

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3062 of 2020

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Harendra Kumar Singh, Son of late Sidh Nath Singh, R/o Laxmi Sadan West of Maharaja College, P.O. Navada, P.S. Navada Arrah, District- Bhojpur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Additional Chief Secretary, State of Bihar, Department of Home(Special Department.
3. The Commissioner, Departmental Enquiry, General Administration Department Enquiry Officer(Department Enquiry Commissioner).
4. The Divisional Commandant, Bihar Home Guards Muzaffarpur- Presiding Officer.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Arvind Kumar Tiwary, Advocate Mr. Sunil Singh, Advocate Ms. Akansha Verma, Advocate
For the Respondent/s	:	Md. N.H. Khan, SC-1 Md. Fazle Karim, AC to SC-1

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

Date : 05-05-2025

Heard Mr. Arvind Kumar Tiwary, learned Advocate duly assisted by Ms. Akansha Verma, learned Advocate for the petitioner and Md. Fazle Karim, learned Advocate for the State.

2. The petitioner is aggrieved with the order dated 03.07.2019 as contained in Memo No.7006 issued by the Additional Chief Secretary, Department of Home (Special Branch) (Annexure-1), whereby the petitioner has been inflicted with the punishment of withholding of five increments with cumulative effect. It was further directed that the petitioner shall



not be entitled to get any amount except subsistence allowance for the period during which he remained under suspension. The petitioner being aggrieved preferred appeal; however, treating it to be a review application, it came to be rejected vide order dated 18.10.2019 by the Additional Chief Secretary, Department of Home (Special Branch) on the ground that in the criminal trial, no direction has been given to the department and thus affirmed the earlier order.

3. Learned Advocate for the petitioner, while assailing the impugned order has made limited submission, firstly to the extent that there is serious defect in the memo of charge, inasmuch as no material witness was examined to substantiate the charge. It is further contended that *mala fide* is writ large for the simple reason that the departmental enquiry was conducted in a day without giving proper opportunity of hearing and, as such, *prima facie*, the enquiry does not stand to the scrutiny of any standard of fairness. Further contention has been made that apart from the charges relating to unauthorized use of the government vehicle, the charge relating to indulge in verbal abuse with the employee of Reliance Trend Mall under the influence of liquor leading to institution of the FIR, does not find substantiated during the course of trial. Moreover, the



charge of consumption of alcohol and intoxication, is based upon breath analyzer test, which is not a conclusive proof of the consumption of liquor. To support the aforesaid contention, heavy reliance has been placed on a judgment rendered by the Apex Court in the case of **Bachubhai Hassanalli Karyani v. State of Maharashtra [(1971) 3 SCC 930]**. Further reliance has also been placed on a Bench decision of this Court in the case of **Manju Devi v. The State of Bihar and Others, [2024 SCC Online Pat 2324]**, wherein the Court has held that *in absence of blood and urine test, breathe analyzer test cannot be said to be conclusive proof of consumption of liquor.*

4. Reliance has been placed to a decision rendered by the Apex Court in the case of **Roop Singh Negi vs. Punjab National Bank & Ors., [(2009) 2 SCC 570]**, to buttress his submission that the charge against the delinquent officer must be proved by oral evidence. However, in the case in hand, no oral evidence has been produced to prove the charges; inasmuch as, there is complete defiance of mandatory prescriptions of Rule 17(3) and (4) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (for short 'the Rules, 2005').

5. Learned Advocate for the petitioner has further



taken this Court through the decision rendered by the Apex Court in the cases of **Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and Another [(1993) 3 SCC 679]**, **G.M. Tank v. State of Gujarat and Others [(2006) 5 SCC 446]** and **Ram Lal v. State of Rajasthan and Others [(2024) 1 SCC 175]** and strenuously argued that if the charges in the departmental enquiry in criminal Court are identical, evidence, witness and circumstances are also same and where Court in exercise of judicial review finds that acquittal in criminal proceeding was after full consideration of prosecution evidence and prosecution miserably failed to prove charge, Court can interfere with the order passed by disciplinary authority where findings of disciplinary authority are found to be unjust, unfair and oppressive.

6. Based upon the afore-noted decision, learned Advocate for the petitioner thus contended that the finding of the enquiry officer is based on no evidence and, as such, cannot be relied upon. The disciplinary authority has failed to consider the statement of defence submitted by the petitioner; thus, apart from its cryptic in nature, the same is mechanical. There is no finding as to how and why the defence of the petitioner is not found acceptable. Similar mistake has been conducted by the



reviewing authority while rejecting the review application. There is no discussion and deliberation of the ground taken by the petitioner. Even if the charges are serious in nature, it is required to be proved by all the hilt with the support of oral evidence, but that has not been done. It is lastly contended that the petitioner has not been served with any show-cause notice before inflicting major punishment and, as such, for all the afore-noted reasons, the impugned orders are wholly illegal and unsustainable in law.

