

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

**Letters Patent Appeal No.27 of 2025  
In  
Civil Writ Jurisdiction Case No.3073 of 2022**

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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 Inspector General of Police, Muzaffarpur Range, Muzaffarpur.
4. The Deputy Inspector General of Police, Tirhut Range, Muzaffarpur.
5. The Senior Superintendent of Police, (Town) Muzaffarpur.
6. The Deputy Superintendent of Police (Town)-Cum-Operating/Enquiry Officer, Muzaffarpur.

... .. Appellant/s

Versus

Bhagwan Singh Son of Late Sheo Nath Singh Resident of Village- Kalani,  
P.O.- Thakura, Police Station- Ramgarh, District-Kaimur, Bhabhua.

... .. Respondent/s

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**Appearance :**

For the Appellant/s : Mr. P.K.Shahi, Advocate General  
Mr. Manoj Kumar, A.C. to G.P.-4  
For the Respondent/s : Mr. Upendra Mishra, Advocate  
Mr. Sunil Kumar, Advocate  
Mr. Sanjeeb Kumar Sanju, Advocate  
Mr. Bhaskar Sandilya, Advocate  
Mr. Ravi Kumar, Advocate

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**CORAM: HONOURABLE THE CHIEF JUSTICE  
and  
HONOURABLE MR. JUSTICE HARISH KUMAR  
ORAL JUDGMENT  
(Per: HONOURABLE THE CHIEF JUSTICE)**

**Date : 30-03-2026**

This Letters Patent Appeal has been filed by the  
State challenging the order dated 12.07.2024 passed by the



learned Single Judge in C.W.J.C. No. 3073 of 2022 in allowing the writ petition and holding that the petitioner is entitled to get all financial and consequential reliefs from the date of his suspension till the date of attainment of the age of superannuation with a further direction that his pensionary benefit shall be calculated and paid on the basis of financial benefit.

2. The writ petition was filed by the petitioner, Bhagwan Singh seeking for following relief(s):-

*“i. For quashing the charge dated 09.11.2016 and initiating of departmental proceeding no. 84/16, Muzaffarpur, District Police, Muzaffarpur against the petitioner and including the finding dated 20.06.2017 passed by the Operating/Enquiry officer, (Respt.No.6) holding the petitioner guilty, who send to the same to the Senior Superintendent of Police, Muzaffarpur (Respt.No.5) for further orders.*

*ii. For quashing the dismissal order contained in memo no-1173 dated 24.07.2017 passed by deputy inspector general of police (DIG), Tirhut Range, Muzaffarpur. (Respt.No.4) the recommendation of Senior Superintendent of Police, Muzaffarpur.*

*iii. For quashing the Appellate order contained in Muzaffarpur Range, Muzaffarpur District order No. 2358/17, vide memo no. 6073 dated 24.11.2017 passed by the L.G. Muzaffarpur Range,*



*Muzaffarpur (Respt.no.3), whereby and where under the appeal filed by the petitioner against the order of dismissal dated 24.07.2017 has been rejected and order of dismissal has been affirmed.*

*iv. For quashing the departmental proceeding no. 84/16, Muzaffarpur, District Police, Muzaffarpur, initiated against the petitioner.*

*v. For directing the Respondents to reinstate the petitioner in service with all consequential and monetary benefits.*

*vi. For any other relief/ reliefs for which the petitioner may be found entitled to.”*

3. It is the case of the petitioner that he was the Sub-Inspector of Police and posted at Vishwavidyalaya Police Station, Muzaffarpur and while he was on duty, Excise Case No. 330 of 2016 was instituted against him on 28.10.2016 under section 37(B) of the Bihar Prohibition and Excise Act, 2016 (hereafter '2016 Act') on the allegation that he had consumed liquor during duty hours. The petitioner was arrested and taken to judicial custody mainly on the basis of the report of the Breath Analyzer Test.

