

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8460 of 2021

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Pankaj Kumar Singh-2, Son of Raghwendra Singh Resident of 331, Kulhariya Complex, 3rd Floor, Ashok Rajpath, P.S. - Gandhi Maidan, District Patna, At present Resident of C/o Shashi Bhushan Singh, SBI Bank, Opposite Prakash Bhawan, Bhoothnath, P.S. - Kankarbagh, District- Patna- 800026.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Director General Police, Bihar, Patna.
3. The Inspector General of Police, Champaran Range at Bettiah.
4. The Deputy Inspector General of Police, Champaran Range at Bettiah.
5. The Superintendent of Police, Bagha at West Champaran.
6. The Sub-Divisional Police Officer, Bagha at West Champaran.
7. The Station House Officer, Chautarwa Police Station, District West Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Satya Prakash Parasar, Advocate
For the Respondent/s : Mr. Saroj Kumar Sharma, AC to AAG-3

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

Date : 11-02-2025

Heard Mr. Satya Prakash Parasar, learned Advocate for the petitioner and Mr. Saroj Kumar Sharma, learned Advocate for the State.

2. The petitioner is aggrieved with the Order No. 65 of



2020 as contained in Memo No. 782 dated 17.08.2020, whereby the petitioner has been inflicted with the punishment of dismissal from the post of Assistant Sub-inspector of Police after invoking the provisions of Article 311(2)(b) of the Constitution of India. The petitioner also sought for quashing of the consequential order issued by the Superintendent of Police, Bagha as contained in Memo No. 1880 dated 04.09.2020, by which the aforementioned order dated 17.08.2020 has been confirmed. During the pendency of the writ petition, the appeal preferred by the petitioner against the order of dismissal also came to be rejected, which was also put to challenge by the petitioner in IA No. 1 of 2024. All these orders are under challenge before this Court.

3. Learned Advocate for the petitioner while assailing the impugned order has vehemently contended that the action of the concerned authorities in invoking the power under Article 311(2)(b) of the Constitution of India is not sustainable, in view of the specific provisions that it can be exercised in a case where the disciplinary authority is satisfied that it is not reasonably practicable to hold such an inquiry. Drawing the attention of this Court to the impugned order, it is contended that no reason as required under Article 311(2)(b) of the Constitution of India has



been assigned; moreover, once it is admitted that for the charge of having been found the petitioner under the influence of liquor, an FIR has been instituted and investigation has been conducted, leading to submission of the charge sheet. This Court has also been apprised that now the petitioner has also been acquitted in criminal case. In the aforesaid premise, the submission of the respondent-State authorities that it was not practicable to hold such inquiry is outrightly fit to be rejected.

4. It is further contended that the order of dismissal is also bad, illegal and unsustainable in law as the same is based on Breath Analyzer Test, which is not the conclusive evidence for consumption of liquor as has been held by the Hon'ble Supreme Court in the case of ***Bachubhai Hasanalli Karyani Vs. State of Maharashtra*** reported in ***(1971) 3 SCC 930***, which order was also considered by a co-ordinate bench of this Court in the case of ***Manju Devi Vs. the State of Bihar in CWJC No. 2590 of 2022***, wherein, the learned Court has held in no uncertain terms that the Breath Analyzer Report cannot be said to be a conclusive proff of consumption of alcohol.

5. Assailing the impugned order, heavy reliance has been placed on a decision of this Court in the case of ***Md. Muqaddar Khan Vs. the State of Bihar*** reported in ***2021(2)***



PLJR 355. Referring to the aforementioned decision, learned advocate for the petitioner further contended that in an identical facts, the delinquent, who was a member of Bihar Military Police was found in the influence of liquor and causing ruckus in an inebriated condition in the police line, was dismissed from service in pursuant to a policy decision taken by the Director General of Police, Bihar vide Memo No. 58/Go. Dated 26.03.2019 by making the provision of Article 311(2)(b) of the Constitution. The learned Court, however, set aside the order of dismissal by observing that the letter of the Director General of Police, Bihar which requires expeditious disciplinary action and dismissal from service cannot be a basis to avoid constitutional mandate of Article 311(2) Clause-(b) of the Constitution of India holding an inquiry before imposing the punishment of dismissal from service.