7. On the other hand, Md. Fazle Karim, learned Advocate for the State contended that the allegation/charges against the petitioner are that he left the Head Quarter without permission along with Departmental Vehicle bearing no. BR01-PA-4247 for his home district, Bhojpur in violation of Bihar Civil Servant Conduct Rules and indulged in verbal abuse with one Pintu Kumar, the employee of Reliance Trends Mall under the influence of alcohol, for which an FIR came to be registered. In the afore-noted premised, a departmental proceeding also came to be initiated on the recommendation made by the Deputy Inspector General of Police-cum-Deputy Commandant, General, Home Guard and Fire Services, Bihar. This incidence led to suspension of the petitioner and initiation of a departmental



proceeding by issuance of memo of charge, duly served upon him with a direction to submit his defence within fifteen days. The defence statement of the petitioner was duly considered by the Enquiry Officer and on being found all the charges proved, the Enquiry Officer submitted the enquiry report before the disciplinary authority.

8. The disciplinary authority examined all the materials available on record as well as the defence statement of the petitioner and on being found three out of four charges proved, the impugned order(s) came to be passed in accordance with law. The review application of the petitioner also did not find any merit and accordingly the same has rightly been rejected. Moreover, the order of punishment is proportionate to the charges levelled against the petitioner and ultimately found proved. It is lastly contended that be that as it may, while exercising the power of judicial review, the Court ought not to re-appreciate the evidence and all the more, the acquittal of criminal case does not govern the disciplinary proceeding, wherein the charges are to be proved on the preponderance of probabilities and not required to be proved beyond all its reasonable doubt.

9. This Court has given anxious consideration to the



submissions advanced by the learned Advocate for the respective parties.

10. Before parting with the case, it would be relevant to discuss the fact of the case, which would be in the opinion of this Court suffice enough to demonstrate that no fair procedure has been adopted by the respondent authorities. There are serious infraction of the statutory prescriptions as prescribed under the Rules, 2005.

11. It would be pertinent to mention that Rule 17 of the Rules, 2005 provides a complete scheme for holding a disciplinary proceeding by the disciplinary authority either by himself or by the enquiring authority. Rule 17(3) of the Rules, 2005 obligates the disciplinary authority to furnish the list of such documents by which and a list of such witnesses by whom the articles of charge are proposed to be sustained. Similarly, 17(4) mandates the disciplinary authority to deliver or cause to be delivered to the Government Servant a copy of the articles of charge, such statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the Government Servant to submit, within such time as may be specified, a written statement of his defence. Sub-rule



(14) thereof, mandates that on the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority and the witnesses shall be examined by or on behalf of the Presenting Officer. The Presenting Officer shall be vested with the right to re-examine the witnesses on any points. The discretion is also given to the enquiring authority to put any question as deem fit. After conclusion of the enquiry in the manner so prescribed, a report is to be submitted under Rule 17 (23) by the enquiring authority to the disciplinary authority.

12. Notwithstanding the statutory prescriptions, the memo of charge clearly demonstrate that no list of witnesses has been produced with the memo of charge by which the article of charge was proposed to be sustained. Suffice it to observe that even the documentary evidence to prove all the four charges were nothing but, one letter issued by the Superintendent of Police, Bhojpur dated 17.04.2016 and another an application dated 16.04.2017 filed by Pintu Kumar, an employee of Reliance Trend Mall; moreover, in absence of any oral evidence, the content of the document(s) cannot be held to be proved.

13. In the case in hand, the record clearly demonstrates that the enquiry has been concluded in a single



day that itself speaks loud and clear that the petitioner has not only been given proper opportunity of hearing but the charges held to be proved without there being any examination of the witnesses and thereby the petitioner has also been deprived to cross-examine the witnesses.

14. Reliance of the petitioner on a decision of the Hon'ble Supreme Court in the case of **Roop Singh Negi v. Punjab National Bank and Others [(2009) 2 SCC 570]** finds substance in the case in hand, wherein the Court emphatically ruled that the charges levelled against the delinquent officer must be found to be 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 learned Court on being found that no witness was examined to prove the documents and the management witnesses merely tendered the documents and did not prove the contents thereof has held that the documentary evidence without proof of contents thereof could not have been treated as evidence.

15. In the case of **State of Uttar Pradesh and Others v. Saroj Kumar Sinha [(2010) 2 SCC 772]**, the Hon'ble Supreme Court has highlighted the status and duties of the Enquiry Officer by holding that the employee should be treated



fairly in any proceeding which may culminate in punishment being imposed upon him.

16. It would be apt and proper to reproduce the relevant paragraphs of the said decision, which are as under:

“27. A bare perusal of the aforesaid sub-rule shows that when the respondent had failed to submit the explanation to the charge-sheet it was incumbent upon the inquiry officer to fix a date for his appearance in the inquiry. It is only in a case when the government servant despite notice of the date fixed failed to appear that the inquiry officer can proceed with the inquiry ex parte. Even in such circumstances it is incumbent on the inquiry officer to record the statement of witnesses mentioned in the charge-sheet. Since the government servant is absent, he would clearly lose the benefit of cross-examination of the witnesses. But nonetheless in order to establish the charges the Department is required to produce the necessary evidence before the inquiry officer. This is so as to avoid the charge that the inquiry officer has acted as a prosecutor as well as a judge.