4. It is the further case of the petitioner that after his arrest, he was produced in the government hospital and it was found that he was physically and mentally fit and nothing was mentioned in the said report that there was any alcohol intake by



him. The petitioner was placed under orders of suspension by the Senior Superintendent of Police, Muzaffarpur vide memo no. 4455 dated 28.10.2016 and a departmental proceeding was initiated against him and the charges were framed vide memo no. 3574 dated 09.11.2016. Mr. Rajiv Ranjan was appointed as the conducting officer but no Presenting Officer was appointed. The petitioner was granted bail on 09.11.2016 and thereafter the memo of charge was provided to him. However, neither the Breath Analyzer Test Report nor other relevant documents were provided to him in clear violation of Rule 17 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereafter '2005 Rules'). The suspension order of the petitioner was revoked on 22.11.2016.

The petitioner filed the show-cause in the departmental proceeding and took a specific stand that he had not consumed any alcohol but the homeopathic medicine which was being taken by him for many years was containing the alcohol concentration.

5. It is the case of the petitioner that reasonable opportunity of hearing was not afforded to him during the disciplinary proceeding by the Enquiry Officer, Presenting Officer was not appointed and the Enquiry Officer submitted the



report, copy of such report was served on the petitioner wherein it is indicated that the petitioner has been recommended to be dismissed in the light of enquiry conducted and which has been confirmed by the Superintendent of Police.

6. It is the further case of the petitioner that after receipt of such report, the petitioner filed his second show-cause categorically stating therein about the taking of a particular homeopathic medicine at the relevant time and also annexed the medical prescription in support of his stand. However, the plea of the petitioner was not accepted and he was dismissed from his service vide order dated 24.07.2017, simply on the finding returned by the Enquiry Officer and also the recommendation made by the Senior Superintendent of Police, Muzzafarpur.

It is further case of the petitioner that on being dissatisfied with the order of his dismissal, he preferred an appeal before the Inspector General of Police, Muzzafarpur under Rule 852 (a) of Bihar Police Manual, which also came to be dismissed on 24.11.2017.

7. The petitioner challenged the dismissal order as well as the order passed by the Appellate Authority before this Court in the writ petition in C.W.J.C. No. 3073 of 2022. The grounds taken in the writ petition for challenging such orders



are that the entire proceeding right from its inception, is not legally justified as the disciplinary authority has failed to appoint the Presenting Officer and in absence of any Presenting Officer either to lead or to take the evidence that was collected against the petitioner, the Enquiry Officer could not have subsumed his duty to examine the evidence himself and to hold the same to be sufficient to establish the charges against the petitioner which is in clear violation of the 2005 Rules.

It was further highlighted in the writ petition that there was no justification on the part of the disciplinary authority to hold that the petitioner had consumed alcohol on the basis of the Breath Analyzer Test, in view of the ratio laid down by the Hon'ble Supreme Court, in the case of **Bachubhai Hassanalli Karyani -Vrs.- State of Maharashtra reported in (1971) 3 Supreme Court Cases 930.**

8. After issuance of notice, the counter affidavit was filed on behalf of the respondent no. 5, S.D.P.O., Saraiya, Muzzafarpur, wherein it is stated that the petitioner, at the time of raid, was found to have been drunk and therefore, in view of the provisions under 2016 Act, the departmental proceeding was conducted and the Breath Analyzer Test report was relied upon, however, no specific denial has been made with respect to the



averments taken by the petitioner in the writ petition relating to the non-supply of the vital documents so also about the non-appointment of the Presenting Officer.

9. The learned Single Judge in the impugned order, has been pleased to observe as follows:-

*“4. It is needless to say that Breath Analyzer Report is not a conclusive proof of consuming 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 petitioner breath was smelling Alcohol. Consumption of Alcohol can only be detected and conclusively asserted by way of blood and urine test of a person suspected to have consumed Alcohol.*

*5. In the instant case, blood and urine examination was not done and on the basis of mere smelling of Alcohol, the concerned authority issued major penalty of dismissal from service.*

*6. Relying on the decision of the Hon'ble Supreme Court, this Court also holds that Breath Analyzer Report is not a conclusive proof of consumption of liquor by the petitioner.*

*7. The Disciplinary Authority as well as Appellate Authority failed to consider such aspect of the matter and solely on the basis of the said report, that too conducted by the seizing officer, passed the strict test punishment provided in CCA Rules, 2005*



