

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15963 of 2021

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Aswasthama Mahto @ Ashwathama Mahto Son of Late Dallu Mahto
Resident of Village- Kocho (Koncho), P.O.- Tutki Nawadih, P.S.- Silli,
District- Ranchi (Jharkhand).

... .. 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, Bihar Military Police, North Mandal, Muzaffarpur.
4. The Commandant of Bihar Military, Police- 7, Katihar.
5. The Investigation/Enquiry Officer-cum-Chief Inspector (C), Bihar Military Police-7, Katihar.

... .. 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 09.10.2020 (Annexure-7) submitted against the petitioner by the Investigation / Enquiry officer - cum- Chief Inspector (C) Bihar Military Police-7, Katihar (Respt.No.5) in Departmental Proceeding No. 08/20, Bihar Military Police-7, Katihar.

(II) For quashing the order dated 23.11.2020 (Annexure-10) passed by the



Commandant of Bihar Military Police-7, Katihar (Respondent No. 4) whereby and where under the petitioner has been dismissed from service with effect from 23.11.2020 holding him guilty of the charges levelled against him in the Departmental Proceeding No. 08/20, Bihar Military Police-7, Katihar.

(III) For quashing the Appellate order dated 19.02.2021 (Annexure-12) passed by the Deputy Inspector General of Police, Bihar Military Police, North Mandal, Muzaffarpur (Respondent No.3) whereby and where under the appeal filed by the petitioner against the order of dismissal dated 23.11.2020 has been rejected and order of dismissal has been affirmed.

(IV) For quashing the Departmental Proceeding No. 08/20, Bihar Military Police-7, Katihar, initiated against the petitioner by the impugned order dated 14.03.2020.

(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.”

Factual Matrix

2. The petitioner was initially appointed as a Constable of Bihar Military Police (BMP) and after rendering satisfactory service for about 33 years, he was promoted to the



post of Havildar. The petitioner was working on the post of Havildar in E-company B.M.P.-7, Katihar and his deputation was in Supaul Stadium under Supaul District. On 31.12.2019 at 12.40 P.M., a case, bearing Supaul P. S. Case No. 828 of 2019, has been registered against the petitioner for the offences punishable under Section 37 (a) and 37(b) of the Bihar Prohibition and Excise Act, 2018, on the allegation that he has taken alcohol. In the light of the allegation and the Police case, petitioner was suspended by the Commandant of B.M.P.-7, Katihar. The petitioner was then served with a notice of show-cause *vide* Memo No. 356, dated 14.02.2020. Thereafter, the petitioner filed his show-cause, stating, *inter alia*, that in the course of going to duty, due to poor health and hungry stomach on the suggestion of a private doctor, syrup was taken by him. Thereafter, the Commandant of B.M.P.-7, Katihar initiated departmental proceeding against him and second show-cause notice was issued against the petitioner. Petitioner again filed his show-cause, stating, *inter alia*, that he had not taken alcohol, rather used homeopath medicine. But the Enquiry Officer did not consider his explanation and without providing proper opportunity found the petitioner guilty and passed the order of dismissal. Again, on 20.10.2020, *vide* Memo No. 150, the



Commandant of Police, Katihar has directed the petitioner to file show-cause against the proposed punishment of his dismissal from service. The petitioner, dissatisfied with the order of dismissal passed by the Commandant of Police, Katihar, filed Appeal before the Deputy Inspector General of Police, Bihar Military Police, North Mandal, Muzaffarpur, who dismissed the appeal. Thereafter, the petitioner filed Memorial Appeal before the Director General of Police, Patna, Bihar and aggrieved by the non-response from the DGP, Patna, Bihar, the petitioner filed a reminder application on 19.07.2021, but till date no order has been passed by the DGP, Bihar, Patna. Hence, this writ petition.

Submission on behalf of the petitioner

3. Learned Advocate on behalf of the petitioner submits that petitioner was examined on the same day in Sadar Hospital, Supaul with Breath Analyzer but neither blood nor urine was tested by the doctor and without examining the urine or the blood, the doctor made a report of smell of alcohol coming out from the mouth of the petitioner.

4. It is submitted by the learned Advocate for the petitioner that during inquiry the petitioner submitted that the petitioner had not taken alcohol, rather used homeopathic



medicine, but the inquiry officer failed to consider such explanation. The petitioner was dismissed only on the basis of Breath Analyzer report, submitted by the Medical Officer of Sadar Hospital, Supaul and in order to ascertain whether he consumed alcohol, his blood and urine specimen were not examined.

5. 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.

6. 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.

7. 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

8. 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 in the night of 31.12.2019 and thereafter only



on the basis of the report of doctor, and that too by Breath Analyzer, a case was registered against the petitioner, without examining his blood and urine.

9. 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 appellant's 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.

10. 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.

11. Thus, this Court holds that Breath Analyzer report is not a conclusive proof of consumption of alcohol by the petitioner.

12. 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.

13. For the reasons stated above, this Court is of the view that the order of dismissal, passed by the Commandant of Bihar Military Police-7, Katihar, dated 23rd November, 2020 and the order of the Deputy Inspector General of Police, Bihar Military Police, North Mandal, Muzaffarpur, dated 19th of February, 2021, affirming the order of dismissal, are quashed and set aside and the respondents are directed to give all financial benefits to the petitioner.

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

(Bibek Chaudhuri, J)

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