

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11737 of 2022

Nitesh Kumar, Son of Satyaprakash Jha, New Shivpuri Colony, Chhoti Daulatpur, P.S. Jamalpur, District Munger.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Home Department, Government of Bihar, Patna.
2. Principal Secretary, Home Department, Government of Bihar, Patna.
3. Director General of Police, Bihar, Patna.
4. Deputy Inspector General, Munger Division, Munger.
5. Superintendent of Police, Lakhisarai, District Lakhisarai.
6. Sub Divisional Officer-cum-Enquiry Officer, Lakhisarai, District Lakhisarai.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sumeet Kumar Singh, Advocate Mr. Shivam Singh, Advocate Mr. Kumar Vikram, Advocate Mrs. Alka Singh, Advocate
For the Respondent/s	:	Mr. Suman Kumar Jha, AC to AAG- 3

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
Date : 09-05-2025

Heard Mr. Sumeet Kumar Singh, learned Advocate
for the petitioner and Mr. Suman Kumar Jha, learned Advocate
for the State.

2. The petitioner is aggrieved with the District Order No. 345 of 2022, as contained in Memo No. 1083 dated 15.04.2022 issued under the signature of Superintendent of Police, Jamui whereby the petitioner has been dismissed from



service with immediate effect. The appeal preferred by the petitioner also came to be rejected under District Order No. 475/22, as contained in Memo No. 1153 dated 14.05.2022 issued under the signature of Deputy Inspector General of Police, Munger Range, Munger, which order is also assailed in the present writ petition.

3. During the pendency of this writ petition, the Memorial filed by the petitioner before the Director General of Police, Bihar also did not find any favour and the same was rejected vide order dated 23.01.2024, which came to be challenged by filing an interlocutory application, bearing I.A. No. 1 of 2024.

4. The short facts of the case, which are necessary for adjudication of the matter are that while the petitioner was working as a constable in Lakhisarai Police Station on 04.04.2021, raid was conducted in village Salonachak and recovered 12 bottles of Denish Special Whiskey containing 750 ml each. The accused persons, however, succeeded in fleeing away. Search memo was prepared and the bottles were brought to police station in an Ertiga Government Vehicle. Subsequently, when the raiding party in the vehicle came in the police station, the Officer-in-charge, Lakhisarai asked the petitioner to bring all



those bottles of liquor, whereupon he produced only 10 bottles, out of 12. Subsequently, when the Officer-in-charge, Lakhisarai enquired the matter and further directed to bring the remaining bottles, thereupon the 2 left over bottles of liquor were also produced after 1½ hours.

5. The afore noted act of indiscipline and misconduct led to issuance of show-cause notice to the petitioner directing him to furnish his explanation within two days. The petitioner immediately responded, which did not satisfy the authority concerned and vide Memo No.2962 dated 15.12.2021, a Memo of Charge has been served upon him. The Sub-Divisional Police Officer, Lakhisarai was appointed as Conducting Officer whereas ASI Suresh Kumar Mishra as Presenting Officer. After service of Memo of Charge, the petitioner was asked to appear before the Conducting Officer and file his statement of defence. The petitioner submitted a categorical reply and requested to exonerate him from all the charges. During the course of departmental proceeding, witnesses were examined and finally the Enquiry Officer submitted its enquiry report under Memo No. 610 dated 14.03.2022 with the finding of guilt upon being found the charges proved. The Superintendent of Police, Lakhisarai vide



Memo No. 2036 dated 25.03.2022 issued second show-cause notice along with the enquiry report, as to why not the petitioner be dismissed from service as his misconduct tarnishes the reputation of the police force and violated the prohibitory rules of Excise Act.

6. The petitioner submitted his exhaustive reply, however, the same was not found satisfactory, and thus the Superintendent of Police inflicted the punishment of dismissal.

7. Aggrieved with the order of dismissal, the petitioner preferred appeal and further Memorial, but to no respite and the order of dismissal came to be affirmed at the level of the Appellate Authority as well as by the Director General of Police Bihar.

