

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.737 of 2023**

=====

Ajay Kumar Son of Nageshwar Paswan resident of Village- Sakra- Faridpur,  
Police Station- Sakra, District- Muzaffarpur.

... ... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Patna, Bihar.
2. The Addl. Chief Secretary, Department of Home, Government of Bihar, Patna.
3. The Under Secretary to the Government, Department of Home (Police Branch),  
Government of Bihar, Patna.
4. The Director General of Police, Bihar, Patna.
5. The Addl. Director General of Police, (Budget/Appeal/Welfare), Bihar, Patna.
6. The Inspector General of Police (Central Range), Bihar Patna.
7. The Senior Superintendent of Police, Patna.
8. The Superintendent of Police, Town (West) -cum- Inquiry Officer.

... ... Respondents

=====

**Bihar Police Manual, 1978**-Rule 853A-Punishment-increase-in the framing of charge itself there was an inherent defect, as it was framed on the direction of Director General of Police-even before giving an opportunity of hearing to an employee, his guilt has been assumed and presumed-there is no sanction of law in such presumption of guilt and the same infringes Article 21 of the Constitution-in petitioner's presence departmental witnesses were not examined and he was not given any opportunity to cross-examine them-without giving any opportunity to show cause, disciplinary authority has passed the impugned order-during pendency of the appeal, Director General of Police passed an order of increase in punishment ignoring the explanation of petitioner Director General of police assumed upon himself the power of Inspector General and he took further steps to pass the order which cannot be said to have been passed by an authority determined under Police Manual-It is the Inspector General who has been authorized under rule 853A to review punishment and take action for obtaining a show cause-when a law prescribes something to be done in a particular way, it must be done in that way or not at all-impugned orders dismissed-petitioner shall be entitled for all the resultant reliefs-direction issued to the Director General of Police, Bihar, to again look into paragraph 3 of the letter no. 63 which assumes and pre-judges the guilt against Station House Officer and Chowkidar even before framing of charge and conduct of an independent enquiry. (Paragraph nos. 21 to 25, 27 to 30 and 34 to 41).

AIR 1975 SC 915; 2019(2) PLJR 293 (FB)- Relied upon.

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.737 of 2023**

=====

Ajay Kumar Son of Nageshwar Paswan resident of Village- Sakra- Faridpur,  
Police Station- Sakra, District- Muzaffarpur.

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Patna, Bihar.
2. The Addl. Chief Secretary, Department of Home, Government of Bihar, Patna.
3. The Under Secretary to the Government, Department of Home (Police Branch), Government of Bihar, Patna.
4. The Director General of Police, Bihar, Patna.
5. The Addl. Director General of Police, (Budget/Appeal/Welfare), Bihar, Patna.
6. The Inspector General of Police (Central Range), Bihar Patna.
7. The Senior Superintendent of Police, Patna.
8. The Superintendent of Police, Town (West) -cum- Inquiry Officer.

... .. Respondents

=====

**Appearance :**

For the Petitioner/s	:	Ms. Nivedita Nirvikar, Sr. Advocate Mr.Ranjit Kumar Yadav, Advocate
For the Respondent/s	:	Mr.Ajay Kumar, AC to GP-4

=====

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**  
**ORAL JUDGMENT**

**Date : 05-05-2023**

Heard Ms. Nivedita Nirvikar, learned senior counsel assisted by Mr. Ranjit Kumar Yadav, learned Advocate for the petitioner and Mr. Ajay Kumar, learned AC to GP-4 for the State.

2. Petitioner, in the present case, is seeking quashing of the order as contained in Memo no. 8716 dated 30.08.2022 issued by respondent no. 2 by which the review against the order vide memo no. 63 dated 27.01.2022 issued by the Director General of Police has been rejected. The Director General of Police has suo-



moto reviewed the order no. 207/2021 dated 30.07.2021 passed in the departmental proceeding no. 08/2021, set-aside the same and imposed a punishment of reverting the petitioner to the post of sub-Inspector for five years in the basic pay and that the petitioner would not be entitled for anything more than subsistence allowance for the period of suspension, the petitioner further prays for setting aside the order dated 05.01.2023 passed by Additional Director General of Police (Budget/Appeal/Kalyan) who rejected the appeal of the petitioner against the order no. 207/2021 dated 30.07.2021.

