

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.1270 of 2023**

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Vikash Kumar Singh @ Vikash Kumar Son of Sri Sita Ram Singh Resident of  
Village- Sri Rampur Tudhhi, P.S.- Parbatta, District- Khagaria.

... .. Petitioner

Versus

1. The State of Bihar through the Director General of Police, Bihar, Patna.
2. The Director General of Police, Patna.
3. The Additional Director General of Police, Railway, Bihar, Patna.
4. The Inspector General of Police, Railway, Bihar, Patna.
5. Teh Deputy Inspector General of Police, Railway, Bihar, Patna.
6. The Superintendant of Police, Railway, Muzaffarpur.
7. The Enquiry Authority-cum-Senior Deputy Superintendant of Police,  
Railway, Sonpur.

... .. Respondents

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**Appearance :**

For the Petitioner : Mr. Vinay Ranjan, Advocate  
For the Respondents : Mr. Md. N.H. Khan, S.C.-1

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**CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR**  
**C.A.V. JUDGMENT**  
**Date : 20-11-2025**

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

2. This writ petition has been filed on behalf of  
the petitioner for quashing the order as contained in Memo  
No.736 dated 08.04.2019, issued under the signature of  
Superintendent of Police, Railway, Muzaffarpur, by which the  
petitioner has been dismissed from service. The petitioner also  
prayed for quashing the appellate order passed by Additional  
Director General of Police, Railway, Bihar, Patna vide Memo



No.796 dated 14.06.2019, by which the departmental appeal preferred by the petitioner has been rejected. Further prayer of the petitioner is to quash the order as contained in memo no. 77 dated 06.04.2022 issued under the signature of Director General of Police, Bihar, Patna, by which the memorial appeal preferred by the petitioner has been rejected. Lastly, it has been prayed by the petitioner to direct the respondent to reinstate him and also grant him all consequential benefits.

3. It is the case of the petitioner that while he was posted as *Hawaladar* at Hajipur Railway Station, an F.I.R. bearing Rail Sonapur (Hajipur) P.S. Case No. 47 of 2019 dated 29.03.2019 was registered against him for the offences punishable under sections 37(b) and 37(c) of the Bihar Excise and Prohibition Act, 2016. In the FIR, it has been alleged against the petitioner that he was creating nuisance in the Police *Bairak* and therefore he was arrested and was taken to Sadar Hospital, where he was examined through breath analyzer machine and alcohol was detected in his blood. The smell of alcohol was also coming from his breath.

4. It is also the case of the petitioner that on the same day of institution of F.I.R., i.e. on 29.03.2019, a departmental proceeding was initiated and article of charges was



served upon the petitioner by the Superintendent of Police Railway, Muzaffarpur vide Memo No.691 dated 29.03.2019, through Jail Superintendent, District Jail, Hajipur and he was directed to submit his response within 24 hours. In the article of charges, it has been alleged against the petitioner that in the breath analyzer report, 180 mg. alcohol was detected and smell of alcohol was found in his breath. In pursuance of the aforesaid order, the petitioner submitted an application before the Senior Superintendent of Police, Railway, Muzaffarpur through Jail Superintendent, Hajipur vide its Office Letter No.992 dated 31.03.2019 and made a request that since he is in confinement of judicial custody, he is not in a position to submit his explanation within 24 hours and therefore, he sought 15 days time for submission of his explanation but, on the very next day of submission of the application of the petitioner, the enquiry authority recorded the statement of witnesses in the jail premises.

5. It is further the case of the petitioner that after recording the statement of witnesses, the petitioner was directed to submit his last defence before the Enquiry Authority and in pursuance of the same he has submitted his defence statement before the Authority and categorically asserted therein



that he uses homeopathic medicine for his ailment and therefore alcohol may be found in his breath analyzer test. He further submits that informant of the case i.e. Sub Inspector -Cum- P.P. In-charge, always used to harass the petitioner and on the date of alleged occurrence, when the petitioner went in the Chambers of the aforesaid Sub Inspector -Cum- P.P. In-charge for submitting his application for leave for the purpose of his daughter's marriage, upon which he demanded Rs. 1,000/- for making recommendation and forwarding application for leave to the senior officers and on refusal to pay the same, hot exchange of words took place between them. He next submits that the petitioner was suffering with serious pain and therefore, he consumed homeopathic medicine and as soon as the informant-Cum- PP In-charge Rail Hajipur come to know about this fact then the informant with the help of his subordinates, arrested the petitioner and took him to Sadar Hospital where he procured a fake report from the Hospital and on the basis of the said report, the petitioner was sent to the judicial custody.