8. Learned Advocate for the petitioner, Mr. Sumeet Kumar Singh, while assailing the impugned order has sought indulgence to take the Court through the relevant material facts before coming to the legal issues. Referring to the F.I.R., bearing Lakhisarai P.S. Case No. 829 of 2021, the copy of which is marked as Annexure/P/3, it is contended that the petitioner was neither the member of the raiding party nor the seizure list witness. The 12 bottles of liquor, which were said to have been recovered, were duly seized by Sub-Inspector of



Police Md. Akhtar Rabani; Constable(s) Pappu Kumar and Sudhir Kumar were the witnesses to the seizure list. He thus submitted that it was only the member of the raiding party and the person, who were the seizure list witnesses, acquainted with the facts as to how many bottles were recovered and seized and later on kept in Ertiga Government vehicle. Hence on a direction given by the Officer-in-charge, Lakhisarai police station, the petitioner had produced 10 bottles of liquor which were kept in the dikky of Ertiga vehicle. When the petitioner was further directed, he searched the vehicle again thoroughly and found two more bottles, which were kept beneath the seat of vehicle. He immediately brought the same before the Officer-in-charge. There had never been any intention on the part of the petitioner to conceal the two bottles of liquor, which was also the subject matter of the F.I.R. and duly noted in the seizure list. If the persons of the raiding party or the seizure list witnesses have kept only 10 of the bottles of liquor in the dickey and two of the bottles beneath the seat of the vehicle, how the petitioner, who was not even the member of the raiding party can be held responsible, it does not stand to the common sense of a prudent person. It is not the charge that it is the petitioner, who had concealed the two of the bottles at different places, rather it was



kept in Ertiga car by raiding party. Even if some delay has occurred in bringing and producing the bottles before the Officer-in-charge, in no circumstances, the conduct of the petitioner termed as misconduct to such an extent, it requires a full fledged enquiry/departmental proceeding leading to punishment of dismissal.

9. Learned Advocate for the petitioner further argued that there is complete defiance of the prescriptions, as provided under the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as 'the Rules, 2005'). Rule 17(3)(b) of Rules, 2005 has been given a complete go-bye. Moreover, the petitioner has not been allowed to cross-examine the witnesses. All the more, the witnesses were either formal witness or they have only hearsay witness. None of the witnesses was examined before the petitioner, despite the specific prescription provided under Section 17(14) of the Rules, 2005 that on the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the Government Servant. The Enquiring Officer



has at all neither considered the written statement filed by the petitioner nor acceded to the request of the petitioner to supply necessary documents, which were relied upon for proving the charges. The entire enquiry report is based upon no evidence and an empty formality was done to complete the departmental proceeding. The impugned order of punishment is not only mechanical and cryptic, but without application of mind to the show-cause explanation of the petitioner filed before the disciplinary authority. The Appellate Authority also committed similar mistake and failed to justify as to why the grounds taken by the petitioner in the Memo of appeal is not found acceptable. The Director General of Police while considering the Memorial has only affirmed the order of the disciplinary authority as well as appellate authority mechanically without making any deliberation and discussions of the points raised by the petitioner.

10. To buttress the aforementioned submissions, learned Advocate for the petitioner placed reliance upon the decisions rendered by this Court in the case of *Manik Besra Vs. The State Bank of India and Ors.*, reported in 2022(4) PLJR 487, *Ajay Kumar Thakur Vs. The State of Bihar & Ors.* reported in 2024 (3) PLJR 693, *Bharat Purbey Vs. The State of Bihar &*



Ors., reported in 2023(1) PLJR 585, Ram Prit Rai Vs. The State of Bihar & Another (C.W.J.C. No. 842 of 2012) and *Indubhushan Kumar Vs. The State of Bihar & Ors., reported in 2022 (1) PLJR 420.*

11. On the other hand, learned Advocate for the State Mr. Suman Kumar Jha dispelling the contention aforenoted has submitted with all vehemence that the facts available on record clearly suggests that after recovery of liquor, the S.H.O., Lakhisarai directed the petitioner and others to keep the liquor in the Government vehicle and on their arrival at Lakhisarai police station directed the petitioner to bring the liquor, but the petitioner knowingly concealed two bottles of the liquor and only brought ten bottles. On interrogation, the petitioner again brought one bottle of liquor and concealed one. Further on questioned, the petitioner produced one more bottle of liquor. This conduct of the petitioner amounts to indiscipline and dereliction of duty, which has clouded a shadow to the reputation of the police Force.

