IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10093 of 2021

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Sunil Kumar Sinha, Son of Late Dhruv Narayan Prasad, Resident of Mohalla-Kadamkuan (Near Old Campus of Arvind Mahila College), P.S.- Kadamkuan, District- Patna.

... ... Petitioner/s

Versus

1. The State of Bihar through the Director General of Police, Bihar, Patna.
2. The Home Secretary, Government of Bihar, Old Secretariat, Patna.
3. The Inspector General of Police, Economic Offence Wing, Patna.
4. The Deputy Inspector General of Police, Economic Offence Wing, Bihar, Patna.
5. The Superintendent of Police, Economic Offence Wing, Bihar, Patna.
6. The Deputy Superintendent of Police Cum Enquiry Officer, Economic Offence Wing, Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ramakant Sharma, Sr. Advocate Mr. Arbind Kumar, Adv. Mr. Lakshmi Kant Sharma, Adv.
For the Respondent/s	:	Mr. Sanjay Kumar, AC to SC 8
For the EOU	:	Mr. V.N.P. Sinha, Sr. Advocate Mr. Vijay Anand, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

C A V JUDGMENT

Date : 30-08-2025

This Court has heard Mr. Ramakant Sharma, learned Senior Advocate with Mr. Arbind Kumar, learned Advocate for the petitioner and Mr. Sanjay Kumar, learned Advocate for the State.

2. The challenge in the present writ petition is made to an order contained in Memo No. 4106 dated 11.09.2020 passed by the Superintendent of Police, whereby the petitioner has been inflicted with the punishment of dismissal in departmental

proceeding No. 4/2017. The order of dismissal questioned before the Appellate Authority also came to be dismissed vide order contained in Memo No. 135 dated 31.12.2020 by the Deputy Inspector General of Police, affirming the punishment of dismissal awarded to the petitioner. The aforesaid appellate order has also put to challenge by filing the present writ petition.

3. The facts, in brief, as pleaded in the writ petition reveal that the petitioner was duly appointed on 11.02.1984 on the post of Constable in the Bihar Police and posted at Patna District Force. On 29.05.2017, while the petitioner was serving as a Constable in Economic Offence Unit, Bihar, Patna, he was assigned the work to hand over certain letters to the office of the Enforcement Directorate, Bihar, Patna. On the next date, i.e., 30.05.2017, the petitioner was found absent in the office and, accordingly, a report was submitted with respect to absence of the petitioner, whereafter internal enquiry was made to find out the whereabouts of the petitioner. After the enquiry, it was informed that the petitioner has been made accused in connection with Gandhi Maidan P.S. Case No. 293 of 2017 on 29.05.2017 for the offences punishable under Sections 279/337/338 of the Indian Penal Code as well as under Sections 37(a), 37(b) and 37(c) of the Bihar Prohibition and Excise Act,

2016 and was remanded to judicial custody on 30.05.2017.

4. The aforesaid incidence led to suspension of the petitioner under Memo No. 3056 dated 05.06.2017 with effect from 29.05.2017 on payment of subsistence allowance. Subsequently, under Memo No. 3280 dated 04.06.2017, the petitioner was served with a show cause notice as to why a departmental proceeding not be initiated against him, and on being found no response to the show cause notice, a departmental proceeding bearing No. 4/2017 was initiated under Memo No. 3601 dated 06.07.2017. The charge memo was drawn against the petitioner along with the list of documents and witnesses. The Deputy Superintendent of Police was appointed as the Enquiry Officer. The petitioner submitted his written defence statement; also examined defence witnesses to prove his innocence. After completion of the enquiry, the conducting officer submitted the enquiry report dated 30.08.2018. The second show cause notice was served upon the petitioner under Memo No. 6030 dated 22.10.2018 seeking his explanation against the proposed punishment of dismissal. The petitioner submitted his explanation. However, on being dissatisfied with the same, the Superintendent of Police vide his Memo No. 4106 dated 11.09.2020 dismissed the petitioner from

services. The petitioner preferred an appeal before the respondent-Deputy Inspector General of Police. However, this also did not find any succor and finally came to be rejected vide memo No. 135 dated 31.12.2020 by the Deputy Inspector General of Police.

