

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4181 of 2021

Manoj Kumar Thakur Son of Sri Jagdish Prasad Thakur resident of Gaushala Road, Begusarai, P.O.- Begusarai, P.S.- Town, District- Begusarai - 851101, Discharged Barbour (Nayee), Wahini headquarters, B.M.P.-15, Balmikinagar, Bagaha (I.B.-3), Camp B.M.P. 6, Muzaffarpur

... .. Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Department of Home (Police), Government of Bihar, Patna
2. Director General of Police, Government of Bihar, Patna
3. Deputy Inspector General of Police, B.M.P. (North Range), Muzaffarpur
4. Commandant, B.M.P.-15, Balmikinagar, Bagaha (I.R.B.-3), Camp- B.M.P.-6, Muzaffarpur
5. Deputy Superintendent of Police, B.M.P.-15, Balmikinagar, Bagaha (I.R.B.-3), Camp- B.M.P.-6, Muzaffarpur

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Arun Kumar Sinha, Advocate Mr. Ashutosh Krishna, Advocate
For the Respondent/s	:	Mr. Sunil Kumar Mandal, SC 3 Mr. Arjun Prasad, AC to SC 3

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 25-06-2025

Heard Mr. Arun Kumar Sinha, learned Advocate for the petitioner and Mr. Arjun Prasad, learned Advocate for the State.

2. The petitioner is aggrieved with the order as contained in Memo No. 2518 dated 11.10.2019 (Annexure-5 to the writ petition), whereby the petitioner has been inflicted with



the punishment of dismissal with effect from 09.10.2019. The appeal preferred by the petitioner against the order of dismissal also came to be rejected vide Memo No. 609 dated 05.03.2020 (Annexure-7 to the writ petition) is also under challenge herein.

3. The short facts which led to the filing of the present writ petition are in narrow compass.

(i) On 24.11.2016, the Deputy Superintendent of Police, Bihar Military Police,-15, Muzaffarpur was informed that the petitioner, who was working as a Class IV employee on the post of Barber was found creating nuisance at Gate No. 2 under influence of liquor. The aforesaid incidence led to institution of Excise Case No. 381 of 2016 for the offences punishable under Section 37(c) of the Bihar Prohibition and Excise Act, 2016. Consequent thereto, the petitioner was taken into custody and subsequently he was enlarged on bail by the learned Sessions Judge, Muzffarpur.

(ii) On account of the reason, afore noted, the petitioner was put under suspension and served with a memo of charge directing him to submit explanation. The petitioner in response to the charges has submitted a detailed reply/defence statement. The Conducting Officer proceeded with the departmental enquiry and examined three witnesses, out of



whom one was formal in nature, and finally returned the finding of guilt against the petitioner of creating nuisance in the influence of liquor and thus violating the prohibitory excise rules of the government. On receipt of the enquiry report, the petitioner was served with second show cause which was also responded but the same did not find favour and finally the impugned order of punishment of dismissal came to be passed.

(iii) Aggrieved with the order of punishment, the petitioner preferred appeal; that did not find any favour and came to be rejected, hence the present writ petition.

4. While assailing the orders impugned, learned Advocate for the petitioner contended that the entire allegation against the petitioner rest upon a Breath Analyser Test, based upon which it is alleged that the petitioner was found under influence of liquor while creating ruckus at Gate No. 2. However, the Breath Analyser Test cannot be said to be a conclusive proof of consumption of alcohol in absence of any urine and blood test. The above mentioned issue was the subject for consideration in the case of *Manju Devi vs. The State of Bihar & Ors. [CWJC No. 2590 of 2022]*, wherein a Bench of this Court placing reliance upon the decision in *Bachubhai Hassanalli Karyani vs. State of Maharashtra [(1971) 3 SCC*



930] recorded the observation of the Apex Court 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 and speech was incoherent and that his pupils were dilated. The consumption of alcohol can only be ascertained by way of blood and urine test by a person suspected to have consumed alcohol.

5. It is the specific contention of the petitioner that the petitioner had never been subjected to any blood and urine test, hence Breath Analyser report alone could not be an admissible evidence to return the finding that the petitioner was found in an inebriated condition or in the influence of liquor. It is further contended that in identical facts the coordinate Bench of this Court in the case of ***Manju Devi*** (supra) has set aside the order of dismissal which was passed only upon the finding of the Enquiry Officer that the delinquent was found under the influence of alcohol on the basis of the Breath Analyser Test. Reliance has also been placed on a judgment rendered by the Apex Court in the case of ***Munna Lal vs. Union of India & Ors. [(2010) 15 SCC 399]*** as also the decision rendered by this Court in the case of ***Jawahar Kumar Singh vs. The State of Bihar & Ors. [2019(2) PLJR 156]***.



6. Referring to the decisions afore noted, learned Advocate for the petitioner thus contended that once it is evident that the evidence, based upon which the finding of guilt is returned by the Enquiry Officer is inadmissible in law, the order of the disciplinary authority inflicting punishment of dismissal is unsustainable in law. Taking this Court through the order of punishment and the appellate order it is further contended that the same is non speaking and cryptic, inasmuch as the defence of the petitioner has neither been deliberated and discussed nor answered as to why the same is not acceptable.

