

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5460 of 2025

Abhay Kumar Singh Son of Late Upendra Prasad Singh, resident of Village-
Fatehpur, P.S.-Raghopur, District-Vaishali.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Home Department, Government of Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Deputy Inspector General of Police (Rail), Bihar, Patna.
4. The Superintendent of Police (Rail), Patna.
5. The In-charge Parichari Pravar, Rail Patna, District-Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Akshansh Ankit, Advocate
		Mr. Manoranjan Kumar, Advocate
For the State	:	Mr. Piyush Kumar Pandey (AC to SC-11)

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 02-04-2026

Heard learned counsel for the petitioner and learned
counsel for the State.

2. The present writ petition has been filed for
issuance of an appropriate writ(s)/order(s)/direction(s) for grant
of the following relief/s:-

“I. To quash the order as contained in



Memo No. 689 dated 23.11.2022 (Annexure P/11) issued by the Respondent No. 2 whereby and whereunder the memorial preferred by the Petitioner against the appellate order has been dismissed.

II. To quash the Appellate order as contained in Memo No. 529 dated 19.07.2022 (Annexure P/9) issued by the Respondent No. 3 whereby and whereunder the appeal preferred by the Petitioner against the order of punishment has been rejected, in a most mechanical and arbitrary manner without following the procedure prescribed under the relevant Rules or complying with the principles of natural justice.

III. To quash the order of punishment as contained in Memo No. 1101 dated 06.05.2022 (Annexure P/8) issued by the Respondent No. 4 whereby and whereunder the petitioner has been dismissed from service in a most mechanical and arbitrary manner without following the procedure prescribed under the relevant Rules or complying with the principles of natural justice.

IV. To direct the Respondents concerned to give a posting commensurate to the status of the Petitioner with all consequential benefits including continuity in service, arrears of



salary etc.

V. To pass any other order/orders in shape of a consequential relief to which the Petitioner may be found to be legally entitled to in the facts and circumstances of the instant case at hand.”

3. Learned counsel for the petitioner submits that the petitioner was initially appointed on the post of Constable on 28.11.1994, against a sanctioned vacant post following the due recruitment process. Counsel submits that while the petitioner was posted as Constable at Rail Police Kendra, Patna, he was falsely implicated in a criminal case at the behest of higher officials. Counsel submits that the petitioner was arrested on 08.01.2022 near Patna Junction and accordingly, FIR has been lodged against him bearing Kotwali P.S. Case No. 10 of 2022 dated 08.01.2022 under section 37(b)(c) of the Bihar Prohibition and Excise Act, 2016. Counsel submits that though, the petitioner was arrested on the allegation that he was in the state of intoxication consuming liquor, but this fact was not correct and on the basis of breath analyzer report without collecting blood sample and urine sample, the petitioner was arrested and subsequently, suspended *vide* Rail District Order no. 43 of 2022 dated 15.01.2022. Counsel submits that thereafter, his



suspension was revoked *vide* Memo No. 659 dated 09.03.2022. He further submits that no preliminary enquiry was undertaken and direction for initiation of the departmental proceeding has been made. In the departmental proceeding bearing Disciplinary Proceeding No. 02 of 2022, charge memo was issued to the petitioner on 31.01.2022, alleging that he was found in the state of intoxication. Thereafter, the Enquiry Officer was appointed and the petitioner was directed to file his reply, which he has submitted on 11.02.2022. The petitioner participated in the enquiry proceeding and oral evidence of the witness taken place, but petitioner was not granted any opportunity to cross examine the three witnesses. Counsel submits that the petitioner was found guilty by the Enquiry Officer, which is in gross violation of principles of natural justice. The Enquiry Officer submitted his enquiry report and the matter was referred to the Disciplinary Authority who issued a second show cause to the petitioner *vide* Memo No. 650 dated 08.03.2022. The petitioner submitted his reply to the second show cause, but the Disciplinary Authority has imposed punishment upon the petitioner contained in Memo No. 1101 dated 06.05.2022 (Annexure P/8), by which, the petitioner was dismissed from the service, which is in complete violation of principles of natural



justice. It was also directed that no payment be made to the petitioner apart from the payment already made during the service period.