5. Mr. Ramakant Sharma, learned Senior Advocate for the petitioner, while assailing the impugned orders of punishment as also the appellate order, submitted that the authorities had completely ignored the fact and circumstances, that the petitioner was riding on a bike being driven by another Constable, who was going to drop the petitioner at his house, as the petitioner in course of unloading and destroying the seized liquor his clothes were drenched with the alcohol on account of breaking down of the bottles and falling of the liquor but, in the meanwhile, he met with an accident. The person assembled there caught him and handed over to the police, who on being found the smell of alcohol suspecting consumption of liquor, brought him to the Hospital for breath analyser, besides blood and urine test, which subsequently led to institution of the FIR, but on suspicious circumstances. The petitioner was inflicted with the harshest punishment of dismissal ignoring the unblemished service career for more than 33 years, which is

wholly arbitrary and *malafide*.

6. The breath analyser report is not a conclusive proof of consumption of alcohol unless it is corroborated by the blood and urine test. However, blood and urine test conducted during the course of investigation has never been proved by the person who conducted the test and, therefore, even if it goes against the petitioner, cannot be treated to be as a valid evidence. To support the aforesaid contention, reliance has been placed on a decision rendered by the Apex Court in the case of ***Bachubhai Hassanalli Karyani Vs. State of Maharashtra [(1971) 3 SCC 930***]. It is further contended that the enquiry report is based upon the First Information Report being Gandhi Maidan P.S. Case No. 293 of 2017 and the materials collected during the course of investigation; nonetheless the Hon'ble supreme Court in the case of ***Roop Singh Negi Vs. Punjab National Bank & Ors. [(2009) 2 SCC 570]***, has unequivocally held that the purported evidence collected during investigation by the Investigating Officer against the accused, could not be treated to be as evidence in the disciplinary proceeding, unless the witness was examined to prove the contents of the document. Mere tendering of the document would not suffice to prove the charges.

7. Taking this Court through the impugned order, it is further submitted that apart from the same being wholly illegal and suffers from non application of mind, the petitioner was dismissed from service only to give a message to the police personnel so that they better to choose in discipline and in fact the petitioner has been made a scapegoat. The Appellate Authority also failed to consider the grounds of memo of appeal preferred by the petitioner and as such in complete disregard to the prescription of Rule 27 of the Bihar Governments (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as the 'Rules, 2005').

8. On the other hand, learned Advocate for the State dispelling the afore noted contention has submitted that the entire departmental proceeding was carried out strictly in accordance with the law and the petitioner participated before the Enquiry Officer as also brought defence witnesses and submitted his written defence which was duly considered *in extenso* by the Enquiry Officer alongside the evidence of the Department. The exhaustive report submitted by the Enquiry Officer available under Annexure-9 to the writ petition clearly reveals that the charges alleged against the petitioner found to be proved based upon the admissible evidence. The explanation

of the petitioner on the proposed punishment was also duly considered by the Superintendent of Police, who was the disciplinary authority of the petitioner and after careful examination of the materials and on being agreed with the report of the Enquiry Officer, dismissed the petitioner by a reasoned and speaking order. The appeal preferred by the petitioner also came to be rejected.

9. The petitioner being a Constable in a disciplined force not to be supposed to violate the prohibition law. The petitioner was apprehend while he was under influence of liquor and thus remanded to judicial custody. The police after investigation submitted charge sheet under Sections 337/338 of the Indian Penal Code read with Section 37(b) of the Bihar Prohibition and Excise Act, 2016 against the petitioner and one unknown motorcycle driver. It is further urged that the departmental enquiry is carried out based upon the preponderance of probabilities and the charges are not required to be proved beyond reasonable doubt. Once the Enquiry Officer returned the finding of guilt against the petitioner, no exhaustive order is required to be passed by the disciplinary authority when he has accepted the report.

10. Having given careful consideration to the

submissions advanced by the learned Advocates for the respective parties and on perusal of the materials available on record, this Court finds that the charges alleged against the petitioner is serious in nature and in case a person, who is in uniform service found indulge in such activity constituting misconduct and unbecoming of a Government servant, surely deserves to be prosecuted with all strictness and dealt with an iron hand.

11. The memo of charge discloses the accusation of indiscipline, dereliction of duty, inaction and being an incompetent police personnel. On 29.05.2017, the petitioner was sent for delivery of post to the office of the Enforcement Directorate, Bihar, Patna after getting his signature done in the peon's book but he did not provide receipt within the stipulated period. On the next date, the same post was sent through another Constable and a receipt was provided. On being found the petitioner absent on 30.05.2017, an enquiry was made and it came to know that the petitioner was taken to judicial custody in connection with Gandhi Maidan P.S. Case No. 293 of 2017 on 29.05.2017 itself, for the offences punishable under Sections 279/337/338 of the Indian Penal Code as well as under Sections 37(a), 37(b) and 37(c) of the Bihar Prohibition and Excise Act,

2016. The aforesaid act and attitude adopted by the petitioner is said to be indicative of indiscipline, dereliction of duty, incompetence and being an incompetent police personnel. List of documents contain six documentary evidence and there was altogether five witnesses to prove the proposed charges.

