

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 9802 of 2022

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Kundan Gauraw S/o Ravindra Kumar Singh Resident of Village-Samhota,
P.O.-Kopa Samhota, P.S.-Kopa, District-Saran (Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Home Department, Govt. of Bihar, Patna.
2. Director General of Police, Bihar, Patna.
3. Deputy Inspector General of Police, STF, Bihar, Patna.
4. Superintendent of Police (Training), STF, Bihar, Patna.
5. Police Inspector-Cum-Enquiry Officer, STF, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr Raju Giri, Sr Advocate with M/s Harsh Vardhan, Harsh Raj, Chetan Anand, Kr Shantanu, Advocates
For the Respondent/s	:	Mr Dhurendra Kr, AC to GP V

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CORAM: HONOURABLE MR JUSTICE RITESH KUMAR

ORAL JUDGMENT

Date : 10-02-2026

Heard the parties.

2 The present writ petition has been filed for the following reliefs:

“I To issue an appropriate writ/order/direction, in the nature of certiorari for quashing the order dated 21.12.2021 passed by the Superintendent of Police (Training), STF, Bihar, Patna by which the petitioner has been dismissed from service.

II To issue an appropriate writ/order/direction, in the nature of certiorari for quashing the order dated 04.04.2022 passed by the Deputy Inspector General of Police, STF,



Bihar, Patna by which the appeal of the petitioner has been rejected.

III To issue an appropriate writ/order/direction, in the nature of certiorari for quashing the enquiry report dated 22.10.2021 submitted against the petitioner in STF Departmental Enquiry No 10/21 by the Inspector -cum- Enquiry Officer, STF, Bihar, Patna.

IV To issue an appropriate writ/order/direction, in the nature of mandamus commanding the respondents to reinstate the petitioner in service as Police Constable in Bihar Police with all consequential benefits.

V To any other relief or reliefs for which the petitioner is found to be entitled in the facts and circumstances of the case.

VA To issue an appropriate writ/order/direction in the nature of certiorari for quashing the order dated 03.04.2023 passed by the DGP, Bihar, Patna as contained in Memo No 218 dated 05.04.2023 by which the Memorial filed by the petitioner has been rejected.”

3 Vide order dated 31.01.2016 passed in the present case, IA No 1 of 2023 filed by the petitioner for addition of additional prayer was allowed and the learned counsel for the petitioner was permitted to add the same in relief portion of the writ petition as Para No 1 (VA) during course of the day and, accordingly Para No 1 (VA) was added.

4 The learned Senior Counsel for the petitioner submits that the petitioner, after being appointed, gave his joining in Bihar



Police as a constable on 01.07.2008. A First Information Report (for brevity, **FIR**) bearing Revelganj PS Case No 245 of 2021 under Sections 30 (a) and 37 (b) (c) of the Bihar Prohibition and Excise Act, 2016 was lodged against the petitioner and some other persons for consumption of liquor and it was further alleged in the FIR that some bottles of beer was recovered from a vehicle. The petitioner was put behind bar and departmental proceeding was initiated against him. The petitioner was enlarged on bail vide order dated 09.07.2021 passed by the Additional Sessions Judge II -cum- Special Judge, Excise, Saran and after his release from jail, vide letter dated 15.07.2021, a request was made by the petitioner to the Superintendent of Police (for brevity, **SP**), Special Task Force (for brevity, **STF**), Bihar, Patna for granting him sometime for filing his reply to the memo of charges. The SP, STF, Bihar, Patna went ahead and appointed the Enquiry Officer as well as the Presenting Officer by his letter dated 19.07.2021 and the Memo of Charge dated 19.07.2021 was issued wherein it has been mentioned that the action of the petitioner amounts to indiscipline, casualness and dereliction of duty. Subsequently, the suspension of the petitioner was revoked vide order dated 30.07.2021.

