

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4818 of 2023

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Rakesh Kumar S/o- Ram Awatar Paswan, Resident of Village- Ugahani, P.S.-
Chennari, District- Rohtas. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. D.G. of Police Bihar, Patna.
3. D.I.G. Saran Range Chapra.
4. S.P. Siwan
5. S.P. Gopalganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ebrahim Kabir, Advocate
	:	Ms. Shruti Sinha, Advocate
For the State	:	Md. N.H. Khan, SC-1
	:	Md. Fazle Karim, AC to SC-1
	:	Md. Harun Quareshi, AC to SC-1

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CORAM: HONOURABLE MR. JUSTICE RITESH KUMAR
ORAL JUDGMENT

Date : 05-02-2026

Heard the parties.

I.A. No. 01 of 2024

2. The present interlocutory application has been filed for amendment in the prayer made in the writ petition since during the pendency of the writ petition, the representation of the petitioner for his reinstatement in view of his acquittal in the criminal case, has been rejected by the Dy. S.P. (Reserve), Police Line, Siwan vide his order contained in Memo No. 2511/RG Ka dated 28.06.2024.

3. The learned counsel for the State has no objection to the said interlocutory application.

4. In view of the above, I.A. No. 01 of 2024 is



allowed and the prayer made therein will be treated to be part of the prayer made in the writ petition.

C.W.J.C. No. 4818 of 2023

5. The present writ petition has been filed for the following reliefs:-

“for issuance of an appropriate writ order or direction for quashing letter no. 1383/Go. dated 25-10-2022 issued by D.G. of Police Bihar Patna whereby has passed order of dismissal from service against the petitioner i.e. Annexure- and also for quashing consequential order of S.P. Siwan Memo No. 3810/Ra.Ka. dated 07-11-2022 i.e. Annexure- and S.P. Gopalganj memo no. 2546/Ra.Ka. dated 15-11-2022 i.e. Annexure- whereby petitioner has been dismissed from service and for all consequential benefits or for any other order or orders which this Hon’ble may deem fit and proper under the circumstances of this case.

For a further direction for quashing Memo No. 2511/RG KA dated 28.06.2024 issued by Dy. S.P. (Reserve) Police Line Siwan where by the representation of the petitioner praying to reinstate the petitioner in service in light of his acquittal in Mairwan P.S. Case No. 187 of 2018 in Ex. Trial No. 967/2020 by learned Court below



Judgment dated 04.01.2024 has been rejected saying that it is not Honourable acquittal, which is illegal and to reinstate the petitioner with full consequential benefits.”

6. The learned counsel for the petitioner submits that the petitioner was appointed on the post of Constable and accordingly he gave his joining on 20.08.2013 in the Siwan District Police Force. He was performing his duties to the satisfaction of the authorities concerned, but all of a sudden vide Memo No. 2255/Ra.Ka. Dated 14.06.2018 issued under the signature of the Superintendent of Police, Siwan, he was proceeded with departmentally and charge memo was served upon him. It has been submitted by the learned counsel for the petitioner that while he was posted at S.B.I. Main Branch, Siwan as Reserve Guard, then on 27.05.2018 at 14:00 hours, he proceeded to the Police Line, Siwan, after informing the guard posted there, but he was found to be intoxicated state and two bottles of liquor was also seized for which Mairwa P.S. Case No. 187 of 2018 dated 27.05.2018 was instituted and the petitioner was sent to judicial custody. The petitioner was put under suspension and departmental proceeding was directed to be initiated against him.

7. The learned counsel for the petitioner further



submits that the Superintendent of Police, Siwan while issuing charge-sheet, did not issue any show-cause to him and at the same time, appointed Enquiry Officer and Presenting Officer to conduct the departmental proceeding. The Petitioner was granted bail by the Court of Additional Sessions Judge-II, Siwan vide his order dated 12.06.2018. The Enquiry Officer proceeded with the enquiry wherein despite repeated opportunity being given to the petitioner to cross examine the witnesses and to produce his defence, but for the one reason or another he did not choose to do the same. Finally, the Enquiry Officer submitted his report wherein he came to the conclusion that from the evidences of the prosecution and appraisal of the evidence collected during course of enquiry, he came to the conclusion that neither bottle of liquor was recovered from the petitioner nor any misbehaviour was found to be caused by him against any officer of Mairwa Police Station. He further came to the conclusion that it has been proved that the petitioner had consumed liquor and the doctor concerned had certified that smell of liquor was coming out of the breath of the petitioner. Accordingly, he found the charges to be proved against the petitioner and sent the same to the disciplinary authority.

