

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2615 of 2021

=====

Sarwon Kumar Son of Shri Shivcharan Singh Resident of Village-
Gulamohiya, Post- Kachchi Dargah, Fatwa, District- Patna, Pin- 803201

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Home (Police) Department, Bihar, Patna.
2. Director General of Police Bihar, Patna.
3. Additional Director General of Police, Law and Order Bihar, Patna.
4. Inspector General of Police, Patna Range, Patna
5. Senior Superintendent of Police, Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Abhinav Srivastava, Sr. Advocate
Mr. Shubham Priyadarshi, Adv.
For the Respondent/s : Mr. Manoj Kumar, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
C A V JUDGMENT

Date : 22-08-2025

This Court has heard Mr. Abhinav Srivastava, learned Senior Advocate with Mr. Shubham Priyadarshi, learned Advocate for the petitioner and Mr. Manoj Kumar, learned Advocate for the State.

2. The challenge made in the present writ petition is the order dated 02.06.2020 bearing Memo No. 173 passed by the Inspector General of Police, Central Range, Patna, by which the petitioner has been inflicted with the punishment of dismissal from service. The appeal preferred by the petitioner also came to be rejected vide order dated 07.10.2020 passed by



the Additional Director General of Police (Law and Order), Bihar, Patna, which order is also put to challenge in the present writ petition.

3. The factual matrix of the case, as culled out from the materials available on record, are as follows:

(i) The petitioner was appointed as a Constable in the services of Bihar Police. Having promoted to the post of Assistant Sub Inspector in November, 2016, the petitioner was posted at Beur Police Station, Patna on 09.12.2016. On 03.02.2017, the DIG, Central Range, Patna, noticing illegal manufacturing and trade of liquor under Beur Police Station directed the concerned officer to take necessary action in this regard. On 03.02.2017, a report, as contained in Anneuxre-2 to the writ petition, was submitted disclosing the fact that the illegal trade of liquor had been running in the patronage of the Beur Police Station in connivance with other persons; the present petitioner was also stated to be involved in the trade of liquor. Under order bearing Memo No. 1097 dated 14.02.2017, the Senior Superintendent of Police, Patna placed the petitioner under suspension and further directed to take action against the Officer Incharge, Beur Police Station and others, including the petitioner.



(ii) In the aforesaid premise, the DIG, Central Range, Patna directed the SSP, Patna to conduct a departmental proceeding against Dhirendra Kumar Pandey, the Officer Incharge. Simultaneously, by letter bearing Memo No. 1097 dated 11.05.2017, a decision has been taken to initiate departmental proceeding against the petitioner. The departmental proceeding in pursuant to the said letter culminated into dismissal of the petitioner from service on 06.06.2017, which was also confirmed in appeal on 05.10.2017. Aggrieved with the aforesaid order, the petitioner, preferred review.

(iii) The Director General of Police having noticed the procedure being suffered with irregularities and illegalities, set aside both the orders and remanded the matter to the disciplinary authority; however, considering the gravity of the offence directed that the petitioner would be placed under suspension during the course of departmental proceeding. The aforesaid order has been placed as Anneuxre-14 to the writ petition. In the light of the aforesaid order, the petitioner was reinstated in service and again placed under suspension and on 28.09.2018 a decision was taken to conduct departmental proceeding afresh against him. The DSP, Traffic-I, Patna was



appointed as Conducting Officer whereas the Police Inspector, Traffic as Presenting Officer. On receipt of the memo of charge, as contained in Annexure-15 to the writ petition, the petitioner submitted his detailed explanation on 05.05.2019. The petitioner, during the departmental proceeding, requested the Conducting Officer for ensuring the appearance of individuals relevant to the proceeding so that he would be able to cross examine them; additional request has been made to furnish call details. The petitioner was furnished the call record however, request of the petitioner to cross examine certain persons was not accepted. In the meanwhile, ongoing enquiry against the SHO, Dharendra Kumar Pandey was concluded, however, charges could not be proved and accordingly by an order under Memo No. 359, the DIG Central Range, Patna exonerated Dharendra Kumar Pandey with caution.

(iv) On 17.08.2019, the DSP Traffic-I, after conclusion of the enquiry, submitted report (Annexure-22 to the writ petition), wherein the charges levelled against the petitioner were found to be proved. The petitioner was asked to submit show cause reply which was duly responded. However, the same could not satisfy the authority and, in the meanwhile, vide letter bearing No. 4714, the Senior Superintendent of Police, Patna



recommended for punishment of dismissal from services of the petitioner to the Inspector General of Police, Central Range, Patna. The petitioner was again directed to submit his explanation on the aforesaid recommendation letter, which was also responded by filing an explanation. Finally, by order dated 02.06.2020 (Anneuxre-28 to writ petition), the Inspector General of Police, Central Range, Patna dismissed the petitioner from services. The petitioner preferred an appeal on 02.06.2020 before the Additional Director General of Police, Bihar, however, it came to be rejected vide order dated 07.10.2020 as contained in Annexure-30 to the writ petition.

