

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 7124 of 2023

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Ashwani Kumar Sinha S/o Late Ramashish Prasad, Resident of village -
Sidhma Ward No. 05, P.O. - Sidhma Chakma, P.S. - Khaulawandpur, District
- Begusarai, Pin Code- 848204.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, General Administration
Department, Government of Bihar, Patna.
2. Divisional Commissioner, Koshi Division, Saharsa.
3. District Magistrate-cum-Collector, Supaul.
4. Enquiry Officer-cum-Deputy Development Commissioner, Supaul.
5. Sub Divisional Officer, Supaul.
6. Block Development Officer, Triveniganj, District - Supaul.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr Raju Giri, Sr Advocate with M/s Kumar Shantanu, Harsh Vardhan, Advocates
For the Respondent/s	:	Mr Manish Kumar, GP IV

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CORAM: HONOURABLE MR JUSTICE ARVIND SINGH CHANDEL

ORAL JUDGMENT

Date : 10-01-2025

This petition has been preferred by the petitioner
seeking the following reliefs:

i. To issue an appropriate writ/order/direction in the nature of certiorari for quashing the order dated 26.03.2022 passed by the District Magistrate -cum- Collector, Supaul by which the petitioner has been dismissed from service (as contained in Annexure 12).

ii. To further issue an appropriate writ/order/direction in the nature of certiorari for quashing the order dated 10.11.2022 passed by the Divisional Commissioner, Koshi Division,



Saharsa, by which the service appeal No 56 of 2022 filed by the petitioner has been rejected (as contained in Annexure 14).

iii. To issue an appropriate writ/order/direction in the nature of mandamus directing the respondents to reinstate the petitioner in service with all consequential benefits.

iv. Any other relief or reliefs for which the petitioner is found to be entitled in the facts and circumstances of the case.”

2 Facts of the case are that the petitioner was deputed in the Sub Divisional Office at Supaul as Upper Division Clerk. Allegation of consumption of liquor was made against him and he was made an accused in Supaul PS Case No 134 of 2018 for the offence punishable under Sections 30 (a), 37 (a) (b) (c) of Bihar Prohibition and Excise Act, 2016. It was alleged that on 10.03.2018 at about 12.15 am, the petitioner was apprehended in an intoxicated condition. According to the police, breath analyzer test was conducted and result was found positive. FIR has been lodged and the petitioner was taken in custody. Thereafter, the petitioner was put under suspension vide order dated 21.03.2018 by the District Magistrate, Supaul. After release from jail custody, his suspension was revoked and, thereafter, departmental proceeding was initiated against him wherein allegation of consumption of liquor has been made against him. Charge memo



was served to the petitioner. Enquiry officer and Presenting Officer were appointed. Reply of the petitioner was sought by the Enquiry Officer for which he prayed for time as he had not received the copy of the FIR and charge sheet submitted by the police before the competent Court. Finally, after conclusion of departmental enquiry, the enquiry officer found the charges proved which were made against the petitioner. On the basis of enquiry report, the District Magistrate, Supaul vide its order dated 26.03.2022 (Annexure 12) dismissed the petitioner from his services. The said order has been assailed by the petitioner before the appellate authority, i.e., Divisional Commissioner, Koshi Division, Saharsa. The appellate authority also, vide its order dated 10.11.2022, dismissed the appeal preferred by the petitioner. Hence, this writ petition has been preferred by the petitioner seeking the reliefs, as mentioned herein above.

3 Learned counsel for the petitioner submits that the enquiry report of the enquiry officer, on the basis of which the order of dismissal has been passed by the Collector, is unsustainable as being violative of principles of natural justice. He submits that though charge memo has been issued to the petitioner but neither list of witnesses were prepared nor submitted nor any witness has been examined by the enquiry officer during



the course of enquiry. Even after that, the enquiry officer, only on the basis of breath analyzer test report, arrived on the conclusion that at the time of the incident, the petitioner was found in intoxicated condition. He further submits that apart from the breath analyzer test, no any other medical test or blood/urine test have been conducted. Referring to the judgment dated 09.05.2024 passed by a coordinate Bench of this Court in ***CWJC No 14846 of 2021 (Dharmraj Singh @ Dhamraj Singh -Versus- The State of Bihar & Others)***, it is submitted by the learned counsel that in the said case, a coordinate Bench of this Court categorically held that breath analyzer report is not a conclusive proof of consumption of alcohol. Therefore, only on the basis of breath analyzer report, which has also not been duly proved during the departmental enquiry, the conclusion made by the enquiry officer, which has been affirmed by the appellate authority, is not sustainable.