8. The learned counsel for the petitioner further



submits that second show cause notices were issued to him and reply was duly submitted by the petitioner but the disciplinary authority vide his order impugned contained in Memo No. 4644 dated 03.12.2018 without considering the same, found the petitioner guilty and awarded the punishment of three black marks which is equivalent to stoppage of increment for two years with cumulative effect. Further, it was also mentioned that during the period of suspension, nothing will be paid to the petitioner, apart from what he has been paid and the period will be treated to be half earned leave.

9. It is further case of the petitioner that the D.I.G., Saran Range, Chapra, while reviewing the case of the petitioner, came to the conclusion that the punishment awarded to the petitioner is disproportionate to the gravity of the offence. Therefore, as per the provisions contained in Rule 853(A) of the Bihar Police Manual, he sent the same (vide Memo No. 387 dated 07.02.2019) for further orders before the Director General of Police, Bihar, Patna. Accordingly, vide Memo No. 753/436896/L-1 dated 16.08.2019 issued under the signature of the A.I.G. (Inspection), Bihar, Patna, the petitioner was directed to submit his show cause explanation that why punishment be not enhanced. The petitioner submitted his show cause reply, but



the Director General of Police, Bihar, Patna by the impugned order contained in पत्र संख्या-पी-3/13-07-64-2021/643 dated 25.10.2022, without considering the reply submitted by the petitioner and without going through the enquiry report, came to the conclusion that no new facts have been submitted by the petitioner and petitioner has consumed liquor, which has been proved during the enquiry, therefore, the Director General of Police, Bihar, Patna proceeded to terminate the services of the petitioner on the ground that the earlier punishment awarded by the Superintendent of Police, Siwan vide Memo No. 4644 dated 03.12.2018 was disproportionate to the gravity of the offence. In compliance thereof, the consequential order was issued by the Superintendent of Police, Siwan vide Memo No. 3810 dated 07.11.2022 and since the petitioner at the relevant time was posted in the district of Gopalganj, further consequential order was issued under the signature of the Superintendent of Police, Gopalganj vide order contained in Memo No. 2546 dated 15.11.2022.

10. A supplementary affidavit has been filed by the learned counsel for the petitioner wherein the judgment passed in Ex. Tr. No. 967/2020 (C.I.S. No. 1327/2018) by the Special Excise Court, 1st, Siwan has been brought on record, whereby



and whereunder the petitioner has been acquitted in relation to Mairwa P.S. Case No. 187 of 2018. At this stage, learned counsel for the State submits that the acquittal is not a clean acquittal, rather the same has been done in absence of the witnesses.

11. In support of his contention, the learned counsel for the petitioner relies on different orders/judgments passed by different Co-ordinate Benches of this Court i.e. ***C.W.J.C. No. 13549 of 2018, Criminal Appeal (SJ) No. 3891 of 2019, C.W.J.C. No. 23862 of 2019 and C.W.J.C. No. 8869 of 1999.*** Learned counsel for the petitioner further submits that the memo of charge served upon the petitioner is in complete violation of the provisions contained in Rule 17(3) and 17(4) of the Bihar Government Servants (CCA) Rules, 2005, since the charge memo is not in the proper format and no opportunity of show-cause was granted to the petitioner.