**Brief facts of the case**

3. The petitioner was posted as Police Inspector-cum-Station House Officer in Kankarbagh Police Station between the period 17.04.2020 to 30.11.2020. During his period, special drive was conducted by a joint central team of Bihar Police Headquarter (Prohibition and Excise cell) for recovery of illegal liquor.

4. It is stated that on 25.11.2020, a raid was conducted in the house no. 14/124 of Ajay Roy @ Lulha in Road No. 14, Ashok Nagar, Patna, in the said raid 25 liters of country liquor (Mahua) was recovered. A case being Kankarbagh P.S. Case No.



911/2020 was registered under Section 30(a) of the Bihar Prohibition and Excise Act, 2016.

**Suspension of the petitioner and initiation of departmental proceeding**

5. By letter no. 1325 dated 29.11.2022 issued by the Director General of Police, Bihar, Patna the petitioner was placed under suspension and a direction was issued to initiate a departmental proceeding against him. It was alleged that the petitioner failed in collection of information and implementation of the Prohibition under Excise Act which shows his in-activeness and carelessness and he has been found incompetent in putting control over the liquor traders.

6. Vide Patna District Order No. 4818/2020, the Senior Superintendent of Police, Patna directed to initiate a departmental proceeding against the petitioner. Accordingly, he was placed under suspension and charges were framed against him vide memo no. 379 dated 10.12.2020 (Annexure '3').

7. In course of enquiry, two witnesses namely, Gautam Kumar and Dinesh Kumar Mishra who were ASI and SI respectively were examined, they proved the letter as contained in Memo No. 34 dated 03.02.2021 and letter vide Memo No. 3506 dated 30.11.2020. It is stated that letter no. 34 of 03.02.2021 was



not mentioned in the list of documents enclosed with the memo of charge and the same was not given to the petitioner.

8. It is stated that the enquiry officer submitted his enquiry report vide memo no. 1165 dated 14.06.2021. Thereafter, vide Central Zonal Order No. 207/2021 dated 30.07.2021 a punishment of stoppage of one increment with non-cumulative effect which would be equivalent to two black mark was imposed upon the petitioner. It was further ordered that the petitioner would not be entitled for any payment for the period of suspension except his subsistence allowance.

9. An appeal preferred by the petitioner before the Additional Director General of Police (Budget/Appeal/Kalyan) Bihar, Patna against the order of punishment was rejected. During pendency of the appeal, the petitioner was served with a show cause notice vide Annexure '9' to the writ application issued by the Deputy Director General of Police (Personnel), Bihar, Patna under the direction of the Director General of Police whereby it was communicated to the petitioner that a decision has been taken to review the punishment order dated 30.07.2021, under Rule 853A of the Police Manual. Petitioner was directed to submit his show cause within 15 days. Petitioner, accordingly submitted his show cause whereafter vide memo no. 63 dated 27.01.2022



(Annexure '10'), the Director General of Police set-aside the punishment order dated 30.07.2021 and enhanced the punishment of the petitioner. The petitioner was reverted to the post of Sub-Inspector for five years at the basic pay and further it has been directed that the petitioner would not be entitled to get anything except his subsistence allowance.

**Submissions on behalf of the petitioner**

**10.** Learned senior counsel for the petitioner submits that apart from the fact that one of the documents being memo no. 34 dated 03.02.2021 was not made available to the petitioner either with the charge-sheet or in course of enquiry, the fact remains that in course of enquiry the department did not produce a single witness to prove the charge that due to inactiveness and carelessness, the petitioner failed to collect information and could not implement the prohibition.

**11.** Learned senior counsel submits that on the basis of a single case of recovery of 25 liters of country made liquor, the opinion formed by the authority cannot be said to have been substantiated.

**12.** It is further submitted that in course of enquiry the petitioner had submitted a petition before the enquiry officer to allow him to give an opportunity the cross-examine the witnesses.



Copy of petition has been placed on the record as Annexure '6' to the writ application. It is submitted that no opportunity to cross-examine the witnesses was given.