4 Learned counsel for the respondent-State opposes the argument raised by the learned counsel for the petitioner and submits that the petitioner was allowed ample opportunity of hearing. From the breath analyzer report, it is well established that at the time of alleged incident, the petitioner was found in intoxicated condition. Therefore, the enquiry officer rightly



arrived on the conclusion that charges levelled against the petitioner found proved.

5 Considering the rival submissions made by both the counsel and considering the material placed on record, this Court finds that though the charge memo was issued to the petitioner but neither list of witnesses were prepared nor any witness has been examined by the enquiry officer during the course of enquiry proceeding. The enquiry officer relied on the breath analyzer report. There is nothing on record which shows that who was the person who brought on record the said breath analyzer report. There is also nothing on record which shows that who and in what manner, the said breath analyzer report has been proved by the presenting officer during the course of enquiry.

6 Referring to the judgment passed by the Supreme Court in the case of *Bachubhai Hassanalli Karyani -Versus- State of Maharashtra, (1971) 3 SCC 930*, a coordinate Bench of this Court in the case of *Dharmraj Singh (supra)* observed and held at paragraphs 13, 14 and 15 as under:

“13. It is needless to say that breath analyzer report is not a conclusive proof of consuming the liquor by a person in Bachubhai Hassanalli Karyani vs State of Maharashtra reported in (1971) 3 SCC 930. The Hon’ble Supreme Court held that no conclusion with regard to consumption of alcohol by a person can be made on the facts that the appellants



breath was smelling of alcohol, that his gait was unsteady, that his speech was incoherent and that his pupils were dilated. Consumption of alcohol can only be ascertained by way of blood and urine test of a person, suspected to have consumed alcohol.

14. The Hon'ble Supreme Court found that the blood and urine examination of the appellant was not done and finally held that the mere smelling of alcohol is not enough to hold that the petitioner consumed alcohol on the date of his apprehension, i e, on 16th of January, 2020.

15. Thus, this Court holds that breath analyzer report is not a conclusive proof of consumption of alcohol by the petitioner."

7 Thus, it is quite clear that the breath analyzer report is not a conclusive proof of consumption of alcohol by the petitioner.

8 Dealing with the issue, the Supreme Court, in the case of *State of Uttar Pradesh & Others -Versus- Saroj Kumar Sinha, (2010) 2 SCC 772* observed and held as under:

"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.”

9 A close scrutiny of the facts of this case in hand clearly shows that in this case though charge memo has been given to the petitioner but there was neither list of witnesses submitted nor any witness was examined during the course of enquiry. The charges levelled against the petitioner has been proved only on the basis of breath analyzer report which is not a conclusive proof of consumption of alcohol, as observed by a coordinate Bench of this Court in the case of ***Dharmraj Singh (supra)***. Apart from that, there is also no material on record which shows that who was the person who produced or proved the breath analyzer report during the course of enquiry. Thus, the conclusion, as arrived by the enquiry officer, is baseless and unsustainable in the eyes of law.

10 Since, there is no material on record to sustain the allegation against the petitioner, the finding of the enquiry officer, which has been accepted by the disciplinary authority and affirmed by the appellate authority, are perverse. They cannot be made the basis for dismissal of the petitioner. Therefore, the order of dismissal dated 26.03.2022 passed by the District Magistrate, Supaul and order of the appellate authority dated 10.11.2022 passed by the Divisional Commissioner, Koshi Division, Saharsa are hereby quashed.



11 The writ petition is allowed.

12 As a result of quashing of both the orders, the respondents are directed to reinstate the petitioner forthwith with all consequential benefits.

(Arvind Singh Chandel, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
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