12. The learned counsel for the petitioner further relies on a judgment of the Hon'ble Supreme Court of India in the case of ***Bachubhai Hassanalli Karyani Versus State of Maharashtra*** reported in **1971 (3) SCC 930**, whereby the Hon'ble Supreme Court of India in paragraph no.4 has held as under:-

“4. The learned counsel contends



that the heavy sentence has been imposed on the appellant because he was found to have been drunk on that night. He says that Dr. Kulkarni, who examined the appellant, based his conclusion merely on the facts that the appellant's breath was smelling of alcohol, that his gait was unsteady, that his speech was incoherent and that his pupils were dilated. The doctor had admitted that a person, placed in the circumstances in which the appellant was put as a result of the accident, would be under a nervous strain and his gait might be unsteady. The doctor had also admitted that a person could smell of alcohol without being under the influence of drinking. No urine test of the appellant was carried out and although the blood of the appellant was sent for chemical analysis, no report of the analysis was produced by the prosecution."

13. A Co-ordinate Bench of this Court vide order dated 19.02.2019 passed in C.W.J.C. No. 13549 of 2018 in paragraph nos. 11 & 12 has held as follows:-

11. Mr. Raju Giri, the learned counsel for the petitioner, apart from other grounds, has seriously canvassed the non-



observance of the principle of proportionality while imposing punishment to an employee. It has been submitted that the award of the punishment in the present case does not take into account the proportionality of the punishment vis-a-vis the offence and for a fleabite, the most serious of the punishments has been imposed.

- 12. The power of punishment is always within the employers' discretion and Courts do not normally interfere with where there is no infirmity with the procedure. However, weighing all the factors, viz., the nature of charges against the petitioner, the manner in which it is sought to be proved, no evidence of any past conduct of similar nature and perhaps lack of sensitivity in dealing with the case of the petitioner, this Court feels that the punishment is rather disproportionate. This Court says so for the reason that nothing but pandemonium is said to have been created and that also not during the period when the petitioner was on duty. This Court is conscious of the fact that the petitioner is an employee of a uniformed service; nonetheless the gravity of the misconduct is not such that he be dismissed from the service. This Court feels that an unduly harsh punishment has been meted out to the*



petitioner and that also when the charges were sought to be proved in a most rudimentary manner by relying upon the Breath Analyzer report, which report could well be wrong as well.

14. Similarly, in the case of ***Dhananjay Jha versus the State of Bihar & ors.*** passed in ***C.W.J.C. No. 23862 of 2019*** dated 29.07.2021, a Co-ordinate Bench of this court after considering the arguments advanced on behalf of the learned counsel for the petitioner to that writ petition, in paragraph no.12 has held as under:-

“12. I have heard the learned counsel for the parties and perused the materials on record. Rule 17 & 18 of the Bihar Government Servant (Classification, Control & Appeal) Rules, 2005, lays down a mandatory procedure to be followed by the disciplinary authority which begins from the stage of service of charge memo by the disciplinary authority, enabling the delinquent to respond thereto, conferring an equal obligation upon the disciplinary authority to satisfy itself, as to whether the allegations are required to be pursued and only after the disciplinary authority is satisfied as also upon completion of such exercise as mandated under Rule 17(3) read with Rule 17(4), the disciplinary authority can either



*interfere in the matter himself or delegate it to an Enquiry Officer under Rule 17(6) to enquire into the same and only then the Enquiry Officer takes over the proceeding. Under Rule 17(6) of the Rules, 2005, the disciplinary authority has another obligation i.e. to appoint a Presenting Officer for leading the case of the Department, which in the present case has been given a go-bye. It is apparent from the records that the proceeding under challenge has been held de horse the procedure inasmuch as neither the petitioner has been heard on the charge by the disciplinary authority, since he was in custody at that time. Moreover, the absence of the Presenting Officer during major part of the departmental enquiry, as mandated under Rule 17(5) and (6) perpetuates the illegality, which is a serious lacuna and has rendered the entire proceeding illegal. The legal position in this regard is no long res integra inasmuch as the same has been settled by this Court in a judgment dated 29.06.2017 passed in **CWJC No. 7207 of 2016 (Shankar Dayal vs. State of Bihar & ors.)**, relevant portion whereof is reproduced herein below:-*