*against the petitioner.*

*8. In my considered view, the order of dismissal is an instance of violation of natural justice because of non-consideration of medical documents and failure on the part of the prosecution to have blood and urine tests of the petitioner done.”*

10. The learned Advocate General Mr. P.K. Shahi argued that even though the learned Single Judge relying upon the case of **Bachubhai Hassanalli Karyani** (supra) has been pleased to observe that the Breath Analyzer Report is not the conclusive proof of consuming liquor by a person, but in the said decision nothing has been held in that respect. In fact, it was a case where the Special Leave Appeal was limited to the question of sentence only and the learned counsel for the appellant in that case raised certain contentions that the sentence imposed on the appellant was excessive as the urine test of the appellant was not carried out and even though the blood of the appellant was sent for chemical analysis, but no report of the analysis was produced by the prosecution and therefore, the Hon'ble Supreme Court, taking into account such submission, has been pleased to observe that it could not be definitely held that the appellant was drunk at the time of occurrence of the accident. According to the learned Advocate General, there is



nothing in this decision that the issue was raised for consideration as to whether a Breath Analyzer Test can be the surest test for determining the consumption of the liquor or some other tests are, in addition to that, also to be conducted. He placed section 75 of 2016 Act which deals with the power of the officers mentioned in section 73 of the said Act to conduct breath analyzer tests and medical tests. Sub-section (3) of section 75 states that the reports of such tests shall be admissible as evidence under the Indian Evidence Act.

11. The learned Advocate General further placed the provisions from the Motor Vehicles Act, 1988 particularly, section 185 which prescribes punishment for driving by a drunken person or by a person under the influence of the drugs, wherein it is stated that whosoever while driving, or attempts to drive, a motor vehicle has, in his blood, alcohol exceeding 30 mg per 100 ml. of blood detected in a test by a Breath Analyzer or in any other test including a laboratory test, shall be punished accordingly.

The learned Advocate General further pointed out that the provision of Breath Analyzer Test was inserted in the year 1994 in the Motor Vehicles Act, 1988 and thereafter in the year 2019, it was prescribed that other test including the



laboratory test can also be conducted for determining whether the person was in a drunken condition or not; and since the word 'or' has been used which is a disjunctive conjunction, therefore, it cannot be said that if only Breath Analyzer Test, but no other test including a laboratory test is conducted, a person cannot be held to be in a drunken condition. It is further argued that during the departmental enquiry, as many as six witnesses were examined, who stated about the Breath Analyzer Test, but no cross-examination has been conducted by the delinquent.

12. It is further argued by the learned Advocate General that when the petitioner was asked to show-cause at the first instance, though a ground has been taken by him about consuming the homeopathy medicine, but no medical prescription has been submitted with the show-cause. Only when the enquiry report was supplied to the petitioner and the second show-cause was filed, the medical document was annexed, however such document was not proved in accordance with law. It is, however, fairly submitted by the learned Advocate General that in the counter affidavit, there is nothing that any Presenting Officer had in fact been appointed in terms of the requirement of 2005 Rules or the documents sought for by the petitioner were supplied to him in accordance with law.



13. The learned counsel for the respondent, on the other hand, submitted that since the scope of interference in the Letters Patent Appeal is limited and there is no perversity in the impugned order and the learned Single Judge relying upon the decision of the Hon'ble Supreme Court has been pleased to hold that the Breath Analyzer Test cannot be said to be a conclusive proof of consuming liquor by a person, therefore, the order should not be interfered with. He has also placed reliance on the decision of the Division Bench of this Court in the case of **The State of Bihar & Ors. -Vrs.- Aswasthama Mahto @ Ashwathama Mahto** decided on 26.02.2026 in LPA No. 1095 of 2024 which arises out of C.W.J.C. No. 15963 of 2021.