**13.** Learned senior counsel further submits that the Rule 853A of the Police Manual authorizes the Inspector General to call for the file in any case and take action within a reasonable time but the said rule does not authorize the Director General of Police to enhance the punishment. It is submitted that the decision to review the punishment has been taken during pendency of the appeal before the appellate authority that too without any recommendation made by the appellate authority.

**14.** It is submitted that in the light of the order of Director General of Police, the disciplinary authority i.e. Inspector General of Police, Central Zone, Patna issued Central Zonal Order No. 49/2022 dated 11.02.2022 (Annexure '11') rejecting the appeal of the petitioner without going into the merit of the appeal.

**15.** The petitioner filed a revision before the Additional Chief Secretary, Department of Home (Police Branch) but the same has been dismissed vide order dated 30.08.2022 as contained in Annexure '13' to the writ application. A review application has also been filed but the same has not been considered.





**16.** By filing a supplementary affidavit the petitioner has brought on record a complete copy of appeal and copy of the revision application which are Annexures '8' and '12' respectively. It is stated that the appeal preferred by the petitioner against the order of punishment dated 30.07.2021 has been rejected by the Additional Director General of Police by order dated 05.01.2023 and the same has been communicated vide memo no. 206 dated 24.01.2023 of the Superintendent of Police (C) Criminal Investigation Department, Patna. The appeal of the petitioner has been rejected on the sole ground that the Director General of Police has already set-aside the order of punishment and has passed a fresh order.

**Concept of 'deemed guilty' introduced in the cases of recovery of illicit liquor.**

**17.** In course of submissions, learned senior counsel has brought to the notice of this Court a letter bearing no. 63 (01 क्रियान्वयन) 2019-20-1296/ मद्यनिषेध dated 24.11.2020 written by the Director General of Police to all the Senior Superintendent of Police and Superintendent of Police (Rail), Bihar. It is stated that on a bare perusal of this letter it would appear that in paragraph '3' it is stated that in case of recovery of illicit liquor, the concerned Station House officer and Chowkidar will be deemed



guilty for not collecting the information and taking necessary action and they will be proceeded against for their failure and inactiveness.

**18.** Learned senior counsel submits that the paragraph '3' of this letter issued by the Director General of Police leaves no room for the disciplinary authority to form any other opinion and in any case of recovery of liquor, the guilt is to be presumed against the concerned Station House Officer and the Chowkidar which is against the principles of natural justice and it amounts to putting an embargo on free and independent exercise of mind by the disciplinary authority.

**Stand of the State**

**19.** A counter affidavit has been filed on behalf of the State. Learned counsel for the State submits that the order of punishment has been passed against the petitioner after following the established procedure of law. The charges against the petitioner were proved, hence, no fault may be found with the decision of the disciplinary authority as well as in the exercise of power by the Director General of Police under Rule 853A of the Bihar Police Manual.

**Consideration**



**20.** Having heard learned counsel for the petitioner and the State, this Court would first of all take note of the charges leveled against the petitioner as under:

**“(2) द्वितीय भाग— अवचार एवं कदाचार के लांछनों का सार**

1. श्री अजय कुमार, जब कंकड़बाग थाना में थानाध्यक्ष के पद पर पदस्थापित थे तो दिनांक — 25.11.2020 को बिहार पुलिस मुख्यालय (मद्यनिषेध प्रभाग), बिहार, पटना के संयुक्त केन्द्रीय टीम के नेतृत्व में अवैध शराब की बरामदगी हेतु विशेष अभियान चलाया गया था। इस अभियान के दौरान पटना जिला के कंकड़बाग थाना क्षेत्र में अजय रय उर्फ लूल्हा पिता स्व० बिन्दा राय, स०—अशोक नगर, रोड नं०— 14, मकान नं०— 14/124 थाना— कंकड़बाग, जिला— पटना के घर पर छापामारी कर कुल 25 लीटर स० — 911/2020 दिनांक — 25.11.2020 धारा —30(क) बिहार मद्य निषेध एवं उत्पाद अधि०, 2016 दर्ज किया गया है।