6. Dispelling the, afore noted, contention, learned advocate for the State urged before this Court that this is an open and shut case, wherein, while the petitioner was holding the post of ASI, he was found under the influence of liquor which also got confirmed through Breath Analyzer Test as well as the Doctor who examined the petitioner, leading to institution of Chautarwa P.S. Case No. 292 of 2020.



7. On account of institution of the criminal case, recommendation for the departmental proceeding has been ordered and the petitioner has been placed under suspension. All the more, in the criminal case, the Investigating Officer submitted charge sheet No. 118 of 2021 on 28.02.2021 under Section 37(b) of the Bihar Prohibition and Excise (Amendment) Act, 2018. On being found the case true against the petitioner, that, notwithstanding the fact, there is complete prohibition of liquor in the entire State of Bihar, the petitioner had violated the prohibition law and was also apprehended and remanded to judicial custody. In the aforesaid premise, the Superintendent of Police under Memo No. 1571 dated 04.08.2020 issued show cause notice upon the petitioner under Article 311(2)(b) of the Constitution of India as to why not he be dismissed from service. In response thereto, the petitioner filed his show cause and also prayed to keep the departmental proceeding in abeyance till the matter is decided by the competent court.

8. Learned Advocate for the State also contended that in the meantime the Director General of Police, Bihar vide its memo contained in Memo No. 58 dated 26.03.2019 communicated to all the senior police officials that those police officers who were found to have consumed liquor and such fact



is also established through the medical report in such cases, expeditious dismissal from service is expected under Article 311(2)(b) of the Constitution of India. In the light of the aforesaid letter, show cause reply of the petitioner was duly considered by the Deputy Inspector General of Police, West Champaran at Bettiah and he was dismissed from service with immediate effect under Rule 824(a) of the Bihar Police Manual read with Article 311(2)(b) of the Constitution of India. Based upon the aforesaid order, the consequential district order has been passed, moreover, the appeal preferred by the petitioner also came to be dismissed by a reasoned and speaking order.

9. This Court has anxiously heard the learned Advocates for the respective parties and also perused the materials available on record. From the materials it transpire that while the petitioner was posted as ASI at Chautarwa P.S., he was charged with consumption of liquor leading to institution of the FIR being Chautarwa P.S. Case No. 292 of 2020, alleging therein that on 25.07.2020 at about 9:45 in the night he was found in the influence of liquor at his residence, situated within the premises of the police station. On such information, the Station House Officer, namely, Vinay Kumar Gupta directed one ASI to bring the petitioner to down stair and found that the



smell of liquor was coming through his breath. The petitioner was brought to the police station and examined through breath analyzer. From the report, it transpires that the contents of liquor was upto 78 mg./100ml. Thereafter the Senior officers were also informed and a formal FIR was registered. Based upon the aforesaid charge, simultaneously a departmental proceeding has also been ordered as discussed hereinabove. The petitioner has been finally inflicted with the punishment of dismissal by invoking the provision under Article 311(2)(b) of the Constitution of India.

10. Trite it is that the constitutional provision under Article 311(2)(b) can be invoked to dismiss a government servant only if a disciplinary authority records in writing his opinion that it is not reasonably practicable, in the facts and circumstances to hold a disciplinary proceeding by taking disciplinary action. The importance of recording reason and reflecting satisfaction of the disciplinary authority to the effect that the departmental enquiry is not reasonably practicable was considered thread bare by the Hon'ble Apex Court in the case of *Union of India vs. Tulsi Ram Patel [1985) 3 SCC 398]*, wherein the Court held that a disciplinary authority is not expected to dispense with the disciplinary enquiry lightly or



arbitrarily or out of ulterior motives or merely in order to avoid of holding an enquiry or because the Department's case against the government servant is weak and must fail. Hon'ble Court in paragraph no. 133 of the, afore noted, decision has observed that "the second condition necessary for the valid application of clause (b) of the second proviso is that the disciplinary authority should record in writing its reason for its satisfaction that it was not reasonably practicable to hold the inquiry contemplated by Article 311(2). This is a constitutional obligation and if such reason is not recorded in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional."

