

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10094 of 2019

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Dinesh Kumar Singh @ P.T.C./383 Dinesh Kumar Singh, S/o Raj Banshi Singh, then posted at Rail District Jamalpur, permanent resident of Village-Gahai, P.S. Dhaka, District- East Champaran, Bihar.

... .. Petitioner

Versus

1. The State of Bihar through the Additional Chief Secretary, department of Home Govt. of Bihar, Old Secretariat Patna, Bihar.
2. The Additional Chief Secretary Department of Home, Govt. of Bihar, Old Secretariat Patna, Bihar.
3. The Principal Secretary, Department of Home Govt. of Bihar, Old Secretariat Patna, Bihar.
4. The Director General of Police Old Secretariat, Patna, Bihar.
5. The Inspector General of Police (Administration) Police Head Quarters, Old Secretariat, Patna, Bihar.
6. The Additional Director General of Police, (Railways), Police Head Quarters, Old Secretariat, Patna, Bihar.
7. The Inspector General of Police (Railways), Police Head Quarters, Old Secretariat, Patna, Bihar.
8. The Deputy Inspector General of Police (Railways), Police Head Quarters, Old Secretariat, Patna, Bihar.
9. The Superintendent of Rail Police Jamalpur, Rail District Jamalpur, Bihar.
10. The Deputy Superintendent of Rail Police, Jamalpur, Rail District Jamalpur, Bihar.
11. The Deputy Superintendent of Rail Police, Kiul, Rail District, Jamalpur, Bihar.
12. The Inspector Police cum Station House Officer Rail Police Station Kiul, Rail Dist.-Jamalpur, Bihar.
13. Mr. Kameshwar Singh Inspector of Police cum-in-charge sergeant Manor cum conducting Officer of Rail Dist. Departmental Proceeding No.06 of 2017.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Rohit Kumar, Advocate Mr. Manish Kumar No. 13, Advocate
For the Respondent/s	:	Mr. Suman Kumar Jha, AC to AAG-III



CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 20-01-2025

Heard the parties.

2. The petitioner is aggrieved with the Rail District Order No. 518/2018 as contained in Memo no. 740 dated 12.07.2018 passed under the signature of the Superintendent of Rail Police, Jamalpur, by which he has been inflicted with the punishment of dismissal. The petitioner also assailed the appellate order, contained in Memo No. 1/GO dated 02.01.2019 issued by the Deputy Inspector General of Police (Railway), Bihar, Patna, by which the appeal preferred by the petitioner also came to be rejected. The petitioner, in all, challenged the entire departmental proceedings, including the memo of charge as well as the inquiry report submitted by the conducting officer.

3. The short facts, which led to the filing of the present writ petition, are summarized hereinbelow:

(i) While the petitioner was posted as a Constable in the Government Railway Police at the Kiul Railway Station, he was residing in a three storied building along with other Constables, next to Platform No.4 of the Kiul Railway Station. On 27-12-2016 a secret information was received regarding persons indulging in illicit trade of liquor. On tip-off illegal



trade of illicit wine, one sub Inspector along with two Constables proceeded towards the Railway yard and apprehended two persons along with the illicit liquor, leading to institution of Kiul Rail P.S. Case No. 247 of 2016 for the offences under Sections 30(a) and 38(i) of the Bihar Prohibition and Excise Act, 2016.

(ii) One of the F.I.R. named accused persons, Shambhu Thathera, has later on confessed that he along with two other accused persons were bringing liquor from Jharkhand to Kiul. The escort party of the train, however, searched the bag, in which they were carrying the illicit liquor and demanded money from the said accused. When, the train reached Kiul Railway Station, the Constables took the three accused persons to a three storied building near the yard, where Constables used to reside. Three Constables present there in plain cloth emerged and demanded Rs. 7000/- for releasing the illicit liquor, failing which the FIR would be lodged and the accused would be forwarded to jail. The accused persons along with one another co-accused, namely, Yatish Kumar came with Rs.7000/-, next morning on 27.12.2016 and paid Rs. 6600/- as illegal gratification. On payment of gratification, the accused persons along with illicit liquor were released. The said accused persons



along with Yatish Kumar proceeded for Lakhisarai through the railway yard when they were apprehended by the police. The amount of illegal gratification has been recovered and seized from one of the inmates of the barracks, namely, Havildar Lalan Ram.

(iii) In the aforesaid premise, the petitioner has been served with a charge memo dated 21-01-2017 alleging that he was residing in the three storied building near the Kiul Railway Yard along with Havildar Lalan Ram and Constable Rajpati Shekhar. He along with these two persons had taken illegal gratification for releasing the said accused Shambhu Thathera and Yatish Kumar along with their consignment of illicit liquor.

(iv) Upon issuance of the memo of charge, the Enquiry Officer conducted the enquiry and submitted the inquiry report on 20.05.2018 holding the charges proved. Finally after service of second show-cause notice, the disciplinary authority inflicted punishment of dismissal, which has also been affirmed by the appellate authority.

