comply his duty, therefore FIR was registered against him on 03.02.2021. Pursuant to the arrest,



the petitioner was suspended under Rule 14 (xi) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 from service. The counter also reveals that the appeal was also dismissed. It is the specific contention of the respondents that both the authorities have concurrently given the findings based on evidences available on record.

9. In order to support the contention learned counsel for petitioner has referred LPA No. 63 of 2017 in CWJC No. 280 of 2016 dated 22.08.2017 wherein this Court has relied upon the judgment of Apex Court in the case of **Roop Singh Negi Vs. Punjab National Bank (2009) 2 SCC 570**. The observations made by the Apex Court as detailed in the order holds that based on the FIR without examining any witness the action taken is unsustainable and the learned writ Court allowed the writ petition and in doing so we are of the considered view that the learned writ court has not committed any error warranting any interference in the appeal.

10. Relying on the same judgment this court is of the view that merely basing on the copy of FIR disciplinary proceeding cannot be finalized. That being so, this court has not committed any error warranting any interference.

11. It is specific contention of the petitioner that he



has given reply to the first show-cause as well as second show cause, but no witnesses were examined in this case and further the orders passed by the disciplinary authority also indicate that no witnesses were examined in this case so as to prove that writ petitioner has taken illegal gratification, on the date of offence for which he has been removed from the service. For the above said discussion, it is just necessary to set aside the orders, as they are violate of Principles of Natural Justice.

12. Therefore, this court is of the considerable view that orders passed by the disciplinary authority dated 11.04.2023 and by the appellate authority dated 22.05.2023 are fit to be quashed.

13. Accordingly, the orders passed by the disciplinary authority dated 11.04.2023 and by the appellate authority dated 22.05.2023 are hereby quashed and this writ application stands allowed.

(G. Anupama Chakravarthy, J)

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AFR/NAFR	
CAV DATE	NA
Uploading Date	25.01.2024
Transmission Date	