4. Mr. Abhinav Srivastava, learned Senior Advocate representing the petitioner has taken this Court through various annexures including the preliminary enquiry report as well as the impugned orders and vehemently submitted that the dismissal of the petitioner is highly arbitrary, unreasonable and in a blatant disregard and violation of the Articles 14 and 21 of the Constitution of India, besides the transgression of the statutory provisions contained under Rule 17 (3) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as the 'Rules, 2005'). Neither the charges indicate any specific misconduct committed by the



petitioner nor the statement of imputation discloses any misconduct committed by the petitioner for which any action could be initiated. The report dated 13.02.2017 submitted by the City S.P. (West) alone had been stated to be misconduct committed by the petitioner and no specific act on the part of the petitioner for which the enquiry was to be conducted. The witnesses examined by the Enquiry Officer have only corroborated signature on the aforesaid report and no statement had been recorded by any witness to the effect that the petitioner was indulged in any unlawful activity with respect to manufacturing and trade of illicit liquor. Request of the petitioner to cross examine the persons, whose statements were of utmost relevance, the same was clearly denied. The enquiry report as well as the order passed by the disciplinary authority and the appellate authority are said to be even without taking note of the explanations furnished by the petitioner. The entire action in conducting the departmental proceeding as well as inflicting punishment upon the petitioner smacks of complete lack of application of mind as well as predetermination on the part of the concerned respondents.

5. Mr. Srivastava, learned Senior Advocate for the petitioner further argued that the high handedness and



discriminatory as well as arbitrary approach on the part of the respondent authorities is manifest from the very fact that the Inspector of Police, Dharendra Kumar Pandey, who had been stated to be instrumental in purported manufacturing of trade of liquor, he had not only been exonerated of the charges but also let go off in the departmental proceeding conducted against him with a mere caution, whereas major penalty of dismissal from service has been inflicted upon the petitioner. The appellate order is also said to be perverse, inasmuch as, the grounds raised by the petitioner while assailing the impugned order of dismissal has not even been deliberated and discussed.

6. Narrating the grounds which led to challenge the impugned orders, learned Senior Advocate further contended that one Sunil Kumar who was also posted as Sub Inspector of Police at Beur Police Station subjected to identical charge and the departmental proceeding which culminated into his dismissal as also the appellate order affirming the same were put to challenge before this Court in CWJC No. 16616 of 2021. A Bench of this Court, considering the materials found against the petitioner to prove his guilt either in the enquiry report dated 13.02.2017 or in course of enquiry held the case of no evidence and thereby set aside the enquiry report as well as the impugned



order of punishment as well as the appellate order vide judgment and order dated 05.01.2024 with 100% back wages and other consequential benefits. Reliance has also been placed on a Two-judge Bench decision of the Apex Court in the case of *Ayaaubkhan Noorkhan Pathan vs State Of Maharashtra & Ors [(2013) 4 SCC 465]* to reinforce his submission that right to cross examine is an indispensable part of natural justice and denying this opportunity renders an enquiry a mere formality.

7. He lastly contended that justice must not only be done but it must eminently appear to be done in order to inspire confidence in the mind of those who are subjected to it. The authorities must take care to manifestly keep an open mind as they are to act fairly in adjudging the guilt or otherwise of the person proceeded against and specially when he has the power to take a punitive step. Thus the language in which the charges are couched and conveyed to the person proceeded against must be in all fairness clear and unambiguous with an open mind. In absence of reasons in the original order makes the order vulnerable to challenge. To support the aforesaid contention, reliance has been placed on a decision rendered by the Apex Court in the case of *Oryx Fisheries Pvt. Ltd vs Union Of India & Ors [(2010) 13 SCC 427]*.



8. Mr. Manoj Kumar, learned Advocate for the State dispelling the afore noted contention has submitted that the enquiry report as contained in Annexure-2 clearly suggests that on the fateful day, the petitioner was under night patrolling duty and the vehicle laden with illicit wine was apprehended and brought to the police station and was released by him in collusion with the O.D. Officer and Sub Inspector, Sunil Kumar along with the private driver, Jitendra Kumar, who used to drive the vehicle of the SHO of Beur P.S. Based upon the enquiry report showing the involvement of the petitioner in the trade of illicit wine, the Senior Superintendent of Police placed the petitioner under suspension and recommended for departmental proceeding. The opinion of the Enquiry Officer is based upon the oral and documentary evidence. The examination of the witnesses was made in presence of the petitioner on 13.08.2019 and the petitioner has put his signature on each and every statement but refused to cross examine them. No infirmities whatsoever has been found in course of the enquiry and thus on receipt of the same, the Senior Superintendent of Police being the controlling officer has recommended for dismissal of the petitioner. The petitioner was asked to submit show cause on the proposed punishment as well as the enquiry report. However, on



being found no merit, the disciplinary authority inflicted the punishment, which is proportionate to the charges and in accordance with law. Submission has also been made that the petitioner has not preferred any Memorial against the order of dismissal or the appellate order and directly moved before this Court.