4. Learned counsel for the petitioner further submits that at the time of passing of the order, the Disciplinary Authority has not recorded his reasonings and only on the basis of suspicion and report of the breath analyzer machine, the petitioner has been punished. He submits that the order passed by the Disciplinary Authority has been further challenged by the petitioner before the Appellate Authority, but the Appellate Authority has rejected the petitioner's appeal in a cryptic manner, contained in Memo No. 529 dated 19.07.2022 (Annexure P/9). The petitioner being aggrieved has preferred memorial, but his memorial was also rejected contained in Memo No. 689 dated 23.11.2022 (Annexure P/11), on the ground that the memorial is not maintainable. Counsel submits that thereafter, the petitioner moved before this Hon'ble Court in C.W.J.C. No. 568 of 2023, which was dismissed as withdrawn *vide* order dated 25.11.2024 with liberty to the petitioner to avail the appropriate remedy. Counsel submits that thereafter, the petitioner filed the present writ petition i.e. C.W.J.C. No. 5460 of 2025 annexing all the materials. Counsel submits that order



of removal is a major punishment. He submits that in series of decisions, this Hon'ble Court has pleased to hold that the breath analyzer report is not a conclusive proof of consuming the liquor by a person and consumption of alcohol can only be ascertained by way of blood and urine test of a person, suspected to have consumed alcohol. He submits that in ***C.W.J.C. No. 14846 of 2021 (Dharmraj Singh @ Dhamraj Singh Vs. The State of Bihar & Ors.) decided on 09.05.2024***, this Hon'ble Court has granted relief to the petitioner of the said writ petition and the writ petition was allowed. Counsel further submits that in ***L.P.A. No. 1095 of 2024 (The State of Bihar & Ors. Vs. Aswasthama Mahto @ Ashwathama Mahto), decided on 26.02.2026***, the Hon'ble Division Bench of this Court has also pleased to hold that consumption of alcohol cannot be tested in breath analyzer test, particularly when, samples of urine test or blood test have not been collected, and in this way, the findings of the ***Bachubhai Hassanalli Karyani Vs. State of Maharashtra***, reported in ***(1971) 3 SCC 930*** has been relied upon.

5. Learned counsel for the State, on the other hand, submits that there is no illegality made in the departmental proceeding as the petitioner was found in the state of



intoxication and he was arrested in the state of intoxication by the police and accordingly, FIR has been lodged. Counsel submits that there is neither any procedural lapse nor any rule has been violated, rather, full opportunity of hearing has been provided to the petitioner. He submits that in ***L.P.A. No. 1199 of 2024 (The State of Bihar & Ors. Vs. Rakesh Kumar)*** in which question of breath analyzer is a conclusive test for ascertaining that a person is in the state of consumption or not has been admitted before this Hon'ble Court in the above mentioned case. Therefore, he submits that till decision of the said L.P.A. No. 1199 of 2024, the present writ petition may not be decided. Counsel further submits that each and every point has been well discussed and accordingly, the punishment of dismissal from service has been imposed upon the petitioner, which has been affirmed in the appellate order and there is no need of any interference in this matter.

6. After hearing the parties and upon perusal of the record, it transpires to this Court that the charge memo has been served upon the petitioner *vide* Annexure-P/3 in the light of regulation of 2017, prepared on the basis of Rule 17(3) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as 'Bihar CCA Rules,



2005'). The allegation is there in the charge memo that the petitioner was found present near Patna junction in the state of intoxication. In the show cause, the defence has been taken by the petitioner that he has taken homeopathic medicine and in support of his claim, he has attached photocopy of prescription *vide* Annexure-P/2, by which, the petitioner has shown that he is in continuous treatment of taking homeopathic medicine. The Enquiry Officer in the enquiry found the charges proved against the petitioner. It has been alleged that the petitioner has not cross examined the persons who have adduced evidence against him. The Disciplinary Authority upon going through the enquiry report, has issued a second show cause. In accordance with second show cause, the petitioner has filed his detailed reply. The detailed reply has not been considered in the final order and he has been punished. This point has been raised by the petitioner in the second show cause as well as in the appeal before the authorities concerned that he is under treatment of Homeopathy Doctor and continuously used to take homeopathic medicine and on that very date also, he has submitted that he has taken the homeopathic medicine. But, the Kotwali police forcefully asked him to sit in the car and he was subsequently arrested.



