

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17742 of 2021

Chandra Kishore Yadav @ Chandra Kishore Yadav @ Constable 704 Chandra Kishore Yadav @ Cons. 704 Chandra Kishore Yadav, Son of Kesho Yadav then Constable under control of Superintendent of Police Nalanda, permanent resident of Village-Keso Farka Tola, Haridih, Post-Haridih, Police Station-Sono, District-Jamui, Bihar.

... .. Petitioner

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Home, Government of Bihar, Sadar Patel Bhawan, Bailey Road, Patna, Bihar.
2. The Additional Chief Secretary Department of Home, Government of Bihar, Sadar Patel Bhawan, Bailey Road, Patna. Bihar.
3. The Principal Secretary, Department of Home, Government of Bihar, Sadar Patel Bhawan, Bailey Road, Patna. Bihar.
4. The Director General of Police, Sadar Patel Bhawan, Bailey Road, Patna, Bihar.
5. The Additional Director General of Police, Head Quarter Sardar Patel Bhawan, Bailey Road, Patna, Bihar.
6. The Additional Director General of Police (Legal Affairs), Sardar Patel Bhawan, Bailey Road, Patna, Bihar.
7. The Inspector General of Police (Budget/Appeal/Welfare) Police Head Quarter, Sardar Patel Bhawan, Bailey Road, Patna, Bihar.
8. The Inspector General of Police (Prohibition Division), Police Headquarter Sardar Patel Bhawan, Patna, Bihar.
9. The Inspector General of Police Central Zone, Patna, District-Patna, Bihar.
10. The Superintendent of Police, Nalanda, Bihar.
11. The Deputy Superintendent of Police (Head Quarter), Police Line, Nalanda.
12. The Deputy Superintendent of Police (Traffic) Nalanda, Bihar.
13. Arun Kumar Singh, Dy S.P. the then Dy. S.P. (Traffic) cum Conducting Officer of Nalanda District Departmental Proceeding No. 33/2020.
14. The R.S.I. (First) Incharge Service Book, Police Lines, Nalanda, Bihar.
15. Mr. Chandrashekhar Singh the Inspector of Police, Cum Station House Officer Harnaut Police Station, Nalanda, permanent R/o Village Veriya Maharaj Police Station, Sahpur, District-Bhojpur, Bihar,



16. Mr. Chandraket Singh then Police Sub-Inspector Cum-Investigation Officer of Harnaut (Nalanda) Police Station Case No. 33 of 2020. Police Lines, Nalanda, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Manish Kumar No.13, Advocate
Mr. Rohit Kumar, Advocate

For the Respondent/s : Mr. Manish Kumar, GP-4

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 15-07-2025

Heard the parties.

2. The challenge made in the present writ petition is the order no.992/2020 under Memo No.2762 dated 13.05.2020, whereby the petitioner has been inflicted with the punishment of dismissal, the copy of which has been marked as Annexure-11 to the writ petition. Aggrieved with the aforesaid order, the petitioner preferred appeal, which was also rejected by the appellate authority and the order has been communicated through Nalanda District Order No.1121 of 2020 under Memo No.3135 dated 03.06.2020 (Annexure-12) and further the memorial preferred by the petitioner also came to be rejected by the order as contained in Memo No.585 dated 23.12.2021 (Annexure-14 to the I.A. No.1 of 2022). Both the orders are also put to challenge in the present writ petition. In sum and substance, the petitioner has challenged the entire departmental



proceeding bearing no. 33/2020, including the order of suspension, memo of charge as well as the enquiry report and second show-cause notice.

3. The genesis of the occurrence as revealed from Memo No.198 dated 30th January, 2020 issued by the S.H.O., Harnaut Police Station, *inter alia*, demonstrate that on 28th January, 2020, a team of the police personnel detained one truck loaded with foreign liquors and seizure was made. Allegedly, at the time of unloading, one Ajit Kumar Yadav, driver of the private car, used in the police station had stolen some bottles of foreign liquors. During interrogation, said Ajit Kumar Yadav made a statement to the effect that some of the Constables of Harnaut Police Station, including the petitioner as Reserve Guards had stolen away 3 cartons of foreign liquor. Said 3 cartons of foreign liquor were recovered from the Police Barrack of the said Police Station on 30.01.2020. With the aforesaid allegation and the recovery of foreign liquors, Harnaut P.S. Case No.33 of 2020 was instituted for the offences punishable under Sections 379/34 of the Indian Penal Code and Section 30(a) of the Bihar Prohibition and Excise Act, 2016 against various Police Constables, including the petitioner.

4. The aforesaid incidence led to issuance of memo



No.198 dated 30.01.2020 issued by the S.H.O. Harnaut P.S. with a recommendation for taking departmental action, resultant into suspension of the petitioner and other concerned police personnel vide Nalanda District Order No.265 of 2020 under Memo No.679 dated 02.02.2020.