12. In course of enquiry, all the witnesses, five in number, mentioned in the list of witnesses were examined and it has been disclosed that no cross examination has been done on behalf of the petitioner. The Enquiry Officer has taken note of the materials collected during the course of investigation in connection with Gandhi Maidan P.S. Case No. 293 of 2017, including the report of the blood test, which demonstrates that ethyl alcohol was detected in the distillate of reddish brown fluid contained in the plastic vials marked A1, A2 and A3. However, it is the admitted position that neither the copy of the report has been served upon the delinquent nor the author of the report was examined to prove the contents thereof. There is no confrontation to the settled proposition of law that the proceedings of the departmental enquiry report are quasi criminal in nature, therefore, the guilt of delinquent is not required to be proved beyond any reasonable doubt as in a criminal case. The Hon'ble Supreme Court in ***State of Haryana***

& Anr. Vs. Rattan Singh [(1977) 2 SCC 491] has held that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility.

13. Notwithstanding the settled legal position, the Apex Court time and again ruled that the Enquiry Officer performs quasi judicial functions; the charges levelled against the delinquent officer must be found to have been proved and 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 a disciplinary proceeding unless the witness was examined to prove the said documents. The Court in case of ***Roop Singh Negi*** (supra) taking note of the fact that the witness was not examined to prove the said document and the management witnesses merely tendered the document and did not prove the content thereof, held the copy of the FIR could not have been treated as evidence.

14. This Court is also conscious of the scope of

judicial review while exercising power under Article 226 of the Constitution of India. In a decision rendered in ***State of Andhra Pradesh & Ors. vs S. Sree Rama Rao [AIR 1963 SC 1723],*** the Apex Court has unequivocally observed as follows:

> *"7. There is no warrant for the view expressed by the High Court that in considering whether a public officer is guilty of the misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court, must be applied, and if that rule be not applied, the High Court in a petition I ... under Article 226 of the Constitution is competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant : it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or*

where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution."

15. Further in the case of ***State of Andhra Pradesh & Ors. Vs. Chitra Venkata Rao [(1975) 2 SCC 557]*** and in **Railway Board, Representing The Union of India Vs. Niranjan Singh** ***[(1969) 1 SCC 502]*** and again in the case of ***Union of India Vs. P. Gunasekaran [(2015) 2 SCC 610],*** the Hon'ble Supreme Court has enunciated the principle to be governed by the High Court while exercising power of judicial review in disciplinary proceeding. The Court has also been cautioned that the departmental enquires are not like the trial being conducted by the civil courts and even on documentary evidence, copies whereof if already supplied to the delinquent can definitely be the basis of the finding of the enquiry

officer/disciplinary authority. The aforesaid issue has also been dealt with by the Apex Court in the case of ***Tara Chand Vyas Vs. Chairman & Disciplinary Authority & Ors. [(1997) 4 SCC 565]*** and further in ***Director General, Indian Council of Medical Research & Ors. Vs. Dr. Anil Kumar Ghosh & Anr. [(1998) 7 SCC 97***].

16. In the light of the afore noted settled proposition, this Court would again examine the enquiry report. Rule 17 of the Rules, 2005 deals with procedure for imposing major penalties, including dismissal. There is clear prescription under rule-17(5)(c) with regard to appointment of a Government servant or legal practitioner to be known as Presenting Officer to present the case of the Department in support of the article of charge. The role of the Presenting Officer has been duly assigned elaborately in different sub sections of Section 17 of the Rules, 2005. There is no whisper in the enquiry report as to what role has been played by the Presenting Officer. It is needless to observe that the appointment of the Presenting Officer is mandatory and in any case the management is obliged to follow the procedures prescribed under Rule-17 of the Rules, 2005 which is somewhat a complete Code containing the manner in which the disciplinary proceeding is to be conducted.

The prescription provided under Rule 17 is statutory and mandatorily required to be followed. Non observance thereof may vitiates the enquiry. When the rule prescribes to do a particular thing in a particular manner, the said act should be done in that manner and not at all. The reference may be taken to a decision rendered by the Apex Court in the case of ***Ramchandra Keshav Adke & Ors vs Govind Joti Chavare And Ors [AIR 1975 SC 915***].