11. Placing reliance upon the mandate of the Hon'ble Supreme Court, a Bench of this Court in the case of ***Md. Muqaddar Khan*** (supra), while considering the identical issue based upon the similar facts, has held in paragraph nos. 9 and 10 as follows:

"9. Before proceeding to address the issues involved in the present case, one has to keep in mind that Clause (2) of Article 311 is a constitutional mandate, which guarantees not only adherence to principles of natural justice, it makes it compulsory to hold an enquiry after informing a member of civil service of the Union or an All India Service or a civil service of a State or holds a civil post under the Union or a State



informing him of the charges against him, if an action of dismissal, removal or reduction in rank is proposed.

10. The principle incorporated in Clause (2) of Article 311 of the Constitution of India shall have no application in three circumstances as provided under the second proviso to Clause (2) of Article 311 of the Constitution of India. One of the three circumstances is, where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry. On plain reading of the second circumstance mentioned in the second proviso to Clause (2) of Article 311 of the Constitution of India, it can be easily noticed that in order to dispense with the requirement of enquiry, all of the following elements must exist:-

- (i) Conduct of the government servant is such that he deserves punishment of dismissal, removal or reduction in rank.*
- (ii) There must be a satisfaction of the disciplinary authority that it is not reasonably practicable to hold such enquiry;*
- (iii) There must be reason for coming to the aforesaid conclusion, which must be recorded in writing; and*
- (iv) Satisfaction must be of the authority empowered to dismiss or remove or reduce in rank and the reasons in support of his satisfaction must be recorded by the said authority.”*

12. It would be also worth relevant to mention here that



in the case of *Muqaddar Khan* (supra) the order of dismissal was also passed in pursuant to the letter of the Director General of Police dated 26.03.2019, identical to the present impugned order, which requires expeditious disciplinary action of dismissal from service. This Court having taken note of such fact held that the said letter cannot be a basis to avoid constitutional mandate of Article 311(2) of the Constitution of India to hold an enquiry before imposing punishment of dismissal or removal from service or reduction in rank. Learned coordinate Bench of this Court has also taken note of the decision rendered in the case of *Jaswant Singh v. State of Punjab [(1991) 1 SCC 362, Reena Rani v. State of Haryana [(2012) 10 SCC 215 and Risal Singh v. State of Haryana [(2014) 13 SCC 244*, wherein the Hon'ble Court while setting aside the order of dismissal held that it is incumbent upon the disciplinary authority, to support the order to show that satisfaction is based on certain objective facts and is not the outcome of whim or caprice of the concerned officers. Any order passed by the disciplinary authority, bereft of reasons for dispensing with the enquiry is vulnerable and *ultra vires* Article 311(2) of the Constitution of India.

13. Before parting with this case, it would also be



pertinent to observe here that Breath Analyzer Report is not the conclusive proof of consumption of alcohol unless it is corroborated by the blood and urine report, as has been held by the Hon'ble Apex Court in the case of ***Bachubhai Hasanalli Karyani*** (supra). Moreover, it is also apprised to this Court that on identical charges, the criminal proceeding, as was initiated against the petitioner, now culminated into his acquittal.

14. Now coming to the impugned order, this Court is of the opinion that there is not even slightest reflection of satisfaction of the disciplinary authority to the effect that the departmental enquiry was not reasonably practicable, or there is any material on record to infer even from circumstances disclosed in the impugned order that it was not reasonably practicable to hold a departmental enquiry.

15. In view of the settled legal position, the impugned order contained in Memo No. 782 dated 17.08.2020 as well as its consequential order contained in Memo No. 1880 dated 04.09.2020 are, hereby, held to be illegal and unsustainable, thus stand set aside. On account of setting aside the impugned orders, the petitioner is directed to be reinstated with all consequential benefits, including the back wages, preferably within a period of 12 weeks from the date of receipt/production of a copy of this



order.

16. The writ petition stands allowed.

17. Pending application, if any, also stand disposed.

(Harish Kumar, J)

Anjani/-

AFR/NAFR	
CAV DATE	
Uploading Date	14.02.2025
Transmission Date	