6. It is the further case of the petitioner that on the basis of the statement of witnesses recorded in the jail premises, the enquiry authority submitted its enquiry report holding the petitioner guilty and the charges leveled against him



were found to be true and on the basis of enquiry report, the Superintendent of Police, Railway, Muzaffarpur, vide Railway Muzaffarpur District Order No.468/2019 dated 08.04.2019 passed an order in the departmental proceeding, by which the petitioner has been dismissed from the service. Being aggrieved with the order of dismissal, the petitioner preferred a departmental appeal on 24.04.2019 but the appellate authority without considering the defence as well as article of charges, has rejected the departmental appeal of the petitioner vide order dated 14.06.2019. Thereafter, the petitioner filed a Memorial Appeal annexing all the relevant documents including the blood report dated 23.09.2019 but the same was also dismissed by the Director General of Police, Bihar, Patna vide order dated 06.04.2022.

7. It is the submission of learned counsel for the petitioner that the petitioner being a patient suffering from chronic pain was taking homeopathic medicine and as such, the breath analyzer test could not be relied upon by the respondents. It is the further submission of learned counsel for the petitioner that the respondent authorities vide memo no.294 dated 20.5.2022, issued to the Police Headquarter, has categorically instructed all the Disciplinary Authorities not to hold anybody



guilty only on the basis of Breath Analyzer Test and therefore, it is emphasized by the learned counsel for the petitioner that the order of dismissal of the petitioner is in violation of the aforesaid guidelines as only on the basis of breath analyzer report the petitioner could not have been imposed with such major penalty of dismissal from the service.

8. Lastly, by way of filing a supplementary affidavit, the petitioner has brought on record the complete FSL Report dated 31.08.2019 wherein it has categorically been stated that no ethyl alcohol was detected in the blood sample of the petitioner.

9. The answering respondent no.6 has filed a counter affidavit wherein he has supported the imposition of punishment and further stated that since the petitioner is a member of disciplined service therefore, the allegations against the petitioner could not be brushed aside.

10. Head the submissions of the parties and perused the materials available on record.

11. A Three-Judge Bench of the Hon'ble Supreme Court in *Bachubhai Hassanalli Karyani Vs. State of Maharashtra* reported in *1971(3) SCC 930* while considering question whether charge of rash and negligent driving after



consuming alcohol was proved in the facts of the case therein or not, the Hon'ble Supreme Court had held that no conclusion with regard to consumption of alcohol by a person can be made on the fact that the appellants breath smells of alcohol, that his gait was unsteady, that his speech was incoherent and that his pupils were dilated. Consumption of alcohol can only conclusively be ascertained by way of blood and urine test of the person suspected to have consumed alcohol. The Hon'ble Supreme Court also noticed in the case of ***Bachubhai Hassanalli Karyani (supra)*** that the doctor had admitted that the person could smell of alcohol even without being under the influence of alcohol.

12. In ***Jawahar Kumar Singh vs. State of Bihar through the Principal Secretary, Home Department & Ors.*** reported as ***2019 SCC OnLine Pat 3671 : (2019) 2 PLJR 156***, a coordinate bench of this Court has held as under:

*“11. The power of punishment is always within the employers' discretion and Courts do not normally interfere with where there is no infirmity with the procedure. However, weighing all the factors, viz., the nature of charges against the petitioner; the manner in which it is sought to be proved, no evidence of any past conduct of similar nature and perhaps lack of sensitivity in dealing with the case of the petitioner, this*



*Court feels that the punishment is rather disproportionate. This Court says so for the reason that nothing but pandemonium is said to have been created and that also not during the period when the petitioner was on duty. This Court is conscious of the fact that the petitioner is an employee of a uniformed service; nonetheless the gravity of the misconduct is not such that he be dismissed from the service. This Court feels that an unduly harsh punishment has been meted out to the petitioner and that also when the charges were sought to be proved in a most rudimentary manner by relying upon the Breath Analyzer report, which report could well be wrong as well.*

12. *The grossly excessive/disproportionate punishment to the petitioner goads this Court in setting-aside the order of dismissal by the Deputy Inspector General of Police, Eastern Range, Bhagalpur (respondent No. 5) and the order passed in appeal by the Inspector General of Police, Bhagalpur Range, Bhagalpur (respondent No. 4) as well as the order rejecting the Memorial of the petitioner by the Director General of Police, Bihar, Patna (respondent No. 3). The matter is, therefore, remitted to the Deputy Inspector General of Police, Eastern Range, Bhagalpur (respondent No. 5) for writing out a fresh order in accordance with law, taking into account whether the petitioner*





*has ever been charged of such offence and whether the charges against him have been conclusively proved and, if so, what would be the commensurate punishment vis-a vis the nature of charge levelled upon him. The aforesaid order be passed within a period of eight weeks from the date of receipt/production of a copy of this order.”*

13. The Co-ordinate Bench of this Court in ***Manoj Kumar Thakur vs. The State of Bihar & Ors.*** (C.W.J.C. No. 4181 of 2021) has observed as under:

