

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11012 of 2019

- 1.1. Geeta Devi Wife of Late Srikant Roy, Resident of Village and P.O. - Kasiyan, P.S. - Dumarao, District - Buxar.
- 1.2. Rohit Kumar Singh, Son of Late Srikant Roy, Resident of Village and P.O. - Kasiyan, P.S.- Dumarao, District - Buxar.
- 1.3. Ravi Kumar Roy, Son of Late Srikant Roy, Resident of Village and P.O. - Kasiyan, P.S.- Dumarao, District - Buxar.
- 1.4. Rajnish Singh, Son of Late Srikant Roy, Resident of Village and P.O. - Kasiyan, P.S.- Dumarao, District - Buxar.
- 1.5. Rima Kumari, D/o Late Srikant Roy, Resident of Village and P.O. - Kasiyan, P.S.- Dumarao, District - Buxar.
- 1.6. Ruby Devi, Wife of Amit Singh, Resident of Village and P.O. - Choura, P.S. - Narahi, District - Balia (U.P).

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary Department of Home, Government of Bihar, Patna.
3. The Director General of Police, Police Headquarter, Patna.
4. The Deputy Director Welfare, Patna Division, Patna.
5. The Inspector General of Police Bhagalpur Zone Home Department Government of Bihar, Patna.
6. The Deputy Inspector General of Police Munger Range, Munger.
7. The Superintendent of Police Begusarai.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ranjay Kumar Singh
For the Respondent/s : Mr. Sheo Shankar Prasad (SC8)

CORAM: HONOURABLE MR. JUSTICE ARVIND SINGH CHANDEL
ORAL JUDGMENT

Date : 28-07-2025

Heard learned counsel for the petitioner and learned
counsel for the respondents-State.

2. The original petitioner Srikant Roy during



pendency of this petition has been died on 30.11.2020, therefore, his legal representatives are incorporated as the petitioners in his place.

3. The deceased Srikant Roy on 19.03.2019 while he was posted as Sub-Inspector of Police, Chakia O.P. Begusarai and was on duty in the night shift, at that time, the breath analyzer test was conducted wherein it was found that the deceased petitioner has consumed liquor. The First Information Report bearing Barauni (Chakia) P.S. Case No. 129 of 2019 under Section 37B of the Bihar Excise and Liquor Prohibition Act, 2016 was registered against the deceased petitioner and he was arrested on 20.03.2019 and put under suspension. On 28.03.2019, he was served a notice and explanation was sought from him within 24 hours. Subsequently, on 04.04.2019, Annexure-P/1, he was dismissed from the services invoking Rule 20 of the Bihar CCA Rules, 2005 as also Clause 10 (ii) of Addendum 49 of Volume 3 of the Bihar Police Manual and Article 311(2)(B) of the Constitution of India. Hence, this petition has been field by the deceased Srikant Roy and during pendency of this petition he died, therefore now his legal representatives are available on record.

4. Learned counsel for the petitioners submits that



order of dismissal has been passed invoking the power under Article 311(2)(B) of the Constitution of India. According to the counsel, the said order is not sustainable in view of the specific provision that it can be exercised in a case where the disciplinary authority is satisfied that it is not a reasonably practicable to hold such an enquiry. It is further contended that no reason as required under Section 311(2)(B) of the Constitution of India has been assigned by the disciplinary authority. It is further submitted by the counsel that order of dismissal is also bad, illegal and unconstitutional as the same is based on breath analyzer test only which is not conclusive evidence of consumption of liquor.

5. Reliance has been placed by the counsel on the judgment passed by the Hon'ble Supreme Court in the case of ***Bachubhai Hasanalli Karyani Vs. State of Maharashtra*** reported in ***(1971) 3 SCC 930*** and also reliance has been placed by the counsel on the judgment passed by the Co-ordinate Bench of this Court in the case of ***Pankaj Kumar Singh Vrs. The State of Bihar and Ors. Passed in C.W.J.C. No. 8460 of 2021.***

6. Learned counsel for the respondents-State opposes the arguments raised by the counsel for the petitioners.



7. Heard learned counsel appearing for both the parties and perused the documents annexed with the petition as well as the counter affidavit and supplementary affidavit filed by the respondents-State.

8. Undisputedly, in this case, no charge-sheet has been issued against the deceased petitioner nor any departmental enquiry has been conducted against him and his services has been dismissed invoking the power under Article 311(2)(B) of the Constitution of India. Perusal of the impugned order (Annexure-P/1) further shows that only on the basis of breath analyzer text, it was found that the deceased petitioner was consumed liquor. Apart from the breath analyzer test, no other test has been conducted. In the case of ***Bachubhai Hasanalli Karyani*** (supra), it is held by the Hon'ble Supreme Court that the breath analyzer report is not the conclusive report of evidence for consumption of Alcohol unless it is corroborated by the blood and urine report. Therefore, only on the basis of breath analyzer report, it cannot be said that the deceased petitioner was consumed Alcohol.

9. The deceased petitioner has been dismissed from the services without going into any departmental proceeding only invoking the power under Article 311(2)(B) of the



Constitution of India. The Co-ordinate Bench of this Court in the case of ***Pankaj Kumar Singh (Supra)*** relying in the judgment passed by the Hon'ble Supreme Court in the case of ***Union of India Vs. Tulsi Ram Patel (1985) 3 SCC 398*** and further referring to the judgment passed by the Co-ordinate Bench of this Court in the case of ***Md. Muqaddar Khan Vs. the State of Bihar*** reported in ***2021(2) PLJR 355*** observed as under:

Para 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 of Department's case against the government servant is weak and must fail. Hon'ble Court in paragraph no.133 of the, aforementioned, 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."

Para 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.”

Para-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”.

10. Taking note of the above, the impugned order which has been passed by the concerned respondent invoking the provision under Article 311(2)(B) of the Constitution of India is liable to be set aside.

11. Accordingly, the impugned order, Annexure-P/1, is, hereby, set aside.

12. The present petitioners, who are the legal representatives of the deceased petitioner, named as above, are entitled to get entire consequential benefit up to death of the



deceased petitioner i.e. dated 30.11.2020. The respondents are directed to clear the entire dues as early as possible probably within a period of 60 days from the date of receipt/production of a copy of this order.

13. With the aforesaid observation and direction, this writ petition is allowed.

(Arvind Singh Chandel , J)

shailendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.07.2025
Transmission Date	NA

