

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5125 of 2023

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Mukesh Kumar Singh Son of Late Girjanandan Singh Resident of Village-
Ramgadh, P.S. Ramgadh, District-Lakhisarai, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Director General of Police, Bihar
3. Inspector General, Special Armed Police, Northern Zone, Muzaffarpur.
4. The Commandant, Bihar Special Armed Police, Jamui.
5. The Dy. S.P. Cum Enquiry Office, BSAP-11, Jamui.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ram Hriday Prasad, Adv.
For the Respondent/s	:	Mr. Md. N.H. Khan (SC1)
		Md. Harun Quareshi, AC to SC-1

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CORAM: HONOURABLE MR. JUSTICE ARVIND SINGH CHANDEL
ORAL ORDER

6 07-04-2025 Heard learned counsel for the petitioner and

learned counsel for the respondents-State.

2. This petition has been preferred by the petitioner being aggrieved with the order dated 29.03.2022 (Annexure-P-7) passed by the Commandant, Bihar Special Armed Police-11, Jamui, whereby and whereunder the services of the petitioner has been dismissed. The petitioner further challenged the order dated 22.06.2022 (Annexure-P-9) and order dated 23.11.2022 (Annexure-P-11), whereby the appeal as well



as memorial preferred by the petitioner have also been rejected by the concerned authorities.

3.The facts of the case, in brief, is that the petitioner was appointed as Constable in Bihar Military Police-7, Katihar on 20.05.1997. Subsequently, he was promoted to the post of Hawaldar. On 19.04.2021, the petitioner has been suspended with effect from 18.04.2021 on the charge of consuming liquor in Legislative Assembly 2021 during election duty in West Bengal. Subsequently, charge memo was issued to the petitioner vide Annexure-P-3. The inquiry officer submitted its inquiry report dated 16.09.2021 (Annexure-P/5). The disciplinary authority on the basis of inquiry report passed the order of major penalty i.e. dismissal from service of the petitioner vide Annexure-P-7 dated 29.03.2022 which has been assailed by the petitioner through an appeal and the memorial, however, both have been rejected by the competent authority vide Annexure-9 dated 22.06.2022 and Annexure-11 dated 23.11.2022, respectively. Hence, this petition has been preferred by the petitioner.



4. Learned counsel for the petitioner submits that without any legal evidence available on record, the inquiry officer wrongly arrived on the conclusion that the charges levelled against the petitioner has been proved. According to the counsel, the concerned doctor who examined the petitioner was not examined by the inquiry officer and only on the basis of oral statement made by some of the departmental witnesses, inquiry officer arrived on the conclusion that the petitioner was found in drunken condition during his duty. The finding recorded by the inquiry officer is not based upon the evidence on record. The disciplinary authority as well as appellate authority while deciding the appeal and the memorial of the petitioner did not consider this aspect. According to the counsel, the case of the petitioner is of a case of no evidence despite that all the authorities have wrongly arrived on the conclusion that the charges levelled against the petitioner is duly proved.

5. Learned counsel for the petitioner in support of his contention has placed reliance on the judgment passed by a co-ordinate Bench of this Court in the case of



Nand Kishore Murmu vs. The State of Bihar and others in
C.W.J.C. No. 3019 of 2022 dated 24.09.2024.

6. Learned counsel for the respondent-State has opposed the submission raised by the learned counsel for the petitioner and submitted that on the basis of evidence available on record the inquiry officer rightly arrived on the conclusion that the petitioner was consumed liquor at the relevant time and on the basis of such report, the disciplinary authority and the other authorities passed final order in the appeal as well as the memorial arriving on the conclusion that the petitioner was consumed liquor. He further submits that the disciplinary authority rightly passed the order of dismissal which has also been confirmed by the appellate authority as well as the authority while deciding the memorial of the petitioner.

7. I have heard both the parties and perused the documents annexed to the petition as well as the counter submitted by the respondent-State.

8. On perusal of charge memo and the inquiry report (Annexure-P-5), it transpires that before the inquiry officer, altogether 16 witnesses were examined by



the inquiry officer. Out of them, only witness No. 14, namely, Sanjay Kumar Singh and witness No. 16, namely, Sri Sakaldeo Yadav have stated that at the time of incident, it was seen by them that the petitioner was present and he was staggering at the relevant point of time. Apart from these witnesses, none of the witnesses have stated anything against the petitioner regarding consumption of liquor. The inquiry officer also relied upon the medical report prepared by the doctor namely, Nilotpol Majumdar, who examined the petitioner in the hospital. However, the inquiry report shows that the doctor, Nilotpol Majumdar has not been cited nor examined by the prosecution before the inquiry officer as witness. After submission of inquiry report dated 16.09.2021, the said doctor was examined by the Dy. S.P. Mr. Paswan on 19.12.2021, this fact is recorded in the order passed by the disciplinary authority (Annexure-P-7). After submission of the inquiry report, as to how and why the statement of the concerned doctor namely, Nilotpol Majumdar was recorded on 19.12.2021. This point has not been clarified by the respondents-State in their counter affidavit. Rather, the counter affidavit is



absolutely silent on this point that at the time of recording of statement of Dr. Nilotpal Majumdar, any opportunity of cross examination of said witness was given to the petitioner or not.

9. The inquiry report as well as order passed by the disciplinary authority also show that they arrived on the conclusion that the petitioner was found in drunken condition only on the basis of the report prepared by the Dr. Nilotpal Majumdar. The inquiry report further shows that Dr. Nilotpal Majumdar without taking any examination of blood or urine of the petitioner or without conducting any breath analyzer test only on the basis of smell from the mouth of the petitioner arrived on the conclusion that the petitioner was consumed liquor. Dr. Mazumdar, who prepared the report is not also examined before the inquiry officer. As such, the case of the petitioner, in similar view of the Court, is a case of no evidence, which has not been considered by the inquiry officer nor disciplinary authority or the authority while deciding the appeal and memorial of the petitioner.

10. In such view of the matter, the finding



recorded by the inquiry officer which has been confirmed by the disciplinary authority as well as authorities while deciding the appeal and memorial are liable to be quashed. Accordingly, the orders dated 23.11.2022 (Annexure-11), 22.06.2022 (Annexuer-9) and 29.03.2022 (Annexure-7) are hereby quashed.

11. The writ petition stands allowed. The respondents are directed to reinstate the services of the petitioner forthwith with all consequential benefit for which he is entitled for.

(Arvind Singh Chandel , J)

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