2. बिहार में पूर्ण शराबबंदी लागू होने के बावजूद कंकड़बाग थाना क्षेत्र में शराब भट्टी/फैक्ट्री का संचालन/अवैध रूप से शराब की बिक्री होना, थाना क्षेत्र के एक ही स्थान (अशोक नगर) से बार—बार मुख्यालय टीम के द्वारा अवैध शराब की बरामदगी करना, इनका आसूचना संकलन में पूर्णरूप से विफलता का परिचायक है।

3. पुलिस महानिदेशक, बिहार, पटना का पत्र सं०— 481/विशेष संयुक्त अभि०) 2020 1325/मद्यनिषेध (गो०) दिनांक 29.11.2020 द्वारा पु०नि० अजय कुमार, थानाध्यक्ष कंकड़बाग, पटना को मद्यनिषेध कानून के क्रियान्वयन एवं आसूचना संकलन में बरती गयी उदासीनता, घोर लापरवाही के लिए तत्काल प्रभाव से सामान्य जीवन—यापन भत्ता पर निलंबित करते हुए विभागीय कार्यवाही चलाने का आदेश दिया गया है।

4. उक्त से स्पष्ट है कि श्री अजय कुमार द्वारा कर्तव्य के दौरान मद्यनिषेध कानून के क्रियान्वयन एवं आसूचना संकलन में घोर लापरवाही बरतते हुए सरकारी सेवक आचार नियमावली, 1976 के कंडिका—3(1) का उल्लंघन किया गया है।

ह०/—  
(संजय सिंह)  
पुलिस महानिरीक्षक,  
केन्द्रीय क्षेत्र, पटना”

**21.** It appears from the enquiry report as contained in Annexure ‘5’ to the writ application that in course of enquiry two witnesses were produced on behalf of the Department. The first witness is Gautam Kumar, Assistant Sub-Inspector who has proved the signature of the Inspector General of Police, Central Range, Patna on memo no. 34 dated 03.02.2021. Except identification of the signature of the Inspector General of Police,



Central Range, nothing more is stated in the enquiry report about this witness. Similarly Dinesh Kumar Mishra, Sub-Inspector of Police has proved the signature of Sri Kantesh Kumar Mishra I.P.S. and Superintendent of Police, Rural, Patna on memo no. 13506 dated 30.11.2020.

**22.** In paragraph '17' of the writ application, a specific statement has been made by the petitioner that he submitted a petition requesting the enquiry officer to give him an opportunity to cross-examine the witnesses but he was not given that opportunity. In response, there is no denial of the said statements.

**23.** This Court further finds that the solitary case cited against the petitioner is Kankarbagh P.S. Case No. 911/2020. No evidence has been led at all on the point that how the petitioner had failed to collect information with regard to illegal sale of liquor in Kankarbagh police station area. No piece of evidence has been brought before the disciplinary authority to prove that from the same and one place (Ashok Nagar) repeated recovery of illicit liquor has been made. The enquiry officer has taken note of the statement of defence of the petitioner that during his period of posting from 17.04.2020 to 30.11.2020, he had seized illicit liquor and had arrested the accused in several cases. It is stated that the petitioner was posted in the said area during the relevant period



which was only 7½ months. A bare perusal of the enquiry report would show that the enquiry officer found himself in a very difficult position on the face of the direction of the police headquarter as contained in its letter no. 63 (01 क्रियान्वयन) 2019-20-1296/ मद्यनिषेध dated 24.11.2020 which clearly orders that in case of recovery of illicit liquor from any police station area, the concerned station house officer would be held guilty. The relevant paragraph of the enquiry report reads as under:-

“बिहार पुलिस मुख्यालय ( मद्यनिषेध प्रभाग), बिहार, पटना का पत्र सं०- 63(क्रियान्वयन) 2019-20-1296 / मद्यनिषेध, दिनांक 24.11.2020 में यह स्पष्ट आदेश दिया गया है कि यदि किसी थाना क्षेत्र में राज्य/जिला स्तर से प्रतिनियुक्त छापाकारी दल के द्वारा अवैध शराब की बरामदगी की जाती है तो ऐसे मामलों में संबंधित थानाध्यक्ष एवं चौकीदार पर असूचना संकलन नहीं करने तथा आवश्यक कार्रवाई नहीं करने के लिए दोषी मानते हुए उनके विफलता एवं निष्क्रियता के लिए कठोर कानूनी एवं अनुशासनिक कार्रवाई की जायेगी। उक्त निर्गत आदेश के बावजूद कंकड़बाग थाना क्षेत्र से मद्य निषेध में गठित संयुक्त टीम द्वारा छापाकारी कर शराब की बरामदगी की गयी।”

