

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 3540 of 2023

=====

Jitendra Kumar Son of Bajrangi Singh, Resident of Village- Manhauli
Akhtiyarpur, P.S. Bikram, District- Patna, Bihar- 801104

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Director General Police, Bihar, Patna.
3. The D.I.G. of Police, Bihar Special Armed Police, Central Zone, Patna.
4. The Commandant, Bihar Special Armed Police-5, Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr Ram Hriday Prasad, Advocate
For the Respondent/s : Mr Dhurendra Kumar, AC to GP V

=====

CORAM: HONOURABLE MR JUSTICE ARVIND SINGH CHANDEL

ORAL JUDGMENT

Date : 08-04-2025

This petition has been preferred by the petitioner being aggrieved with the order dated 04.06.2021 (Annexure 9) passed by the Commandant, Bihar Special Armed Police – 5, Patna whereby and whereunder the services of the petitioner have been dismissed. Also challenged the order dated 30.11.2021 (Annexure 11) passed by the Appellate Authority and also order dated 27.01.2023 (Annexure 14) whereby the Memorial submitted by the petitioner has been rejected by the authorities.

2 Brief facts of the case are that the petitioner was appointed as ***Bal Aarakchi*** on compassionate ground. Subsequently, on the allegation of consuming liquor, charge was



framed against the petitioner and on the basis of Enquiry Report, the Disciplinary Authority, vide impugned order dated 04.06.2021, dismissed the services of the petitioner. The Appeal as well as the Memorial filed by the petitioner have also been rejected. Hence, this petition.

3 It is submitted by the learned counsel for the petitioner that the Enquiry Officer arrived on the conclusion only on the basis of Breath Analyzer Report which is not a conclusive report for consumption of alcohol. Unless and until the blood and urine of the person is examined, it cannot be assumed that he consumed alcohol. In this case, no such medical examination has been done with respect to the petitioner. Reliance has been placed by the counsel on the judgment dated 24.09.2024 passed in ***CWJC No 3019 of 2022*** by a coordinate Bench of this Court in the case of ***Nand Kishore Murmu -Versus- The State of Bihar & Others.***

4 Learned counsel for the respondent-State opposes the argument raised by the learned counsel for the petitioner and submits that at the time when the petitioner was caught, he was tested through Breath Analyzer Machine and it was found that he consumed liquor and total 11.6 mg/100 ml alcohol was found in his breath. Taking into consideration the said Breath Analyzer Report, the Enquiry Officer rightly arrived at the conclusion that



charge levelled against the petitioner has been duly proved. Thus, the order passed by the Disciplinary Authority, which has been affirmed by the Appellate Authority as well as the Authority who passed the order in the Memorial, is in accordance with the evidence available on record.

5 I have heard learned counsel for both the parties, perused the Enquiry Report and other documents as well as the counter affidavit submitted by the State.

6 On perusal of the Enquiry Report (Annexure A annexed with the counter affidavit submitted by the learned counsel for the State), it clearly shows that for proving the charge levelled against the petitioner, total seven witnesses were examined by the Department. Most of the witnesses have stated that at the time of incident, the petitioner was caught and taken to the Police Station and was tested through Breath Analyzer. Taking into consideration the report of Breath Analyzer, the Enquiry Officer found the charges proved against the petitioner and it was held by him that petitioner was found in intoxicated condition.

7 Dealing with the issue, a coordinate Bench of this Court in the case of *Nand Kishore Murmu (supra)*, taking into consideration the observation made by the Hon'ble Supreme Court in the case of *Bachubhai Hassanalli Karyani -Versus- The State*



of Maharashtra, reported in (1971) 3 SCC 930, held that the Breath Analyzer Report is not a conclusive report of consumption of liquor by a person. It can only be ascertained by way of blood and urine test of a person suspected of consuming alcohol. In the supplementary counter affidavit, the respondent-State categorically admitted the fact that no blood or urine test of the petitioner with regard to the consumption of liquor was done by the Investigating Officer of the case. Thus, it is quite clear that the Enquiry Officer, only on the basis of Breath Analyzer Report, arrived on the conclusion that charge levelled against the petitioner has been proved. Since no blood or urine test was medically tested by the Medical Officer, therefore, only on the basis of report of Breath Analyzer, it cannot be said that the petitioner had consumed alcohol. The Disciplinary Authority as well as the Appellant Authority and the Authority, who decided the Memorial, did not consider the said aspect.

8 Therefore, the order dated 04.06.2021 passed by the Disciplinary Authority (Annexure 9) as well as the order dated 30.11.2021 (Annexure 11) and also the order dated 27.01.2023 (Anexure 14)) passed by the Director General of Police in the Memorial are liable to be quashed. Accordingly, all the orders are hereby quashed and set aside.



9 The respondents are directed to allow the petitioner to resume his duties with all consequential monetary benefits.

10 However, the petitioner will not get any financial benefit during the period when he was dismissed from service and discharged no official duty.

11 The reinstatement of the petitioner will be done within 30 days from the date of receipt of a copy of order of this Court.

12 With the above observation, this writ petition is allowed.

(Arvind Singh Chandel, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.04.2025
Transmission Date	NA