5 The learned Senior Counsel for the petitioner further submits that the petitioner submitted his application before the



Enquiry Officer on 09.08.2021 for exonerating him from the charges levelled against him but he went ahead with the enquiry and finally submitted his enquiry report on 22.10.2021, wherein the Enquiry Officer found the charges to be proved against the petitioner, only on the basis of the lodging of the FIR. A second show cause notice was issued to the petitioner vide letters dated 27.10.2021 and 07.12.2021 but since the petitioner was busy in Panchayat elections, therefore, he requested for grant of some more time to file his reply, but instead of giving further time, the SP (Training), STF, Bihar, Patna, by the impugned order contained in Memo No 2525 dated 21.12.2021, without considering the materials and the fact that the petitioner could not submit the second show cause reply since he was engaged in Panchayat election duties, went ahead and awarded the punishment of dismissal from service upon the petitioner. The Disciplinary Authority, only on the basis of the lodging of the FIR and the fact that in breath analyzer machine, the petitioner was found to have consumed liquor, passed the impugned order.

6 Being aggrieved with the order of dismissal, the petitioner preferred statutory appeal before the appellate authority wherein he gave a detailed description of the situation wherein he was forced not to file his show cause reply and in the Memo of



Appeal, he also took a plea that although the machine, i e, breath analyzer machine, is required to be verified/tested within 12 months but in the calibration report, the date is mentioned as 13.03.2019 and the report has been generated in case of the petitioner on 06.07.2021, i e, after almost 28 months, therefore the same cannot be said to be valid. Apart from the above referred defence, the petitioner has raised other illegalities in the departmental proceeding during course of enquiry but the appellate authority, in a mechanical manner relying upon the dismissal order, went ahead to reject the appeal of the petitioner by the impugned order contained in Memo No 93 dated 04.04.2022 issued under the signature of the DIG, STF, Bihar, Patna. The petitioner filed Memorial before the Director General of Police (for brevity, **DGP**), Bihar, Patna but the same was also dismissed without considering any of the defence raised by the petitioner in his Memorial application, vide Letter No P-3/13-07-27-2022/218 dated 05.04.2023 issued under the signature of the DGP, Bihar, Patna.

7 It has been submitted by the learned Senior Counsel for the petitioner that the orders impugned have been passed only on the basis of the fact that in breath analyzer test, the petitioner was found to have consumed liquor and FIR was lodged against



him. Neither the Disciplinary Authority nor the Appellate Authority or the Authority who considered the Memorial preferred by the petitioner considered the defence taken by the petitioner and went ahead in passing the impugned orders, whereby the petitioner has been dismissed from service and the same has been confirmed by the Appellate Authority and the Authority who has passed the order upon Memorial filed by the petitioner. The Authorities did not consider that the vehicle in question from where bottles of liquor were said to have been seized, did not belong to the petitioner and the report submitted by the Forensic Science Laboratory (for brevity, **FSL**), it has come that no ethyle alcohol was detected in the urine sample of the petitioner. The learned Senior Counsel for the petitioner relies upon a judgment dated 28.09.2022 passed in **CWJC No 1076 of 2021** by a coordinate Bench of this Court wherein in paragraph No 8, it has been held as follows:

“8 Lodging of FIR per se cannot be made the basis of holding the charges proved. The Apex Court in the case of Roop Singh Negi v Punjab National Bank, reported in (2009) 2 SCC 570, in paragraph 14 has held as follows:

“14 Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive



at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.”

8 The learned Senior Counsel for the petitioner further relies on a judgment passed by a coordinate Bench of this Court in *CWJC No 14846 of 2021 (Dharmraj Singh @ Dhamraj Singh -Versus- The State of Bihar & Others)* wherein by the order dated 09.05.2024, the coordinate Bench set aside the order of dismissal and the consequential orders passed on almost identical charges. The learned Senior Counsel for the petitioner relies on Paragraphs No 13 to 16 of the above mentioned judgment which reads 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.

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."

9 The learned Senior Counsel for the petitioner further relies on a judgment dated 05.02.2026 passed by this Court in ***CWJC No 4818 of 2023*** in the case of ***Rakesh Kumar -Versus- The State of Bihar & Others*** wherein this Court, while relying on different judgments of coordinate Benches and the Hon'ble Supreme Court of India, has set aside the order passed by the Disciplinary Authority, the Appellate Authority and the Authority who had passed the order in Memorial and directed the petitioner to be reinstated in service forthwith.