5. In course of investigation, complicity of the petitioner and others have been found; considering the seriousness of the offence, a show-cause was issued to the petitioner and others vide Memo No.760 dated 06.02.2020 and further vide Memo No.1955 dated 28.03.2020.

6. In response to the show-cause notice, explanation was made by the petitioner and others; however, the same was not found satisfactory and accordingly a departmental proceeding was initiated after serving a copy of the memo of charge upon the petitioner. The Dy. S.P. (Traffic), Biharsharif, Nalanda was appointed as Conducting Officer and A.S.I. Rana Ravindra Singh was nominated as Presenting Officer of the departmental proceeding.

7. In course of enquiry, the witnesses were examined by the department and the petitioner was asked to submit his written defence. In response thereto, the petitioner submitted his written defence and claimed to be innocent. The Enquiry Officer



returned a finding of guilt after completion of the enquiry vide his enquiry report dated 05.05.2020. The petitioner was served with the second show-cause notice and finally inflicted with the punishment of dismissal upon being found his reply to the second show-cause not worthy for consideration. The appeal and the memorial preferred by the petitioner also did not find favour and came to be rejected.

8. Mr. Manish Kumar No.13, learned Advocate for the petitioner while assailing the impugned orders and the entire departmental proceedings has submitted that the disciplinary authority has failed in following the mandatory prescriptions as provided under Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (for short 'the Rules, 2005'). There is no definite and distinct article of charge, which constitutes misconduct or misbehaviour as required under Rule 17(3) of the Rules, 2005. There is also violation of Rule 17(6) of the Rules, 2005. The person upon whose statement(s), the petitioner has been made accused and subjected to departmental proceeding, has never been examined in course of enquiry.

9. Taking this Court through the enquiry report, learned Advocate for the petitioner has further submitted that the witnesses have failed to prove the charges with respect to



recovery of the foreign liquors from the exclusive possession of the petitioner rather the Barrack from where recovery has been made, several Constables used to reside; hence, the entire enquiry report is based upon no evidence. In a departmental proceeding concerning a charge of corruption related to banned liquor, the evidence needs to be strong and compelling, but not necessarily to the same "hilt" as in a criminal trial and in absence of any definite/clear proof, it is difficult to draw a finding of guilt. Further submission has been made that the witnesses produced in the departmental proceedings were merely tendered the documents and did not proof the contents thereof. The Enquiry Officer also failed to consider the explanation of the delinquent and rejected the same without dealing it before holding the petitioner for guilty of the charges. The order of the disciplinary authority is said to be cryptic and non-speaking; moreover, the disciplinary authority also failed to consider the specific reply to the second show-cause notice filed by the petitioner. The mandate of Rule 17(14) of the Rules, 2005 has also not been considered by the disciplinary authority. Similar mistake has also been committed by the appellate authority, who failed to take care of Rule 17(27) of the Rules, 2005. While rejecting the memorial, the D.G.P., Bihar also fell



in error while not considering the grounds taken by the petitioner.

10. Learned Advocate for the petitioner lastly contended that Constable Ramjee Choudhary @ Ram Jee Choudary, who was also subjected to identical show-cause notice and similar memo of charge as also suffered with identical punishment of dismissal to that of the petitioner, has approached this Court in C.W.J.C. No.17423 of 2021, whose order of dismissal as well as the appellate order and the order passed in memorial stood set aside vide order dated 03.07.2024.

11. Mr. Manish Kumar, learned Government Pleader, refuted the, afore-noted, contention, and taking this Court through the enquiry report as well as the order passed by the disciplinary authority submitted that the charges against the petitioner are serious in nature and in presence of the petitioner and other Constables, recovery of foreign liquors was made from the Barrack where the petitioner along with others used to reside. The name of the petitioner was disclosed by one Ajit Kumar Yadav. In the aforesaid premise, Harnaut P.S. Case No.33 of 2020 was instituted against the petitioner and others and they have been remanded to the judicial custody; moreover, in course of investigation, the allegation found true. In the



departmental proceeding, the petitioner was given proper opportunity of hearing. The witnesses were also examined, who supported the charges. In course of enquiry, sufficient evidences have come; based upon which, the enquiry report returned a finding of guilt. The disciplinary authority also considered the reply to the second show-cause and finally order of punishment has been passed. The petitioner failed to point out any infirmity in the departmental proceeding and only vague allegation has been levelled. The act of the petitioner tarnishes the image of Police Institution in the society and therefore the dismissal order is proportionate to the charges proved against him.

12. In response to the submission led by the learned Advocate for the petitioner that the order inflicted upon identically situated Constable was set aside by a Bench of this Court, learned Advocate for the State, though did not confront the position, however, he submitted that both the persons have been subjected to separate departmental proceeding and the outcome is based upon the exclusive evidences and finding of the Enquiry Officer, which has been later on found to be unsustainable by the Court of law, in the case of Ramjee Choudhary @ Ram Jee Choudhary.