“Rule 17(3) of "the Rules" casts an obligation on the Disciplinary Authority to draw a charge against



a delinquent Government servant or cause it to be drawn up against the officer delinquent. Sub-rule (4) thereof further mandates the delivery of such charge memo so drawn up either through the Disciplinary Authority or through an officer duly authorized. The obligation cast on the Disciplinary Authority does not stop here rather he has yet to satisfy himself whether the explanation so forwarded by a delinquent on the proposed charge, requires an enquiry by the Enquiry Officer or requires a closure. This power exclusively vested in the Disciplinary Authority under rule 17(4) cannot be delegated. In the present case this mandatory obligation cast on Disciplinary Authority has been flouted as confirmed from the letter dated 1.2.2008 (Annexure 2) issued by the Enquiry Officer directing the petitioner to file his reply on the charges before him. This is a gross statutory violation and has been commented upon by a Division Bench of this Court in a judgment reported in 1996(2) PLJR 95 (Ravindra Nath Singh vs. Bihar State Road Transport



Corporation) when the Division Bench has expressed the following opinion at paragraph 6 of the judgment:

“6. ... The Enquiry Officer is not the competent authority to consider the reply to the charges. It is for the disciplinary authority to consider the reply to charges and on consideration of the causes shown in the reply to decide as to whether to close or to continue with the proceedings by holding domestic enquiry into the charges.”

15. Per contra, learned counsel for the State submits that the petitioner was found to be intoxicated and two bottles of liquor was recovered from the vehicle in which he was travelling. Further he created ruckus at the Mairwa Police Station and also misbehaved with the Officer In-Charge of the concerned police station. He further submits that the departmental proceeding was conducted after giving due opportunity to the petitioner, but for the reasons best known to him he did not participate in the same and did not choose to cross-examine any of the witnesses and did not produce any document in support of his innocence.

16. Learned counsel for the State relies on the judgment in the case of the *State of Bihar & Ors. Vs. Manju*



Devi passed in *L.P.A. No. 960 of 2024*, wherein the order passed by the Co-ordinate Bench of this Court in similar nature of the case has been stayed.

17. After having gone through the materials available on record and the arguments advanced on behalf of the parties, it appears that while issuing memo of charge, the disciplinary authority did not adhere to the provisions contained in Rule 17(3) and 17(4) of the Bihar Government Servants (CCA) Rules, 2005, inasmuch as, no opportunity of show cause was given to the petitioner. Further, the Enquiry Officer while submitting the enquiry report came to the conclusion that the only charge which was proved against the petitioner was consuming liquor, but from perusal of the enquiry report, it would transpire that the doctor who had examined during course of the enquiry and who has given his report had not conducted any test on the petitioner and only on the basis of smell coming out of his mouth/breath, came to the conclusion that the petitioner had consumed liquor. The disciplinary authority on the basis of the enquiry report issued the impugned order contained in memo No. 4644 dated 03.12.2018, whereby the petitioner was awarded punishment mentioned therein. However, the D.I.G., Saran Range, Chapra during review



recommended for enhancement of punishment and upon the said recommendation, the Director General of Police, Bihar, Patna vide order contained in Memo No. पत्र संख्या-पी-3/13-07-64-2021/643 dated 25.10.2022, proceeded to dismiss the petitioner from service. Further the petitioner has also been acquitted in the criminal cases.

18. In my considered opinion, the order contained in Memo No. 4644 dated 03.12.2018 issued under the signature of the Superintendent of Police, Siwan, order contained in Memo No. पत्र संख्या-पी-3/13-07-64-2021/643 dated 25.10.2022, issued under the signature of the Director General of Police, Bihar, Patna and the subsequent order contained in Memo No. 2511/RG Ka dated 28.06.2024 issued under the signature of the Dy.S.P. (Reserve), Police Line, Siwan deserves to be set aside and are accordingly set aside. The consequential order contained in Memo No. 3810 dated 07.11.2022 issued under the signature of the Superintendent of Police, Siwan and Memo No. 2546 dated 15.11.2022 issued under the signature of the Superintendent of Police, Gopalganj are also set aside.

19. The petitioner is directed to be reinstated in services forthwith. However, he will not be entitled for any salary since undisputedly he has not worked for the said period



but services will be counted notionally for all the benefits.

20. The writ petition is allowed in the aforementioned terms.

(Ritesh Kumar, J)

AjayMishra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.02.2026
Transmission Date	NA

