

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3195 of 2025

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Girjanandan Sharma Son of Late Jagdish Sharma, Resident of Village-
Kamtachak, P.O- Mittanchak, P.S.- Gopalpur, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Home Department Government of Bihar, Patna.
2. The Principal Secretary, Home Department, Government of Bihar, Patna.
3. Additional Director General of Police, Bihar Special Armed Police, Bihar, Patna.
4. The Deputy Inspector General of Police, Bihar Special Armed Police (North Division), Muzaffarpur.
5. Inquiry Officer-cum-Deputy Superintendent of Police- cum- Commandant, C Company, Bihar Special Armed Police, XII, Bhim Nagar, Supaul (Bihar).

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Raju Giri, Sr. Advocate Mr. Harsh Vardhan, Advocate Mr. Harsh Raj, Advocate Mr. Chetan Anand, Advocate
For the Respondent/s	:	Mr. Government Pleader (6)

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

3 29-01-2026 The petitioner is a retired Assistant Sub-Inspector of Police. His service came to an end on superannuation w.e.f. 31st January, 2019. While he was in service, he was arrested by a raid party with the allegation of consumption of prohibited alcohol within the jurisdiction of the police station where he was posted. After such arrest on 23rd July, 2018, Excise Case No. C I-477/2018 under Section 37(B) of the Excise and Prohibition Act, 2016 was registered against the petitioner. The petitioner was arrested and taken to custody.

2. The above-mentioned act being treated as

professional misconduct. A departmental proceeding was initiated against the petitioner. The Commandant of Bihar Armed Police, Saharsa submitted Memorandum of Charge against the petitioner and on conclusion of departmental proceeding, he was dismissed from service six days before his superannuation on 25th January, 2019.

3. The petitioner preferred a departmental appeal which was subsequently allowed and the Inquiry Authority was directed to give opportunity to the petitioner to cross-examine the witnesses on behalf of the prosecution. As the petitioner had retired from service in the meantime, the departmental proceeding was converted to a proceeding under Section 43(B) of the Bihar Pension Rules, 1950. In the said inquiry proceeding, the petitioner was found committing gross misconduct and 20 per cent of his pension was directed to be deducted for five years. It was further directed that he would not be paid balance salary except the suspension allowance during the period suspension. The petitioner challenged the said order dated 27th June, 2023 in an appeal which was dismissed by the appellate authority. Hence, the instant writ petition.

4. The learned Senior Counsel on behalf of the petitioner has assailed the decision of the penalty of inquiry

authority, subsequently affirmed by the appellate authority on the ground that the punishment of deduction of 20 per cent of pension amount for five years and direction of non-payment of salary beyond the suspension allowance are disproportionate to the alleged misconduct because even assuming that the petitioner consumed prohibited liquor, it may be an instance of moral turpitude but such act of the petitioner did not cause any pecuniary loss to the police department. Therefore, recovery of money from the pension of the petitioner is arbitrary and disproportionate to the charge leveled against him.

5. Secondly, it is contended by the learned Advocate on behalf of the petitioner that the departmental inquiry against the petitioner is itself bad in law because Rule 17(3) of the Bihar Government Servants (Classification Control and Appeal) Rules, 2005 lays down a mandatory provision of submission of charge-sheet against a delinquent employee by the disciplinary authority or the appointing authority. Charge-sheet having been filed by the commandant, who is neither a disciplinary authority or an appointing authority, is bad in law.

6. Third limb of argument of the learned Senior Counsel for the petitioner is that the raiding party found the petitioner in drunken condition on the basis of Breath Analyzer

Report. This Court relying on the decision of the Hon'ble Supreme Court in ***Bahubhai Hassanali Karyani Vs. The State of Maharashtra*** reported in ***1971 3 SCC 930*** held in series of cases that Breath Analyzer Report is not a conclusive test to hold drunkenness of a person.

7. Learned counsel on behalf of the State, on the other hand, submits that the second inquiry was done in accordance with law following the provisions contained in CCA Rules read with Bihar Pension Rules. Therefore, the order passed by the departmental authority cannot be held to be a subject of judicial review.

8. Having heard the learned counsels for the parties and on careful perusal of entire materials available on record, this Court agrees with the submission made by the learned Senior Counsel on behalf of the petitioner that for the alleged act of the petitioner, the police department did not incurred any financial loss. It may be a fact that when a police officer was apprehended by the officers and staffs of Excise Department on the allegation of consumption of prohibited liquor, it laid to a bad impression of the police department in the estimation of the general public. However, for such alleged act, the delinquent employee cannot be charged with financial loss.

9. Learned Senior Counsel on behalf of the petitioner has filed a rejoinder to the writ petition yesterday i.e. on 28th January, 2026 annexing a circular bearing no. 294, dated 20th May, 2022 issued by the Deputy Inspector General Personnel Department of Police, Bihar, Patna. The said circular clearly states that no police personnel can be held guilty in a departmental proceeding on the basis of Breath Analyzer Report alone. The said circular dated 20th May, 2022 was violated by the police department itself by passing the impugned order.

10. For the reasons stated above, I am not in a position to agree with the findings of the respondent-authority. The order of punishment passed against the petitioner on 27th June, 2023 is quashed and set aside.

11. The writ petition is, therefore, allowed on contest, however, without cost.

12. If any amount is deducted from the pension of the petitioner, the said amount shall be paid back to him. Moreover, he is entitled to get full salary and other benefits during his period of suspension.

(Bibek Chaudhuri, J.)

Jyoti Kumari/-

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