7. Upon perusal of the documents on record and the judgment passed by this Hon'ble Court in case of **Dharmraj Singh @ Dhamraj Singh (supra)**, the relevant conclusive para 12 to 17 reads as under:-

“12. Having heard the learned counsels for the parties and on careful perusal of the materials on record, I am surprised to note that the petitioner was arrested on the allegation that he consumed alcohol on 16th of January, 2020 from Barrack No. 3 of Reserve Police Line, Motihari. It is presumed that in Barrack No. 3, there were other personnel sleeping at that point of time. The arresting officer did not get the petitioner superficially examined by other inmates of Barrack No. 3 to ascertain as to whether smell of alcohol was coming from the mouth or not.

*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.

16. The disciplinary authority as well as the appellate authority failed to consider such aspect of the matter and the impugned order of dismissal of the petitioner suffers from manifest arbitrariness. The order of dismissal is an instance of violation of natural justice because of non-consideration of medical documents filed by the petitioner at the time of departmental inquiry.

17. For the reasons stated above, this Court is of the view that the order of dismissal, passed by the Deputy Inspector of Police, Champaran Range, Bettiah, dated 2nd of July, 2020; the order of the Additional Director General of Police, Bihar, Patna,



dated 30th of September, 2020, affirming the order of dismissal; and order, dated 29th of June, 2021 passed by the Director General, Bihar, Patna, dismissing the memorial appeal of the petitioner, are quashed and set aside.”

7.1. Subsequently, the order passed by the Hon’ble Division Bench of this Court in L.P.A. No. 1095 of 2024 decided on 26.02.2026, the relevant para 4 to 8 reads as under:-

“4. The learned Single Judge while allowing the writ petition held that proper procedure was not followed by the appellant-authorities, and only on basis of the fact that the petitioner’s breath smelled like alcohol, action was taken against the petitioner. The relevant paragraphs of the impugned judgment are reproduced as under:

“8. Having heard the learned counsels for the parties and on careful perusal of the materials on record, I am surprised to note that the petitioner was arrested on the allegation that he consumed alcohol in the night of 31.12.2019 and thereafter only on the basis of the report of doctor, and that too by Breath Analyzer, a case was registered against the petitioner,



without examining his blood and urine.

*9. 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 appellant's 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.*

10. 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.

11. Thus, this Court holds that Breath Analyzer report is not a conclusive proof of consumption of alcohol by the



petitioner.

12. The disciplinary authority as well as the appellate authority failed to consider such aspect of the matter and the impugned order of dismissal of the petitioner suffers from manifest arbitrariness. The order of dismissal is an instance of violation of natural justice because of non-consideration of medical documents filed by the petitioner at the time of departmental inquiry.”

*5. Learned counsel for the appellants submits that the learned Single Judge did not consider the fact that due procedure had been followed in the present matter, and the order of dismissal was passed in accordance with law. The respondent having been found in violation of departmental rules and regulations was dismissed from the service. Learned counsel further submits that the application of **Bachubhai Hassanalli Karyani v. State of Maharashtra** reported in (1971) 3 SCC 930 is unwarranted in the present case. **Bachubhai Hassanalli Karyani** (supra) is related to proving the guilt of an accused in a criminal trial, and the facts therein can be distinguished from the present case. In a criminal trial the guilt of the accused has to be proved beyond*



reasonable doubts, whereas, disciplinary proceedings are conducted on the basis of preponderance of probabilities.

6. Learned counsel for the respondent submits that the learned Single Judge passed the impugned order after careful consideration of materials available on record, and is well founded and supported by reason. Therefore, the order of the learned Single Judge requires no interference by this court.

7. On perusal of materials on record, and the submissions advanced by the parties, it is evident that a major punishment was imposed on the respondent based on the allegation that he had consumed alcohol, and was found in an intoxicated state. The allegation was supported only by report of a doctor on the basis of breathalyzer test. It is also not disputed that no blood or urine test of the petitioner was conducted, which could conclusively show the consumption of alcohol, if any.

