

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1095 of 2024

In

Civil Writ Jurisdiction Case No.15963 of 2021

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1. The State of Bihar through the Home Secretary, Bihar, Patna.
 2. The Director General-cum-Inspector General of Police, Bihar, Patna.
 3. The Deputy Inspector General of Police, Bihar Military Police, North Mandal, Muzaffarpur.
 4. The Commandant of Bihar Military, Police- 7, Katihar.
 5. The Investigation/Enquiry Officer-cum-Chief Inspector (C), Bihar Military Police-7, Katihar.

... .. Appellant/s

Versus

Aswasthama Mahto @ Ashwathama Mahto Son of Late Dallu Mahto
Resident of Village- Kocho (Koncho), P.O.- Tutki Nawadih, Police Station-
Silli, District- Ranchi (Jharkhand).

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Manoj Kumar, AC To GP-4

For the Respondent/s : Mr. Upendra Mishra, Advocate

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

and

HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

4 26-02-2026 The present *intra* court appeal is preferred against the

order dated 09.05.2024 passed in CWJC No. 15963 of 2021,

whereby the learned Single Judge allowed the writ petition, and

has set aside the order of punishment of dismissal from service

imposed upon the respondent. Further, the appellants have been

directed to give all financial benefits to the respondent.



2. The brief facts giving rise to the present appeal are that the respondent was initially appointed as a Constable in the Bihar Military Police (BMP) and had rendered about 33 years of service. Later, he was promoted to the post of Havaldar, and was serving in E-Company, BMP-7, Katihar, on deputation at Supaul Stadium, Supaul. On 31.12.2019, he was alleged to have been found in an intoxicated state, and a breathalyzer test was conducted on him. Subsequently, a case (Supaul P.S. Case No. 828/2019) was registered against him under Sections 37(a) and 37(b) of the Bihar Prohibition and Excise Act, 2018, alleging that he had consumed alcohol. Consequently, he was suspended and served a show-cause notice (Memo No. 356 dated 14.02.2020) asking him to explain why disciplinary action should not be taken against him.

3. The respondent in his reply to show cause stated that he had only consumed certain medicines, which caused alcohol smell in his breath. The appellant-authorities did not consider this to be a reasonable explanation and found the respondent guilty, and passed the order of dismissal. Dissatisfied with the dismissal order, the respondent preferred an appeal before the Deputy Inspector General of Police, BMP, Muzaffarpur, which was dismissed. Thereafter, the respondent



filed the impugned writ application, which came to be allowed.

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.”

9. The delinquent during departmental inquiry has specifically made his defence supported with the documentary evidence that at the relevant time he had taken homeopathic medicine as prescribed by the doctor, thus, such consumption of homeopathic medicine could have caused/indicated alcohol in breathalyzer test. Whereas, the findings of the inquiry report, nowhere discuss about the defence taken by the delinquent (respondent), as indicated above. Therefore, on this count also the finding of the said inquiry report suffers from the vice of arbitrariness and impropriety.

10. As such, it is evident that the appellant-authorities failed to adhere to mandatory procedural requirements; specifically, no blood or urine analysis was conducted to



substantiate the finding that the respondent was under the influence of alcohol. Therefore, the disciplinary action initiated against the respondent, resting solely on a finding devoid of the requisite medical corroboration is legally unsustainable and cannot be upheld.

11. Considering the discussions made above, we find no illegality or perversity in the order of the learned Single Judge, and the order is hereby affirmed.

12. Accordingly, the present *intra* court appeal stands dismissed.

13. Pending application(s), if any, shall stand disposed of.

(Sudhir Singh, J)

(Rajesh Kumar Verma, J)

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