17. Though in the case in hand, in the counter affidavit a specific averment has been made that the Presenting Officer was also appointed under Memo No. 6726 dated 12.12.2017 but surprisingly the enquiry report is silent about the role he played therein. To clarify the position regarding failure on the part of the Presenting Officer to discharge his obligation, it would be worth benefiting to encapsulate the relevant paragraph of the decision rendered by a Bench of this Court in the case of ***Panchanan Kumar Vs. The Bihar State Electricity Board & Ors.[1996 (1) PLJR 401]***:

> *"11. Considering the rival contentions of the parties, this Court is of the opinion that in the instant case the inquiry has been vitiated inasmuch as the enquiry officer himself has acted as the presenting officer even though the presenting officer was appointed by the Electricity Board. There is no explanation why the said presenting*

officer did not appear before the enquiry officer to present the case of the department. In the peculiar facts of this case, the action of the enquiry officer to present the case himself on behalf of the department and also to take upon himself the duty of enquiring the correctness or otherwise of the said case clearly shows that the enquiry officer, in the instant case, has failed to discharge his duty as a fair and impartial enquiry authority. He has rolled up within himself the role of both the presenting officer and the enquiry officer and as such has acted in a manner which is not consistent with the principles of nature justice. In this connection, this Court is reminded of the observation of the Supreme Court in the case of D.K. Yadav v. J.M.A. Industries Limited reported in (1993) 3 SCC 259 : 1994 (1) PLJR 55 (SC). In the said judgment of D.K. Yadav (supra) the learned Judges of the Hon'ble Supreme Court has said that in a matter relating to dismissal from service the employee concerned is visited with civil consequences and as such the same amounts to deprivation of right of livelihood guaranteed under Article 21 of the Constitution of India. In the matter of Infliction of penalty of dismissal/termination, the procedure which is to be applied must be just, fair and reasonable. In the instant case, this Court is of the view that the procedure which has been applied by the enquiry officer in coming to his finding is neither just nor fair nor is the same resonable. As such this Court cannot approve the same. Even though it is well settled that technicalities of rules of evidence are not applicable to a departmental proceeding and this has also been settled by the Supreme Court as far back as in 1964 in its Constitution Bench judgment in the case of Union of India v. H.C. Goel reported in A.I.R. 1964 S.C. page 364 in paragraph

> *27 that the technical rules which govern criminal trials in courts may not necessarily apply to disciplinary proceedings, but nevertheless, the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trial as to disciplinary enquiries held under the statutory rules."*

18. It is trite law that justice must not only be done but manifestly seen to be done in order to create trust and faith upon the person who is subjected to an action/proceeding which may led to civil or evil consequences. The disciplinary authority, who has the power to inflict severest punishment, in no way having unbridled power to give a go by to the mandatory prescriptions, before inflicting punishment, failure of which vitiates the entire action/proceeding. The disciplinary authority must not be swayed with the charges, only because the same is grave and serious in nature. It is trite that if the consequences is extreme, the procedure must be required to be followed strictly.

19. In view of the discussions made hereinabove, this Court does not find that the enquiry has been conducted in line with the prescription prescribed under the Rules, 2005, thus left with no option but to quash the enquiry report and relegate the matter to the disciplinary authority to proceed afresh in accordance with law. It is further clarified that once the

foundation collapsed the superstructure would automatically tumble down.

20. Accordingly, the impugned order as contained in Memo No. 4106 dated 11.09.2020 as well as the appellate order contained in Memo No. 135 dated 31.12.2020 are also set aside. By virtue of setting aside the order of dismissal as well as the appellate order along with the enquiry report, the petitioner shall be treated under suspension in the light of the mandate of the Hon'ble Supreme Court in the case of **Managing Director, ECIL, Hyderabad & Ors. Vs. B. Karunakar & Ors., reported in, (1993) 4 SCC 727**; and in case the petitioner attained the age of superannuation, the proceeding shall be converted under Rule 43(b) of the Bihar Pension Rules, 1950 and the same shall start from the stage of enquiry afresh after giving proper opportunity of hearing to all the stake holders.

21. From the record, it appears that the petitioner has attained the age of superannuation, therefore, this Court expects that the departmental proceeding must be concluded, preferably within a period of four months from the date of receipt/production of a copy of this order, in case of non-completion of the fresh proceeding within the stipulated period, the petitioner shall be entitled to get all his retiral benefits and

other dues.

22. The writ petition stands allowed to the extent indicated above.

(Harish Kumar, J)

Anjani/-

AFR/NAFR	
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