

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9742 of 2024

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Harun Rashid son of Late Jamil Ahmad, resident of Village- Bheriyarwa, P.S.-
Ramgarhwa, District- East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna.
2. The Commissioner, Tirhut Division, Muzaffarpur
3. The District Magistrate, East Champaran at Motihari.
4. The Deputy Collector (District Establishment), East Champaran at Motihari.
5. The Circle Officer, Motihari Circle, East Champaran at Motihari.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Karandeep Kumar
For the Respondent/s : Mr.Government Pleader (24)

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CORAM: HONOURABLE MR. JUSTICE ARVIND SINGH CHANDEL
ORAL JUDGMENT

Date : 18-06-2025

This petition has been preferred by the petitioner challenging the order as contained in Memo No. 622 dated 27.06.2019 passed by the District Magistrate, East Champaran at Motihari, whereby and whereunder the petitioner has been dismissed from the service also under the challenge is the Order dated 17.08.2023 passed by the Commissioner, Tirhut Division, Muzaffarpur, whereby and whereunder the service appeal as preferred by the petitioner against the order dated 27.06.2019 has been dismissed.

2. The brief facts of the case are that when the petitioner was working as Revenue Clerk, Motihari Circle, East



Champan, he was alleged to have consumed liquor in office and in that regard Excise Case No. 298 of 2017 was registered against him and he was taken in judicial custody on 07.11.2017 and was released on bail on 09.11.2017 and joined his office. Subsequently, he was suspended w.e.f. the date he was taken into custody vide Memo No. 1118 dated 07.11.2017. Pursuant to thereof a memo of charge as contained in Annexure - P/3 has also been issued to him and enquiry officer was appointed. The enquiry officer submitted his enquiry report dated 18.10.2019, Annexure - P/5. Thereafter, second show cause was issued to the petitioner and finally the disciplinary authority vide order dated 27.06.2019, Annexure- P/8 dismissed the petitioner from services. The order of termination was challenged by the petitioner bearing service appeal no. 200/2019 which was also rejected by the appellate authority vide order dated 17.08.2023 Annexure- P/9. Hence, this writ petition.

3. Learned counsel for the petitioner submit that the enquiry officer without recording statement of any of the witnesses and without tendering any document by any of the witnesses only on the basis of breath analyzer report arrived on the conclusion that at the relevant time the petitioner had consumed liquor. The finding recorded by the enquiry officer is



not based upon any legal evidence rather, it is only on the basis of the breath analyzer report which was also not the part of the enquiry proceeding. Therefore, the finding as recorded by the enquiry officer is not substantial. The Disciplinary Authority and the Appellate Authority while passing the order have not considered this aspect and passed the order impugned. Therefore, both the order as referred herein above are liable to be set aside. Reliance has also been placed by the counsel on the judgment passed by this Court in **CWJC No. 10484 of 2023** *Manoj Kumar Pandey vs. The State of Bihar & Ors.* dated 10.01.2025.

4. Learned counsel for the respondent – State do not opposes the argument raised by the counsel for the petitioner.

5. Heard, learned counsel for the petitioner as well as counsel for the respondent-State. Perused the documents as well as the counter affidavit annexed with the petition.

6. The charge-sheet issued to the petitioner i.e. Annexure – P/3 clearly shows that no list of witnesses have been prepared. The enquiry report further shows that the enquiry officer has not examined any witnesses during the course of enquiry. The enquiry report further shows that the enquiry officer only on the basis of breath analyzer test report of the



petitioner arrived on the conclusion that the petitioner had consumed liquor at the relevant time. The said breath analyzer test report on the basis of which charges were found proved is also not the part of the enquiry proceeding. Virtually, it is a case of no evidence.

7. With regard to the breath analyzer report is concerned, in the case of *Manoj Kumar Pandey (supra)* this Court categorically observed that the breath analyzer report is not the conclusive proof of consumption of alcohol.

8. Taking into consideration as discussed above, I find that the conclusion as arrived by the enquiry officer in this case is baseless and unsustainable in the eyes of law. Since, there is no material on record to sustain the allegation against the petitioner. The finding of the enquiry officer which has been upheld by the disciplinary authority and affirmed by the appellate authority are perverse and cannot be made the basis of dismissal of the petitioner from his service. Therefore, the order dated 27.06.2019 passed by the District Magistrate, East Champaran at Motihari and order dated 17.08.2023 passed by the Commissioner, Tirhut Division, Muzaffarpur are hereby quashed.

9. The writ petition is allowed.



10. However, the respondents-State is directed to reinstate the services of the petitioner forthwith with all consequential benefits accrued to him. The necessary order be passed within 45 days from the date of receipt/production of a copy of this Order.

(Arvind Singh Chandel , J)

Siddharth Soni/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