24. This Court further finds on record is Annexure ‘6’ to the writ application by which the petitioner has brought to the notice of the Inspector General of Police, Central Range, Patna that in course of enquiry the statement of departmental witnesses have been recorded in his absence and he was not given any opportunity to cross-examine the witnesses. He has made specific statement in this regard in paragraph ‘17’ of the writ application but the respondents have not brought on record any documentary evidence with the counter affidavit in form of the order-sheet of the enquiry officer to show that the witnesses were examined in



presence of the petitioner. In fact, the response of the respondents are completely vague and the same be taken as denial of the stand of the petitioner.

**25.** This Court further finds that in paragraph '19' of the writ application there is a specific statement that no second show cause notice was given to the petitioner before passing order of punishment dated 30.07.2021 (Annexure '7').

**26.** This Court has perused Annexure '7' to the writ application. It appears on perusal of Annexure '7' that it does not mention anywhere that a second show cause notice was issued to the petitioner. The operative part of the order dated 30.07.2021 (Annexure '7') reads as under:

“उपर्युक्त परिप्रेक्ष्य में संगत अभिलेखों एवं संचालन पदाधिकारी के जाँच निष्कर्ष प्रतिवेदन के अध्ययनोपरान्त संचालन पदाधिकारी के निष्कर्ष से सहमत होने का पर्याप्त आधार है चूँकि अपचारी के विरुद्ध प्रतिवेदित आरोप संचालित विभागीय कार्यवाही में प्रमाणित हुआ है, अतः अपचारी पु०नि० अजय कुमार को दोषी पति हुए उसके विरुद्ध असंचयी प्रभाव से एक वर्ष के लिए वार्षिक वेतन-वृद्धि समपहरण का दण्ड अधिरोपित किया जाता है। जिसका मान दो कलांक (02) के समतुल्य होगा। ”

**27.** A bare reading of the order contained in Annexure '7' would show that the disciplinary authority has simply gone by the opinion of enquiry officer without giving any opportunity to show cause to the petitioner. In the opinion of this Court, this action of the disciplinary authority is in complete violation of principles of natural justice and it has seriously prejudiced the case of the petitioner.



**28.** This Court further finds that the Director General of Police took a *suo motu* decision to review the order of the disciplinary authority, a show cause notice was issued to the petitioner in exercise of power under Rule 853A of the Bihar Police Manual. On perusal of the order passed by the Director General of Police as contained in Annexure '10' to the writ application, this Court finds that in the name of the issuance of show cause notice he has done a mere empty formality. The said order though takes note of the fact that the petitioner has submitted his explanation to the show cause notice on 21.10.2021 but no consideration at all has been given to the explanation of the petitioner. In the opinion of this Court, the Director General of Police while passing the order as contained in Annexure '10' should have considered each and every ground raised by the petitioner in his explanation, non-consideration of the explanation of the petitioner would render his order bad in law. Rule 853A of the Bihar Police Manual is being extracted hereunder for a ready reference:

“853A. (a) Inspector General may call for the file in any case even when no appeal lies and pass such order as he may deem fit. The Deputy Inspector General may call for any file but he should refer it to the Inspector General with his recommendation for his order. The above action should be taken within a reasonable time from the date of final order in departmental proceeding.

(b) Notwithstanding anything contained in these rules the State Government may call for the proceedings in any



disciplinary case even when no appeal or memorial lies, and pass such order as it may deem fit.

(c) When an appeal has been filed and the Inspector General on applying his mind thinks that he should enhance the punishment, he can dismiss the appeal but must simultaneously mention in that order that as per powers given in the rule 853A(a), he has decided to review it for enhancement and take action for obtaining a show cause, etc., where necessary.”