12. Before initiation of departmental proceeding, the petitioner was served with a show-cause, however, he failed to justify his conduct, hence the departmental proceeding, bearing no. 12/21 was initiated against the petitioner and after



framing and handing over the Memo of charge vide Memo No. 2962/RO dated 15.12.2021, the petitioner has given ample opportunity during enquiry and the witnesses have also been produced, who supported the charges. The Presenting Officer had examined the witnesses and opportunity was given to the petitioner to cross-examine, but he refused to do so. The charges levelled against the petitioner stood proved in the enquiry. On receipt of the enquiry report, the Superintendent of Police issued second show-cause notice, which was responded by the petitioner and after proper discussion of the same, the impugned order of dismissal came to be passed. In the State of Bihar, there is complete prohibition of liquor; the conduct of the petitioner in concealing the bottle of liquor, which was seized in a raid in connection with Lakhisarai P.S. Case No. 829 of 2021 was a grave misconduct and thus the order of dismissal cannot be said to be disproportionate.

13. Before parting with this case, it would be worth noting that while exercising the power of judicial review under Articles 226/227 of the Constitution of India, the power of the Court is confined to the illegality surfaced in the decision making process, which led to manifest illegality and not with the decision itself. The aforementioned proposition stands settled in



innumerable decisions in the case of *State of Andhra Pradesh & Ors. Vs. S. Sree Rama Rao*, (AIR 1963 SC 1723), *State of Andhra Pradesh & Ors. Vs. Chitra Venkata Rao*, [(1975) 2 SCC 557], *Railway Board representing the Union of India Vs. Niranjana Singh*, [(1969) 1 SCC 502], *State of Haryana & Anr. Vs. Rattan Singh*, [(1977) 2 SCC 491], *Chennai Metropolitan Water Supply & Sewerage Board Vs. T. T. Murali Babu*, [(2014) 4 SCC 108] and *Union of India & Ors. Vs. P. Gunasekaran*, [(2015) 2 SCC 610]; wherein the Apex Court held that High Court cannot venture into re-appreciation of the evidence or interfere in conclusion in enquiry proceedings. The Court can only see whether the enquiry is held by a competent authority and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence.

14. The High Court may undoubtedly interfere



where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion.

15. It is also settled that the High Court in exercise of its jurisdiction under Articles 226/227 of the Constitution cannot go into proportionality of the punishment so long as punishment does not shock conscience of the Court. These aspects have been threadbarely discussed in various decisions of the Hon'ble Supreme Court in the case of ***B. C. Chaturvedi Vs. Union of India & Ors.***, reported in (1995) 6 SCC 749, ***Coimbatore District Central Coop. Bank Vs. Coimbatore District Central Coop. Bank Employees Association & Anr.***, reported in (2007) 4 SCC 669 and ***Chennai Metropolitan Water Supply & Sewerage Board & Ors. Vs. T. T. Murali Babu***, reported in (2014) 4 SCC 108.



16. After going through the aforementioned rulings, the scope of interference in a disciplinary proceeding is well defined and thus in the settled legal premise, now this Court consider the facts of the case in hand. It is the admitted position that the petitioner was not the member to the raiding party, which led to recovery of 12 bottles of Dennis Special Whiskey and institution of the F.I.R., bearing Lakhisarai P.S. Case No. 829 of 2021. The raid was led by ASI Md. Akhtar Rabani and the witnesses to the seizure were Constable(s) Pappu Kumar and Sudhir Kumar. It is only those persons, who would be the competent witness to say that the liquor, in question,, was handed over to whom. However, none of them were examined as witness by the department. All the three witnesses, who were examined by the enquiry officer were only deposed that in the departmental enquiry they have stated that this petitioner has produced two bottles of liquor after a delay of 1½ hours before the officer-in-charge. There is no evidence nor the witnesses to the enquiry have deposed that the petitioner was custodian of the seized illicit liquor and it was ever handed over to him.

17. This Court is not oblivious of the settled principle that in the departmental proceeding, the charges ought to be proved on the basis of preponderance of probability and



not required to be proved beyond all its reasonable doubt. Notwithstanding the aforesaid position, the departmental authorities while inflicting with the harshest punishment of dismissal must be conscious that they should not be allowed themselves to be influenced by the irrelevant or extraneous consideration. If the authorities have disabled themselves from reaching a fair conclusion by some extraneous consideration to the evidence and merit of the case, the Court while exercising the power under Articles 226/227 of the Constitution can interfere with the decision of the authorities.

18. The report of the enquiry officer returning the finding of guilt is absolutely upon no evidence. The enquiry officer reached to the conclusion only on the facts that when the petitioner was asked to bring the left over two bottles of liquor, out of 12 bottles, he took 1 ½ hours and later on he produced the same, which bottles are said to have been kept beneath the seat of Ertiga Car. All the more, since other constables had also come along with the petitioner in Ertiga Car but allegation has only been levelled against the petitioner, hence complicity of the petitioner in concealing two bottles of liquor is apparent.