*8. Further, appellants have been unable to show that how **Bachubhai Hassanalli Karyani** (supra) does not find any application in the present case. The Hon'ble Supreme Court, has clearly laid down in **Bachubhai Hassanalli Karyani** (supra) that drunkenness cannot be said to be*



conclusively proved unless urine or blood test is carried out. The relevant paragraphs of the said judgment are reproduced as under:

“4.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.

5. It seems to us that on this evidence it cannot be definitely held that the appellant was drunk at the time the accident occurred.”

7.2. Another judgment passed by this Hon’ble Court in case of ***Manoj Kumar Thakur Vs. The State of Bihar & Ors*** passed in ***C.W.J.C. No. 4181 of 2021***, decided on ***25.06.2025***, its relevant para 4 & 5 reads as under:-

“4. While assailing the orders impugned,



*learned Advocate for the petitioner contended that the entire allegation against the petitioner rest upon a Breath Analyser Test, based upon which it is alleged that the petitioner was found under influence of liquor while creating ruckus at Gate No. 2. However, the Breath Analyser Test cannot be said to be a conclusive proof of consumption of alcohol in absence of any urine and blood test. The above mentioned issue was the subject for consideration in the case of **Manju Devi vs. The State of Bihar & Ors. [CWJC No. 2590 of 2022]**, wherein a Bench of this Court placing reliance upon the decision in **Bachubhai Hassanalli Karyani vs. State of Maharashtra [(1971) 3 SCC 930]** recorded the observation of the Apex Court that no conclusion with regard to consumption of alcohol by a person can be made on the facts that the appellant's breathe was smelling of alcohol, that his gait was unsteady and speech was incoherent and that his pupils were dilated. The consumption of alcohol can only be ascertained by way of blood and urine test by a person suspected to have consumed alcohol.*

5. It is the specific contention of the petitioner that the petitioner had never been



*subjected to any blood and urine test, hence Breath Analyser report alone could not be an admissible evidence to return the finding that the petitioner was found in an inebriated condition or in the influence of liquor. It is further contended that in identical facts the coordinate Bench of this Court in the case of **Manju Devi** (supra) has set aside the order of dismissal which was passed only upon the finding of the Enquiry Officer that the delinquent was found under the influence of alcohol on the basis of the Breath Analyser Test. Reliance has also been placed on a judgment rendered by the Apex Court in the case of **Munna Lal vs. Union of India & Ors. [(2010) 15 SCC 399]** as also the decision rendered by this Court in the case of **Jawahar Kumar Singh vs. The State of Bihar & Ors. [2019(2) PLJR 156].**”*

8. It transpires to this Court that the finding of consumption of alcohol as consistently decided by this Court as well as approved by the Hon’ble Division Bench and on the basis of judgment of Hon’ble Supreme Court, it has been held that the breath analyzer report is not a conclusive proof of consuming the liquor by a person and consumption of alcohol can only be ascertained by way of blood and urine test of a



person, suspected to have consumed alcohol.

9. This Court reached on the conclusion that the enquiry report furnished by the Enquiry Officer, the decisions of the Disciplinary Authority as well as the Appellate Authority, have been passed without application of mind to the defence taken by the petitioner as required under Rule 17(14) of the Bihar CCA Rules, 2005 and there is non-consideration of ratio laid down in the judgments discussed above and subsequently, the Appellate Authority has also failed to discharge his obligation at the time of passing the order in appeal.

10. Hence, in view of the discussions made above, this Court finds that the impugned orders have been passed without appreciation of rules laid down and consideration of law and they are fit to be set aside. Hence, the order passed by the Disciplinary Authority contained in Memo No. 1101 dated 06.05.2022 (Annexure P/8), order passed by the Appellate Authority contained in Memo No. 529 dated 19.07.2022 (Annexure P/9) and the order passed in the memorial contained in Memo No. 689 dated 23.11.2022 (Annexure P/11), all are hereby set aside. The petitioner is hereby directed to be reinstated in the service.

11. So far as the consequential benefits are



concerned, the same shall be examined by the respondents in view of the mandate of the Hon’ble Supreme Court of India in the case of *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya*, reported in *(2013) 10 SCC 324*.

12. Accordingly, with the aforesaid observation and direction, this writ petition stands allowed.

(Dr. Anshuman, J)

Divyansh/-

AFR/NAFR	
CAV DATE	NA
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