13. This Court has heard the submissions set forth by



the learned Advocate for the respective parties and carefully examined the record(s).

14. *Prima facie*, this court finds that the petitioner is also subjected to identical charges to those have been levelled against Constable Ramjee Choudhary @ Ram Jee Choudhary, whose name was also disclosed by co-accused Ajit Kumar Yadav; based upon which a raid was conducted in the Barrack and recovery was made from an Almirah. The learned co-ordinate Bench while considering the case of Constable Ramjee Choudhary @ Ram Jee Choudhary [in C.W.J.C. No.17423 of 2021], has also taken note of the fact that he used to stay in the Police Barrack of Harnaut Police Station along with other Constables, including the petitioner from where 3 cartons of foreign liquor containing 72 bottles in all measuring about 27 liters were recovered from the 2nd Floor of Police Barrack from an Almirah situated on the Northern side of the wall. However, there is no material to show that the Almirah, from which the foreign liquor was seized, was under exclusive control and possession of Constable Ramjee Choudhary @ Ram Jee Choudhary. Similar is the position with respect to the petitioner in the present case.

15. The learned Court further took note of the fact that



as many as 40 Constables and other members of the force used to stay in the Barrack. Thus, when a contraband article is recovered from the place used by more than one person, it was the duty of the prosecuting agency to produce satisfactorily evidence, if not conclusive one, that the Almirah from which foreign liquors were recovered, was in exclusive possession of the charged employee. The statement of Ajit Kumar Yadav, who was a driver of a private car used by the Police is also said to be in the nature of hearsay and thus held to be not admissible at all. The learned Court further placing reliance upon a decision rendered by the Apex Court in the case of **Oryx Fisheries Private Limited Vrs. Union of India and Another [(2010) 13 SCC 427]** and further in the case of **Kranti Associates Private Limited And Another Vrs. Masood Ahmad Khan And Others [(2010) 9 SCC 496]**, has observed that if the decision of quasi-judicial administrative authority is based on no reason, in such circumstances, the Court exercising the power of judicial review under Article 226 of the Constitution of India, is duty bound to examine the challenge.

16. Highlighting the role of Enquiry Officer, who acts an independent adjudicator, as reinforced by the Apex Court in the case of **State of Uttar Pradesh and Others v. Saroj**



Kumar Sinha [(2010) 2 SCC 772], further concluded that a person cannot be punished for departmental misconduct on the basis of exculpatory statement made by some other persons. It was one Ajit Kumar Yadav, who implicated the petitioner, but he was not examined before the Enquiry Officer. Thus, the Court held that the Department failed to produce any evidence to prove the charges of complicity, besides no evidence has come that the Almirah of the Barrack from which the contraband articles were recovered, was exclusively under the possession and control of the petitioner.

17. Having gone through the afore-noted Bench decision of this Court in **Ramjee Choudhary** (supra), this Court finds that the charges alleged against the petitioner and to that of Constable Ramjee Choudhary are one and identical and both of them subjected to identical proceeding, which culminated into dismissal. So far the order of dismissal passed in relation to Constable Ramjee Choudhary, the same stood set aside.

18. Uniformity demands similar treatment, in case, apart from the same charges, the witnesses and the evidences are same, which led to identical punishment but challenge to the punishment in respect of co-delinquent sustained by a Bench of this Court and consequently the order came to be set aside.



Uniformity is the hallmark of law is the mandate of Article 14 of the Constitution of India.

19. Besides the aforesaid fact, this Court also finds that there is substance in the submission of the petitioner to the extent the impugned order of dismissal passed by the disciplinary authority is cryptic and non-speaking. There is no deliberation and discussion to the reply to the second show-cause filed by the petitioner as to why it has not been found acceptable to the disciplinary authority. Similar mistake has been committed by the appellate authority, who failed to follow the mandatory prescriptions provided under Rule 17(27) of the Rules, 2005; while disposing the memorial, the D.G.P., Bihar also fell in similar error.

20. The Court time without number has reinforced the importance of recording of reasons in support of its conclusions.

21. The reliance placed by the learned co-ordinate of this Court upon the case of **Oryx Fisheries Private Limited** (supra) and **Kranti Associate Private Limited** (supra), also cautioned that any decision which affects prejudicially must be a reasoned and speaking one. It is the reason, which operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power. The reasons have



been held to be indispensable a component of a decision making process as observing principles of natural justice.

22. Consequently, the order of dismissal dated 13.05.2020 as contained in Memo No.2762 and the order passed in appeal dated 03.06.2020 as contained in Memo No.3135 as also the order passed in memorial dated 23.12.2021 as contained in Memo No.585 are quashed and set aside.

23. The petitioner is reinstated with all consequential benefit(s) as has been accorded to Constable Ramjee Choudhary @ Ram Jee Choudhary (petitioner in C.W.J.C. No.17423 of 2021).

24. The writ petition stands allowed.

(Harish Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23-07-2025
Transmission Date	