19. Well settled it is that the disciplinary proceedings, before a domestic Tribunal are of a quasi-judicial



character and, therefore, it is necessary that the Enquiry Officer/disciplinary authority should arrive at its conclusions on the basis of some evidence, that is to say, such evidence which and that too, with some degree of definiteness, points to the guilt of the delinquent and does not leave the matter in a suspicious state as mere suspicion cannot take the place of proof even in domestic enquiries. If, there is no evidence to sustain the charges framed against the delinquent, he cannot be held to be guilty as in that event, the findings recorded by the Enquiry Officer would be perverse. [*Vide: Nand Kishore Prasad vs State of Bihar and Ors., (1978) 3 SCC 366*] It is also true that the findings recorded in a domestic enquiry can be characterized as perverse if it is shown that such findings are not supported by any evidence on record or not based on the evidence adduced by the parties or no reasonable person could have come to those findings on the basis of that evidence.

20. In the case of *Rajinder Kumar Kindra vs. Delhi Administration [(1984) 4 SCC 635]*, the Apex Court held that where the findings of misconduct are based on no legal evidence and the conclusion is one to which no reasonable man could come, the findings can be rejected as perverse. It was also laid down that where a quasi-judicial tribunal records findings



based on no legal evidence and the findings are its mere *ipse dixit* or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated.

21. In the case in hand, the enquiry report, discussed hereinabove, clearly demonstrates that the entire findings of the Enquiry Officer is based on conjectures and surmises and mere *ipse dixit*. There is no legal evidence to support the findings; all the more mala fide is writ large when the entire enquiry is concluded in a hot haste manner. Time without number, the Court has cautioned that the justice is not to be done but manifestly seen to be done. The action of the respondents in the case in hand does not stand on the scrutiny of fairness and the Enquiry Officer acting in a quasi judicial is in the position of an independent adjudicator and no such proceeding be conducted with close mind. The very object of rules of natural justice is to ensure that a government servant is treated fairly in a proceeding which may culminate in imposition of punishment including dismissal/removal from service.

22. Now coming to the impugned order of dismissal, this Court finds that the explanation of the petitioner



to the second show cause came to be rejected only on being termed it as unsatisfactory. There is no discussion and deliberation as to why it is not acceptable. There is no doubt that the disciplinary authority need not elaborately consider each and every contention, but at least in brief a gist of reply to the second show-cause notice was required to be considered by the disciplinary authority for the reasons that the object of issuance of second show-cause and receipt of explanation procedure would be defeated if it is not considered. Non-consideration of the explanation would certainly termed the decision of the disciplinary authority mechanical and actuated with non-application of mind. The order of the appellate authority also suffers from vice of illegality, inasmuch as no reason has been assigned as to why the grounds raised by the petitioner in the appeal did not find favour. The appeal preferred by the petitioner also came to be dismissed in one line; irrespective of the fact the petitioner has raised series of points on facts as well as on law in his memo of appeal but not a single point has been considered.

23. This Court is further appalled to see as to how that much of conduct of the petitioner as charged in the proceeding be termed as grave misconduct and indiscipline,



which requires severe punishment of dismissal. The disciplinary authority ought to act in a sensible manner while proceeding departmentally and inflicting harshest punishment of dismissal only in case where such punishment is proportionate to the charges. However, this Court is of the view that the manner in which the entire proceeding has initiated and culminated to the punishment of dismissal is quite unwarranted and shocks the judicial conscience to this Court.

24. For all the afore noted reasons, this Court finds that the impugned order passed by the disciplinary authority as contained in District Order No. 345 of 2022 under Memo No. 1083 dated 15.04.2022 as also the District Order No. 475/22 under Memo No. 1153 dated 14.05.2022 are unsustainable and hereby set aside.

25. Since the very disciplinary proceeding is tinkered with serious illegalities and actuated with *malafide*, this Court deems it fit and proper to direct the respondents to reinstate the petitioner with all back wages along with other consequential benefits as is admissible to the petitioner in view of the law laid down by the Apex Court in ***Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya & Ors.*** [(2013) 10 SCC 324].



26. The writ petition stands allowed.

27. Pending application(s), if any, shall also stand disposed off.

(Harish Kumar, J)

uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.05.2025
Transmission Date	NA