14. Adverting to the contentions raised by the learned counsel for the parties, there is no dispute that several grounds have been taken in the writ petition apart from the ground that Breath Analyzer Test report should not have been relied upon by the disciplinary authority for holding that the petitioner had consumed liquor, i.e., the Presenting Officer has not been appointed and non-supply of the breath analyzer report and other documents to the petitioner. These aspects have not at all been dealt with by the learned Single Judge while passing the impugned order. Only relying upon the decision of the Hon'ble



Supreme Court in the case of **Bachubhai Hassanalli Karyani** (supra), it has been held that since blood and urine examination was not done and it was based on mere smelling of alcohol, the authority has imposed the major penalty of dismissal, therefore, the order of the disciplinary authority as well as the appellate authority is not sustainable in the eyes of law.

15. On perusal of the judgment of the Hon'ble Supreme Court on which reliance has been placed by the learned Single Judge, we are of the view that the submission of the learned Advocate General that no issue was raised for determination in that case as to whether the Breath Analyzer Test was the conclusive proof of holding a person to have consumed liquor or not, is correct.

In the said case, submission of the learned counsel for the appellant was noted down in paragraph no. 4 of the order which was a case where Special Leave Appeal was limited to the question of sentence only and thereafter in paragraph no. 5, the Hon'ble Supreme Court has been pleased to hold that since it could not be definitely held that the appellant was drunk at the time of the occurrence of the accident, therefore, the sentence of rigorous imprisonment passed against the appellant was reduced to the period already undergone. This decision, in our humble



view, does not lay down any proposition as has been held by the learned Single Judge that the Breath Analyzer Report is not the conclusive proof of consuming liquor by a person.

16. So far as the Division Bench decision in the case of **Aswasthama Mahto** (supra) upon which reliance has been placed by the learned counsel for the respondent is concerned, we find that in that case, the Division Bench has been pleased to take note of the fact that the delinquent during the departmental enquiry has specifically made the defence supported with the documentary evidence and in the finding of the enquiry report, nowhere it was discussed about the defence taken by the delinquent and therefore, the Division Bench has been pleased to confirm the order of the learned Single Judge and found no illegality and perversity in the order of the learned Single Judge and dismissed the Letters Patent Appeal.

17. Therefore, we are of the humble view that the reasoning that has been assigned by the learned Single Judge in placing reliance in the case of **Bachubhai Hassanalli Karyani** (supra) in setting aside the order of dismissal passed by the disciplinary authority dated 24.07.2017 which has been affirmed by the appellate authority on 24.11.2017, cannot be held to be justified. Moreover, the learned Single Judge has not considered



the statutory provision of section 75(3) of 2016 Act which states about the report of the breath analyzer test to be admissible. In the case of **State Tr. P.S. Lodhi Colony, New Delhi -Vrs.- Sanjeev Nanda reported in (2012) 8 Supreme Court Cases 450**, while considering the expressions “while driving” and “attempting to drive” in section 185 of the Motor Vehicles Act, it was held that a breath analyzer test is applied so that the alcohol content in the blood can be detected instantly.

18. However, we are of the view that on the other grounds which have been taken by the petitioner in the writ petition, the relief which has been granted to the respondent by the learned Single Judge is sustainable in the eyes of law.

The ground that has been taken in the writ petition is that in terms of the provision of 2005 Rules, the disciplinary authority ought to have appointed the Presenting Officer, however, no Presenting Officer was appointed in the departmental proceeding. The relevant provision, i.e., Rule 17(5)(c) of 2005 Rules is quoted hereinbelow:-

**Rule 17 (5) (c):**

*“Where the disciplinary authority itself inquires into any article of charge or appoints an inquiring authority for holding an inquiry about such charge, it may, by an order, appoint a government servant or a legal practitioner to be known as the*



*"Presenting officer' to present on his behalf the case in support of the articles of charge."*

In the State's counter affidavit, nothing has been stated controverting such stand taken by the respondent that no Presenting Officer was appointed.

Similarly, specific ground has been taken in the writ petition that even though the memo of charge was provided to the petitioner, but the Breath Analyzer Report and the other documents on which reliance have been placed, were not supplied to the petitioner. There was no specific denial by the State in the counter affidavit filed.

