

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 10484 of 2023

Manoj Kumar Pandey Son of Satyadev Pandey, Resident of Mohalla- Ambika Nagar, Ward No. 12, Police Station- Banjaria, 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 Collector, East Champaran at Motihari.
4. The Additional Collector, East Champaran at Motihari.
5. The Sub Divisional Officer, Sadar, Motihari, East Champaran.
6. The Sub Divisional Officer, Raxaul, East Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr Karandeep Kumar, Advocate
For the Respondent/s : Mr Md Khurshid Alam, AAG XII

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) For quashing the order dated 18.04.2023 passed in Service Appeal No 294 of 2019 by the Court of learned Commissioner, Tirhut Division, Muzaffarpur, whereby and where under the appeal preferred by the petitioner against the order of dismissal from service as contained in memo No 1232 (establishment) dated 26.10.2019 issued by the Collector, East Champaran at Motihari has been rejected.

(ii) For quashing the order as contained in memo No 1332/Estb dated



26.10.2019 issued under the signature of Collector, East Champaran at Motihari, whereby and where under the petitioner has been dismissed from the service.

(iii) For directing the respondent authorities to reinstate the petitioner on the post of Revenue Clerk, Circle, Sadar, Motihari, East Champaran at Motihari and grant all consequential benefits to the petitioner.

iv. And for any other relief(s) for which the petitioner is found to be entitled in view of the facts and circumstances of the case.”

2 Facts of the case are that the petitioner, while working as a Revenue Cleark, East Champaran was apprehended on 08.06.2018 in connection with Excise Case No 267 of 2018 dated 09.06.2018 instituted for the offence punishable under Section 37 (a) and (b) of the Bihar Prohibition and Excise Act, 2016. The petitioner and one Sanjay Kumar were allegedly found consuming the prohibited liquor. The petitioner was remanded in judicial custody on 09.06.2018 and subsequently was granted bail by this Court. Subsequently, departmental enquiry has been initiated against him. Charge memo was given to him. In his reply, the petitioner denied the charges levelled against him. The enquiry officer submitted his enquiry report and he found the charges proved which have been levelled against the petitioner. On the basis of the said enquiry report, the District Magistrate, East Champaran, Motihari vide his order dated 26.10.2019 dismissed



the petitioner from the services. A departmental appeal was preferred by the petitioner being Service Appeal Case No 294 of 2019 before the Court of Commissioner, Tirhut Division, Muzaffarpur. The appeal was also rejected vide order dated 18.04.2023. Hence, this petition has been preferred by the petitioner.

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 given 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 unrebutted 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 26.10.2019 passed by the Collector, East Champaran at Motihari and order of the appellate authority dated 18.04.2023 passed by the Divisional Commissioner, Tirhut Division, Muzaffarpur 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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