4. Learned counsel for the petitioner contended that with respect to the identical charges, Constable Rajpati Shekhar was also proceeded and dismissed from his service. He challenged his order of dismissal in C.W.J.C. No. 9512 of 2019.



The learned Single Judge having perused the entire records and taking note of the submissions of the respective parties, held that not even a single competent witness deposed in the enquiry and thus the facts forming part of the allegation against the petitioner in the memo of charge could not be proved. Learned counsel for the petitioner further contended that placing reliance upon the afore-noted judgment, the departmental proceeding initiated against other identically situated Constables, which also culminated in dismissal, have been set aside by this Court in **C.W.J.C. No. 13239 of 2019 [Arvind Kumar v. State of Bihar and Others]** and **C.W.J.C. No. 12458 of 2019 [Dipendra Prasad Yadav @ Dipendra Pr. Yadav @ Havladar v. State of Bihar and Others]** vide judgments dated 05.05.2023.

5. Referring to the afore-noted decisions passed by the learned co-ordinate Bench of this Court, learned counsel for the petitioner, thus submitted that the case of the petitioner is based on parity. Taking this Court through the facts of this case, he urged that identical cases having been allowed by the learned co-ordinate Bench of this Court, similar view may be taken.

6. Confronting with the afore-noted facts, learned counsel for the State has fairly contended that it is not in dispute



that identical memo of charge was framed and issued against Constable Rajpati Shekhar @ Constable 06 Rajpati Shekhar, which proceeding was also culminated in his dismissal. However, his dismissal order was set aside by this Court in C.W.J.C. No. 9512 of 2019.

7. Having heard learned counsel for the respective parties and on perusal of the materials available on record, this Court finds that the contention of the petitioner finds substance, inasmuch as the Constable Rajpati Shekhar was also served with identical memo of charge dated 21.01.2017 and further dismissed from his service by the same authority. The appeal of said Constable was also rejected in identical fashion, which orders were subject matter of C.W.J.C. No. 9512 of 2019.

8. Before parting with the case, it would be apt to encapsulate the relevant paragraphs of the decision passed by the learned co-ordinate Bench of this Court in C.W.J.C. No. 9512 of 2016.

“11. Shambhu Thathera and Yatish Kumar, however, have also not been examined in the proceedings. They were only two persons competent of deposing in respect of the occurrence alleged at the barrack. It is only these two persons who were competent to state about the petitioner's presence, participation in demand and acceptance



of illegal gratification, and subsequent release of the accused persons with the illicit consignment of liquor.

12. Reliance on the confessional statement of accused Shambhu Thathera, the allegations stated in the FIR, seizure of the alleged illegal gratification from Havildar Lalan Ram and statement of police officials/personnel in support of the factum of lodging of the FIR, recording of confessional statement of accused Shambhu Thathera, at best, are proof of the facts leading to lodging of the criminal case and not by any stretch of imagination sufficient to prove the occurrence as stated in the F.I.R. and bring home the charges against the petitioner even on preponderance of probability. The documents forming part of the criminal investigation relied upon by the Enquiry Officer cannot be considered to be material to sustain charges in the departmental proceedings. Law to this effect by now settled as per decision in case of **Roop Singh Negi** (supra) relied upon by the learned senior counsel for the petitioner.

13. The submission of the State counsel regarding procedure being followed and witnesses being examined, therefore, is clearly unsustainable. As noted above, not a single witness competent to depose in respect of any fact forming part of the allegation against the petitioner in the charge memo has been examined. All the witnesses, who have been examined, are, at best,



witness to the lodging of the criminal case after the accused Shambhu Thathera had been apprehended in the Railway yard. The nine witnesses, who have been examined, are not witnesses to the events, prior to arrest of accused Shambhu Thathera, i.e. in the night of 26-12-2016 at the barrack or in the morning of 27-12- 2016 when it is alleged that illegal gratification was demanded in presence of the petitioner, accepted and after accepting the illegal gratification the accused Shambhu Thathera and Yatish Kumar released along with consignment of illicit liquor. Even on preponderance of probability it cannot be concluded that based on depositions of these nine witnesses, or material forming part of the criminal investigation arising out of Kiul Rail P.S. Case No. 247 of 2016, the charges have been proved.”

9. The observation and finding of the learned Court, afore-noted, finally led to hold that the conclusion of the disciplinary authority based on the depositions of the nine witnesses and documents forming part of criminal investigation is unsustainable.

10. Faced with the aforesaid facts and the settled position; and on being found the case of the petitioner to be identically situated as that of Rajpati Shekhar @ Constable 06 Rajpati Shekhar, this Court is left with no option but to set aside



the order of dismissal as contained in Memo No. 740 dated 12.07.2018 passed by the Superintendent of Rail Police, Jamalpur and the order of the appellate authority contained in Memo No. 1/GO dated 02.01.2019 issued by the Deputy Inspector General of Police (Railway) Patna as also the entire disciplinary proceedings against the petitioner, in order to uphold uniformity.

10. The petitioner shall be reinstated in service with all consequential benefit(s).

11. The writ petition stands allowed.

(Harish Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24-01-2025
Transmission Date	