10 The learned counsel for the State submits that the petitioner is a named accused in Revelganj PS Case No 245 of 2021 instituted under different sections of the Bihar Prohibition and Excise Act, 2016 and was arrested along with other accused in this case and further the vehicle of the petitioner was searched and 12 bottles of liquor was found from the vehicle in question. The learned counsel for the State further submits that the petitioner and others were put to Ethyle alcohol test and their test result were positive and accordingly, they were arrested and remanded to judicial custody. The enquiry report was submitted by the Enquiry Officer, wherein after considering the material, including the deposition of witnesses, the Enquiry Officer found the charges to be proved against the petitioner and due opportunity was given to the petitioner by the Disciplinary Authority, but he did not choose to file his second show cause reply, therefore left with no alternative, the Disciplinary Authority passed the impugned order whereby the services of the petitioner were dismissed.

11 A reply has been filed on behalf of the petitioner wherein it has been stated that the breath analyzer machine was faulty and it was not calibrated within the stipulated time in terms of the Bihar Legal Meteorology (Enforcement) Rules, 2014 (for brevity, *the Rules*) since as per the breath analyzer report of the



petitioner, the calibration date of the machine was 13.03.2019 and the test was conducted on 06.07.2021, i.e. beyond one year and as per the Rules, the calibration of the breath analyzer machine should be done on completion of 12 months which has not been done in the present case.

12 The learned Senior Counsel for the petitioner further refers to Section 2 (w) of the Legal Meteorology Act, 2009 (for brevity, *the Act*) and Rule 14 of the Rules and submits that the breath analyzer machine falls within the definition of weight and measure as it is used to measure blood alcohol contained and therefore, specification and calibration are required to be done as per the provisions of the Act and the Rules. He further submits that the urine of the petitioner was also sent to the Regional FSL, Muzaffarpur, Bihar and on perusal of the report dated 30.10.2021, it will transpire that Ethyle alcohol was not detected in the urine of the petitioner. Even in the light of Letter No 294 dated 20.05.2022 issued by the Police Headquarter, Bihar, Patna, it has been specifically mentioned that charges are being proved only on the basis of the breath analyzer test not in the departmental proceeding and the parties concerned should not be awarded the punishment of dismissal from service only on the basis of the breath analyzer test. It has further been submitted in the reply affidavit that the



vehicle from where liquor was said to have been seized does not belong to the petitioner and the said vehicle belongs to one Saurav Satish and in respect thereof, the registration document of the vehicle has also been brought on record.

13 From the arguments advanced on behalf of the parties and after going through the records, I find that the Enquiry Officer found the charges to be proved against the petitioner only on the basis of lodging the FIR and the Disciplinary Authority passed the order of dismissal on the basis of the said enquiry report. Neither the Enquiry Officer nor the Disciplinary Authority took pain to obtain the urine report which was sent to the FSL to ascertain that whether liquor was found in the petitioner's report or not. Further, neither the appellate Authority nor the concerned Authority, i.e. the DGP who had passed the order on the Memorial preferred by the petitioner took into consideration any of the defence taken by the petitioner by way of his Memorial. Different Benches of this Court have held that punishment based on breath analyzer test cannot sustain and that even the State Government, in view of different judgments passed by this Court, came out with a notification contained in Memo No 294 dated 20.05.2022 issued under the signature of DIG (Personnel), Bihar, Patna wherein in



paragraph No 20, specially it has been mentioned with regard to breath analyzer report.

14 In my considered opinion, the order contained in Memo No 2525 dated 21.12.2021, Memo No 93 dated 04.04.2022 and Letter No P-3/13-07-27-2022/218 dated 05.04.2023 deserve to be set aside and are accordingly, set aside. The petitioner is directed to be reinstated in service forthwith. However, he will not be entitled to any salary for the period when he was not in service since undisputedly, he has not worked. However, the said period will be counted notionally for giving all the benefits to the petitioner.

15 In the aforementioned terms, this writ application is allowed.

(Ritesh Kumar, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.02.2026
Transmission Date	NA