**29.** A bare reading of the aforesaid rule would show that it is the Inspector General who has been authorized under this rule to call for the file in any case and when an appeal has been filed and the Inspector General on applying his mind thinks that he should enhance the punishment, he can dismiss the appeal but simultaneously he has to record an order that as per powers given under Rule 853A(a) he had decided to review it for enhancement and take action for obtaining a show cause. It is well settled in law that when a statute prescribes something to be done in a particular manner, it must be done in that manner or not at all. Reference in this regard may be made to the judgment of the Hon’ble Supreme Court in the case of **Ramchandra Keshav Adke (Dead) by Lrs. vs. Govind Joti Chavare and others** reported in **AIR 1975 SC 915**. Paragraph ‘25’ of the same is being extracted hereunder for a ready reference:-

“25. A century ago, in Taylor v. Taylor, (1875) 1 Ch D 426 Jassel, M.R. adopted the rule that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden. This rule has stood the test of time. It





was applied by the Privy Council, in Nazir Ahmed v. Emperor 63 Ind App 372 = AIR 1936 PC253 (2) and later by this Court in several cases, Shiv Bahadur Singh v. State of U.P., AIR (1954) SC 1098 =(AIR 1954 SC 322 = 1954 SCR 1098 = 1954 Cri LJ 910; Deep Chand v. State of Rajasthan, (1962) 1 SCR 662 =(AIR 1961 SC 1527) = (1961) 2 Cri LJ 705) to a Magistrate making a record under Sections 164 and 364 of the Code of Criminal Procedure, 1898. This rule squarely applies “where, indeed, the whole aim and object of the legislature would be plainly defeated if the command to do the thing in a particular manner did not imply a prohibition to do it in any other. Maxwell's Interpretation of Statutes, 11th Edn., pp. 362-63”. The rule will be attracted with full force in the present case, because non-verification of the surrender in the requisite manner would frustrate the very purpose of this provision. Intention of the legislature to prohibit the verification of the surrender in a manner other than the one prescribed, is implied in these provisions. Failure to comply with these mandatory provisions, therefore, had vitiated the surrender and rendered it nonest for the purpose of Section 5(3)(b).”

**30.** In this case, an appeal preferred by the petitioner was pending consideration before the Inspector General of Police but during pendency of the appeal, the Director General of Police assumed upon himself the power of Inspector General and proceeded to pass the order as contained in Annexure ‘10’ to the writ application which cannot be said to have been passed by an authority prescribed under the Bihar Police Manual. This Court in the case of **Kashi Nath Singh Vs. State of Bihar & Ors.** reported in **2019 (2) PLJR 293** (Full Bench), has held that the provisions of the Bihar Police Manual are required to be obeyed but in this case the Director General of Police seems to have acted in haste and



thereafter the Inspector General of Police before whom the appeal was pending simply rejected the appeal vide Annexure '16' (attached to the supplementary affidavit of the petitioner). Taking note of the fact that an order has been passed by the Director General of Police under Rule 853A of the Bihar Police Manual, the appeal has been rejected. This is how the power exercised by the Director General of Police without authority of law has rendered the appeal of the petitioner infructuous.

**31.** At this stage, this Court would reproduce paragraph '3' of the letter no 63 (01 क्रियान्वयन) 2019-20-1296/ मद्यनिषेध dated 24.11.2020 as under:-

“3. यदि किसी थाना क्षेत्र में राज्य स्तर/जिला स्तर पर प्राप्त आसूचनाओं के आधार पर राज्य/जिला स्तर से प्रतिनियुक्त छाापामारी दल के द्वारा अवैध शराब की बरामदगी की जाती हैं तो ऐसे मामलों से संबंधित थानाध्यक्ष एवं चौकीदारी पर आसूचना संकलन नहीं करने तथा आवश्यक कार्रवाई नहीं करने के लिए दोषी माने जायेंगे तथा उनके इस विफलता एवं निष्क्रियता के लिये कठोर कानूनी एवं अनुशासनिक कार्रवाई की जाय।”

**32.** In fact, the enquiry officer has referred the aforesaid paragraph in his enquiry report to conclude the guilt against the petitioner.

### **The Concept of deemed guilty**

**33.** Advanced Law Laxicon, 3<sup>rd</sup> Edition, Volume 2 D-I Reprint 2009 the word 'Deemed' has been described as under:-

“Deems means 'is of opinion' or 'considers' or 'decides' and there is no implication of steps to be taken before the opinion is



formed or the decision is taken.” (R.v. Brixton Prison Governor ex p. Soblen, 1963 2QB 243 : (1962) 3 All ER 641.