Rule 17(4) of 2005 Rules reads as follows:-

**Rule 17 (4):**

*"The disciplinary authority shall deliver or cause to be delivered to the Government Servant a copy of the articles of charge, such statement of the imputations of misconduct or misbehavior and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the Government Servant to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person."*

The settled position of law as has been held in the case of **Nazir Ahmad -Vrs.- King Emperor** reported in



**AIR 1936 PC 253 (2)** is 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. A co-ordinate Bench of this Court in the case of **Narayan Prasad Sah -Vrs.- Union of India reported in 2008(2) PLJR 581** has held that non-appointment of a Presenting Officer and the Enquiry Officer's assumption of the role of prosecutor is a blatant violation of the principles of natural justice vitiating the entire enquiry. This opinion was further fortified by another co-ordinate Bench of this Court in the case of **Upendra Pandit -Vrs.- State of Bihar reported in 2023(4) PLJR 568** wherein it has been held as under:

*“11. In the opinion of the Court, Rule 17 (3) and (4) of the Rules of 2005 are very clear when they provide that where it is proposed to hold an inquiry against the government servant under the said Rules, the disciplinary authority shall draw up or cause to be drawn up the substance of the imputation of misconduct or misbehaviour in support of each article of charge, the same shall contain a statement of relevant facts, list of documents and list of witnesses by which the articles of charges are proposed to be sustained. Thus, non supply of the list of documents and the list of witnesses to the appellant in the instant case on which the disciplinary authority proposed to sustain the*



*charges levelled against the appellant in the disciplinary proceeding as also the proceeding being conducted without appointment of a Presenting Officer was a clear and serious lapse of the provisions of Rule 17 of the Act of 2005. The requirement of Rule 17 (3) and (4) not having been fulfilled, the order of punishment of dismissal from service of the appellant cannot be sustained.”*

The Presenting Officer plays a vital role in departmental enquiry by acting as the agent of the Disciplinary Authority, responsible for presenting the case in support of the charges. He ensures fairness by marshalling evidence, examining prosecution witnesses, and cross-examining defence witnesses, bridging the gap between allegations and Enquiry Officer's objective findings. The Presenting Officer assists in discovering the truth rather than acting solely as a hostile prosecutor and thus his role is generally crucial to ensure the validity of the enquiry process and that all the evidence are properly documented and evaluated.

In view of the aforesaid statutory provision having been flouted while conducting the disciplinary proceeding and judicial pronouncements of this Court, we are of the view that the order passed by the disciplinary authority in dismissing the petitioner so also by the appellate authority in dismissing the



appeal are liable to be quashed.

Therefore, we are of the view that even on the ground on which the impugned order has been passed is not sustainable in the eyes of law, otherwise the impugned order is sustainable in the eyes of law, as discussed above and thus the relief which has been granted to the petitioner is quite justified.

19. At this juncture, the learned Advocate General has submitted that since this Court has found the procedural flaws in the departmental proceedings, in view of the decision of this Court, the matter should be remitted back for fresh adjudication by the Enquiry Officer after rectifying such flaws.

Considering the fact that the petitioner has already retired from service since 2019, besides the fact that disciplinary authority had an opportunity to conduct a proper enquiry proceeding and if the mandatory provisions as per 2005 Rules were not complied with and no Presenting Officer was appointed, it goes to the root of the matter and vitiates the entire departmental proceeding, we are unable to accept the contention raised by the learned Advocate General for remitting back the matter. We also endorse the view of the learned co-ordinate Division Bench of this Court, which in identical circumstances, has been pleased to observe, “A remand on finding the enquiry



proceeding to be vitiated on a technical ground; is to avoid prejudice to the delinquent employee. As has been held, it is not a measure to cover up the negligence or laxity of the Disciplinary Authority in conducting a proper enquiry.” [*Vide Srikant Singh -Vrs.- The State of Bihar & Ors. (L.P.A. No. 58 of 2024) & The State of Bihar & Others -Vrs.- Vikash Kumar @ Vikas Kumar (L.P.A. No. 446 of 2024)*]

20. Accordingly, the Letters Patent Appeal stands dismissed.

**(Sangam Kumar Sahoo, CJ)**

**(Harish Kumar, J)**

guddukr/-

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