28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/ disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in



the absence of the delinquent official to see as to whether the un rebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

29. Apart from the above, by virtue of Article 311(2) of the Constitution of India the departmental enquiry had to be conducted in accordance with the rules of natural justice. It is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceedings which may culminate in punishment being imposed on the employee.

30. When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.”



(Emphasis supplied.)

17. It is settled proposition of law that the action of the respondent(s) while passing the major punishment must get through the examination of fairness by extending proper opportunity to the delinquent to defend his case.

18. Conclusion of the departmental enquiry in a single day without examination of witnesses and the report of the Presenting Officer not only smack *mala fide* but in no circumstances, can be held to be, in all fairness, reasonable and justified.

19. Now, coming to other issue(s) with regard to the charge(s) of the petitioner being under the influence of liquor, which charge is said to have been proved based upon the Breathe Analyzer Test, also does not appear to this Court convincing and sustainable in law. There is settled proposition that unless urine and blood test carried out mere smelling of alcohol, unsteady gait, dilation of pupils and incoherence in speech not enough to come to the conclusion that the person has consumed alcohol. In the case in hand, there is no urine and blood report, which suggest the consumption of alcohol by the petitioner.

20. The aforesaid legal position as held by the Apex



Court in the case of **Bachubhai Hassanalli Karyani** (supra), also vitiates the finding of the enquiry officer of consumption of alcohol by the petitioner and acted under the influence of the same.

21. This Court has also not oblivious of the fact that regarding imputation of creating ruckus and abusing staff of the Reliance Trend Mall; the petitioner was charged with misconduct and simultaneously an FIR has also been instituted, which finally led to acquittal of the petitioner vide judgment dated 13.02.2019 passed in Excise Case No.370 of 2017 arising out of Arrah Nawada P.S. Case No.104/2017.

22. Having gone through the judgment afore-noted, it would be evident that the learned Trial Court has come to the conclusion that no evidence has come on the point of drinking of wine by the accused and thus charge under Section 37 of the Bihar Prohibition and Excise Act, 2016 could not be established by the prosecution. The learned Trial Court also held that none of the witness has stated any word of abuse which was said to have been given by the petitioner at the relevant time of occurrence. Based upon the aforesaid finding, the petitioner was acquitted from the charges levelled against him.

23. There is no confrontation with the settled legal



position that acquittal in criminal proceeding does confer any right to employee to claim benefit in departmental proceeding as the charges in departmental enquiry and criminal Court are to be proved on a different yardstick. However, where charges in departmental enquiry and criminal Court are identical, evidence, witness and circumstances are also same and where Court in exercise of judicial review finds that acquittal in criminal proceeding was after full consideration of prosecution evidence and prosecution miserably failed to prove charge, Court can interfere with the order passed by disciplinary authority where findings of disciplinary authority are found to be unjust, unfair and oppressive.

24. The aforesaid legal position came to be crystallized and settled by the Hon'ble Supreme Court in the case of **Capt. M. Paul Anthony** (supra), **G.M. Tank** (supra) **and** recently in the case of **Ram Lal** (supra).

25. Now, coming to the impugned orders of dismissal and its affirmance by the appellate/reviewing authority, it appears that the disciplinary authority as well as the reviewing authority while passing the impugned orders have not dealt with the reply of the petitioner as well as the ground taken in the appeal/review, the order merely mentioned that no new fact was



disclosed by the petitioner in his reply to the second show-cause and the disciplinary authority merely reiterated the findings of the enquiry officer. The impugned orders do not contain any discussion as to how the petitioner's reply and the ground taken in the review was not acceptable to the authorities and thus in the opinion of this Court, the impugned orders suffer from non-application of mind.

26. A Bench of this Court in the case of **Shekhar Chandra Verma v. The State of Bihar and Others [(2014) 1 PLJR 532]** has held in its para-20 as follows:

“20. By now, it is well settled that passing of a reasoned order in a quasi judicial proceeding is the requirement of the compliance of the principles of natural justice. Reference in this connection may be usefully made to the judgment of the Apex Court in the case of ***Siemens Engineer & Manufacturing Co. of India Ltd. v. Union of India*** reported in AIR 1976 SC 1785 and in the case of ***S.N. Mukherjee v. Union of India*** reported in 1990 SC 1984.”

27. On all the aforesaid counts, this Court is of the view that the impugned orders suffer from illegality and the entire proceedings are actuated with *mala fide* and unfairness depriving the petitioner from fair opportunity to defend himself;



the memo of charge also vitiates on account of apparent infraction of statutory provisions, hence, the order dated 03.07.2019 as contained in Memo No.7006 as also the order dated 18.10.2019 as well as the entire departmental proceedings are hereby set aside.

28. The respondent authorities are directed to reinstate the petitioner with all consequential benefits. However, this order would not preclude the respondents to proceed afresh, in accordance with law, if so advised.

29. The writ petition stands allowed.

(Harish Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13-05-2025
Transmission Date	NA