The true synonym for the word ‘deemed’ is ‘judged’ and the other shades of meaning came later. Whenever the word ‘deemed’ is used in statute in relation to a person or thing, it implies that the legislature after due consideration exercised its judgment in conferring that status or attribute to a person or thing. M.R. Mehhotra v. State, AIR 1958 All 492, 498.”

**34.** Upon going through the entire materials as discussed hereinabove, this Court has no iota of doubt that there was an inherent defect in the framing of charge itself inasmuch as a bare perusal of it would show that it has been framed on the direction of the Director General of Police, Bihar vide his letter no. 48 dated 29.11.2020 addressed to the Senior Superintendent of Police (Annexure ‘1’ to the writ application). In this letter the Director General of Police has referred his own direction contained in letter no. 63 dated 24.11.2022, paragraph ‘3’ whereof pre-judges the guilt of the S.H.O. and the Chowkidar in case of recovery of illicit liquor from the area of the police station. This has no statutory sanction. Once the Director General of Police issued this direction to the S.S.P., the S.S.P./S.P. had no opportunity to apply his own independent mind as to whether the petitioner is liable to be proceeded against or of the kind of charges may be framed against him. The direction was coming from the top of the police echelon as if on mere recovery of illicit



liquor of 25 liters from the Kankarbagh Police Station area, the Officer-in-Charge of the said police station is liable to be held guilty.

**35.** In the opinion of this Court, paragraph '3' of the letter no. 63 (01 क्रियान्वयन) 2019-20-1296/ मद्यनिषेध dated 24.11.2020 which has influenced the entire proceeding right from the beginning, paragraph '3' raises a presumption of guilt even before framing of charge, therefore, this Court has no iota of doubt in saying that the guilt of the employee has been assumed and presumed even before giving him an opportunity of hearing. Such presumption of guilt has no sanction of law and the same is violative of Article 21 of the Constitution of India. It is contrary to the principles of fair play in action.

**36.** This Court has already noticed that in course of enquiry only two departmental witnesses came and they proved only the signature of the concerned authorities on the order. There is not a single witness to say as to how the petitioner may be said to have acted negligently and because of his failure to collect information and implementation of the prohibition laws in Kankarbagh area, illegal operation of Bhatti or factory or illegal sale of liquor has taken place. Not a single example has been cited in course of enquiry to demonstrate that during the period of



service of the petitioner, repeated recoveries were made from the same area.

**37.** This Court also finds that the departmental witnesses were not examined in presence of the petitioner and he was not given any opportunity to cross-examine them. This fact has been specifically pleaded by the petitioner but not denied by the respondents.

**38.** The disciplinary authority has passed the impugned order without giving any opportunity to show cause and further during pendency of the appeal the Director General of Police passed an order of enhancement of punishment without considering the explanation of the petitioner.

**39.** This Court, therefore, comes to a conclusion that the entire disciplinary proceeding (right from the stage of framing of charge) has vitiated and the same is liable to be set-aside.

**40.** This Court, accordingly, sets-aside the impugned orders and allow this Writ Application.

**41.** The petitioner shall be entitled for all the consequential reliefs. The Director General of Police, Bihar, Patna (respondent no. 4) shall issue necessary consequential order within a period of 30 days from the date of receipt/production of a copy of this order.



42. Before this Court parts with this order, in view of the discussions made hereinabove, this court directs the Director General of Police, Bihar, Patna (respondent No. 4) to revisit paragraph ‘3’ of the letter no. 63 (01 क्रियान्वयन) 2019-20-1296/ मद्य निषेध dated 24.11.2020 which assumes and pre-judges the guilt against the Station House Officer and Chowkidar even before framing of charge and conduct of an independent enquiry. This has no sanction of law. Because of this stipulation in this case the whole proceeding right from framing of charge has been influenced and a serious prejudice has been caused to the petitioner.

43. This Writ Application is allowed.

(Rajeev Ranjan Prasad, J.)

Rajeev/Tusharika-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	10.05.2023
Transmission Date	