*13. It would be pertinent to observe that in case of Munna Lal (supra), wherein the 3-Judge Bench of the Apex Court while considering the appeal preferred by the delinquent, who was charged with dereliction of duty and misconduct under influence of liquor, which led to his dismissal and duly affirmed by the High Court, has set aside the impugned order and held that in absence of any material to support the consumption of liquor and the evidence was found not satisfactory to prove that he was found with any alcohol and if there is no medical report, the charge levelled against the appellant was not satisfactorily proved. The Court further held that in the absence of sufficient proof, the disciplinary authority should not have imposed such penalty, the appellant was reinstated with 50% of the back wages for*



*the period he was out of service.*

14. *Similarly, in the case of Jawahar Kumar Singh (supra), while the delinquent was facing identical charge of creating ruckus after consuming liquor leading to his dismissal was questioned before this Court; the learned coordinate Bench of this Court set aside the impugned order of dismissal and relegated the matter by observing that an unduly harsh punishment has been meted out to the petitioner and that also when charges were sought to be proved in a most rudimentary manner by relying upon the Breath Analyser report, which report could well be wrong as well.*
15. *Now coming to the case in hand, once the finding of consumption of alcohol is based upon no evidence, the enquiry report furnished by the Enquiry Officer itself vitiates in law and thus inadmissible. Hence, based upon such enquiry report, if the petitioner has been inflicted with the order of extreme punishment, the same is wholly sustainable. Moreover, the impugned order of punishment also does not reflect the application of mind to the defence taken by the petitioner as is required under Rule 17(14) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 and thus the same is held to be cryptic, and passed without application of mind. Similar*



*mistake has also been committed by the Appellate Authority, who failed to discharge his obligation, as is required under Rule 27 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005.”*

14. The Co-ordinate Bench of this Court relying upon the case of ***Bachubhai Hassanalli Karyani (supra)***; ***Manju Devi vs. State of Bihar through the Additional Chief Secretary and Others*** reported as ***2024 SCC Online PAT 2324*** has observed that breath analyzer test could not be the sole basis for sustaining disciplinary inquiry and observed as under:

*“7. In Bachubhai Hassanalli Karyani Vrs. 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 breathe 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 by a person suspected to have consumed alcohol.*

*8. In the instant case, there is also no allegation that at the time of arrest the gait of the original petitioner was unsteady, he was speaking incoherently or that his pupils were dilated.*



9. *In the above stated report, the Honble Supreme Court found that the blood and urine examination of the appellant was not done and finally held that mere smelling of alcohol is not enough to hold that the petitioner consumed alcohol on the date of his apprehension.*
10. *For the reasons stated above, I have no other alternative but to hold that the disciplinary authority failed to consider the observation of the Hon'ble Supreme Court and based his order of punishment of the original petitioner of breathe analyzer report which cannot be said to be a conclusive report of consumption of alcohol.*
11. *For the reasons stated above, this Court is not in a position to uphold the impugned order dated 11th January, 2020, communicated on 15th January, 2020, passed by the District Magistrate, Supaul against the original petitioner as well as the order passed in appeal by the Commissioner based on the order dated 11th January, 2020."*

15. Learned counsel for the petitioner has drawn attention of this Court to a decision delivered by a co-ordinate Bench of this Court in ***Neeraj Kumar vs. State of Bihar & Ors. C.W.J.C. No.9828 of 2022*** wherein while deciding a challenge to a disciplinary proceeding the coordinate Bench has observed



shock that despite a departmental order standing that no disciplinary proceeding will lie on the allegation that a police personnel had consumed alcohol on the basis of only the breath analyzer test yet the disciplinary proceeding was allowed to be conducted and the petitioner therein was dismissed.

**16.** From the afore-quoted judgments, it is clear that the breath analyzer test could not be the sole basis to conclusively arrive at a finding that a person had consumed alcohol. It is settled law that the threshold in a disciplinary proceeding is much lower, i.e., preponderance of possibilities and not that of a criminal case i.e. beyond all reasonable doubts, however, placing reliance completely on the breath analyzer test would not even meet that lower threshold. In absence of any other evidence to support a conclusion to that effect would render such a finding void. Further, the F.S.L. report supports the contention of the petitioner that no alcohol was detected. Therefore, the imposition of major penalty of dismissal of service could not be sustained in absence of any cogent evidence solely on the basis of breath analyzer report when the F.S.L. report supports the case of the petitioner.

**17.** In view of the above discussions, the impugned orders dated 08.04.2019, by which the petitioner has



been dismissed from service and the appellate order dated 14.06.2019, by which the departmental appeal preferred by the petitioner has been rejected are hereby quashed and set aside. The respondents are directed to reinstate the petitioner forthwith with all consequential benefits in accordance with law.

18. With the aforesaid observations and directions, this writ petition is allowed.

(Sandeep Kumar, J)

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