7. On the other hand, learned Advocate for the State dispelling the aforesaid contention submitted that there is no infirmity in the procedure followed by the Department, which led to issuance of the dismissal order. The petitioner was found in inebriated condition while he was creating ruckus at the gate of jail premises. The witnesses produced before the Enquiry Officer have supported the charges and finally on being found the charges proved, the Enquiry Officer has returned the finding of guilt. Based upon the enquiry report, the petitioner was directed to submit his show-cause reply. On all the stages, the petitioner was afforded reasonable opportunity to defend his case, but he failed to do so. The disciplinary authority has duly



considered the show-cause reply of the petitioner and on being dissatisfied with the same, the impugned order came to be passed.

8. Learned Advocate for the State further contended that while exercising the power of judicial review, there cannot be re-appreciation of evidence, moreover, in the disciplinary proceeding the charges are only required to be proved based upon the preponderance of probabilities, that is present in the case. The appeal preferred by the petitioner also came to be rejected, hence no interference is required to the impugned order; is the contention of the learned Advocate for the State.

9. Before parting with the case, it would be relevant to give a glance to the memo of charge. There is a specific imputation against the petitioner that on the alleged date he was found under the influence of liquor and creating ruckus and indiscipline behaviour, hence in the opinion of this Court, the Department was obliged to prove the charge of consumption of alcohol. For the said purpose, the only evidence, produced by the department was a breath analyser test report. Time and again, the Hon'ble Supreme Court and this Court on innumerable decisions held that for conclusive proof of consumption of alcohol, blood and urine test report is necessary.



The materials available on record, as also the enquiry report clearly suggest that there is no such report to support the allegation of consumption of liquor.

10. So far the institution of the criminal case is concerned, it is true that the same is pending and till date the trial has not been concluded.

11. This Court now coming to the enquiry report, *prima facie*, finds that there is no Presenting Officer, though it has been said that the Presenting Officer was appointed and the witnesses were examined in his presence, but there is no opinion on behalf of the Presenting Officer. The Enquiry Officer while returning the finding of guilt has emphasized upon the institution of Excise Case No. 381 of 2016 and consequent remand of the petitioner to judicial custody, which, in the opinion of this Court, cannot be the basis to return the finding of guilt of consumption of alcohol.

12. True it is that the power of punishment is always within the domain of the employer's discretion and normally should not interfere where there is no infirmity in the proceeding, except where it is based on no evidence, and in case where there is manifest infirmities in the procedure which led to serious illegality.



13. It would be pertinent to observe that in case of ***Munna Lal*** (supra), wherein the 3-Judge Bench of the Apex Court while considering the appeal preferred by the delinquent, who was charged with dereliction of duty and misconduct under influence of liquor, which led to his dismissal and duly affirmed by the High Court, has set aside the impugned order and held that in absence of any material to support the consumption of liquor and the evidence was found not satisfactory to prove that he was found with any alcohol and if there is no medical report, the charge levelled against the appellant was not satisfactorily proved. The Court further held that in the absence of sufficient proof, the disciplinary authority should not have imposed such penalty, the appellant was reinstated with 50% of the back wages for the period he was out of service.

14. Similarly, in the case of ***Jawahar Kumar Singh*** (supra), while the delinquent was facing identical charge of creating ruckus after consuming liquor leading to his dismissal was questioned before this Court; the learned coordinate Bench of this Court set aside the impugned order of dismissal and relegated the matter by observing that an unduly harsh punishment has been meted out to the petitioner and that also when charges were sought to be proved in a most rudimentary



manner by relying upon the Breath Analyser report, which report could well be wrong as well.

15. Now coming to the case in hand, once the finding of consumption of alcohol is based upon no evidence, the enquiry report furnished by the Enquiry Officer itself vitiates in law and thus inadmissible. Hence, based upon such enquiry report, if the petitioner has been inflicted with the order of extreme punishment, the same is wholly sustainable. Moreover, the impugned order of punishment also does not reflect the application of mind to the defence taken by the petitioner as is required under Rule 17(14) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 and thus the same is held to be cryptic, and passed without application of mind. Similar mistake has also been committed by the Appellate Authority, who failed to discharge his obligation, as is required under Rule 27 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005.

16. In view of the discussions made hereinabove, this Court finds that the impugned orders, as contained in Memo No. 2518 dated 11.10.2019 and Memo No. 609 dated 05.03.2020 are held to be unsustainable and hereby set aside. The petitioner is hereby directed to be reinstated in service.



17. So far the consequential benefits are concerned, the same shall be examined by the respondents in view of the mandate of the Hon’ble Supreme Court in the case of *Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya, [(2013) 10 SCC 324]*.

18. The writ petition stands allowed.

19. There shall be no order as to costs.

(Harish Kumar, J)

Anjani/-

AFR/NAFR	
CAV DATE	
Uploading Date	01 .07.2025
Transmission Date	