9. Narrating the factual aspects of the matter, learned Advocate for the State further submitted that there may be some anomalies in the departmental proceeding /procedure but in this case the delinquent ASI had been given sufficient opportunity to be heard from time to time and principle of natural justice has been followed in its letter and spirit. The controlling authority of the petitioner is the competent authority; however in the present case the DIG, Central Range Patna had entrusted to enquire the matter and submit a report. There is no infirmities in making recommendation by the controlling authority which is not binding upon the disciplinary authority. The petitioner has failed to point out any transgression of the specific rules of the Rules, 2005.

10. Referring to the decision of the Hon'ble Apex Court in the case of *Airports Authority of India vs. Pradip Kumar Banerjee [(2025) 4 SCC 111]*, it is contended that the



Court reiterating the principle enunciated in *Boloram Bordoloi v. Lakhimi Gaolia Bank* [(2021) 3 SCC 806] has held that in disciplinary proceeding it is not for the disciplinary authority to deal with each and every ground raised by the delinquent officer in the representation against the proposed penalty and detailed reasons are not required to be recorded in the order imposing punishment, if he accepts the finding recorded by the Enquiry Officer. Reliance has also been placed on a decision rendered by the Division Bench of this Court in the case of *Om Prakash Sah vs. the State of Bihar & Ors.* [LPA No. 34 of 2014], wherein the learned Division Bench placing reliance upon the decision of the Apex Court in the case of *State of Haryana & Anr. vs. Rattan Singh* [AIR 1977 SC 1512] has held that mere non examination of the complainant is inconsequential, if the Department has been able to prove the charges by producing the relevant witnesses. The decision of the learned Single Judge in the case of *Anuj Kumar Singh vs. The State of Bihar & Ors.* [CWJC No. 6409 of 2016] has also been referred that in case there is no infirmity in the procedure followed by the disciplinary authority and there has been no violation of the principle of natural justice, the impugned order is not required to be interfered with in view of the settled law to the effect that



under Articles 226 and 227 of the Constitution of India, neither the evidence can be re-appreciated nor interference can be made with the conclusion of the enquiry proceeding. To support the contention that the Superintendent of Police or the Senior Superintendent of Police being the controlling authority can also initiate departmental proceeding or impose punishment, except removal or compulsory retirement, and as such, there is no infirmity if the recommendation has been made with the proposed punishment. Reliance has also been placed on a decision rendered in the case of *Ras Bihari Paswan Vs. The State of Bihar 7 Ors. [CWJC No. 8664 of 2017]* and further in the case of *Arun Kumar Jha vs. The State of Bihar & Ors. [CWJC No. 8955 of 2015]*.

11. Highlighting the legal proposition enunciated in the afore noted cases, learned Advocate for the State urged before this Court that no interference is required to the impugned orders of dismissal duly affirmed in appeal.

12. This Court has carefully heard the learned Advocates for the respective parties and perused the materials available on record. Before proceeding further, it would be pertinent to observe here that the access to the High Court by way of a writ petition under Article 226 of the Constitution is



not a constitutional right but also a part of the basic structure. The rule of exclusion of writ jurisdiction, in case of alternative remedy, is rule of discretion and not a rule of compulsion. In an appropriate case, in spite of the availability of alternative remedy a Writ Court may still exercise its discretionary jurisdiction of judicial review, in at least three contingencies; (i) where the writ petition seeks enforcement of any fundamental rights, (ii) where there is failure of principle of natural justice or (iii) where orders or proceedings are wholly without jurisdiction or vires of the Act is under challenge. Since the thrust of the argument led by the learned Senior Advocate representing the petitioner is, *inter alia*, confined in the premise of the orders impugned and the action of the respondents, are in breach of principle of natural justice; hence the Court proceeded to examine the legality of the impugned orders.

13. The story starts from the letter issued by the DIG, Central Range, Patna contained in Memo No. 231 dated 03.02.2017 where he directed the SSP, Patna to investigate in the matter regarding sale and trade of liquor under Beur Police Station. It was also directed transfer of the officers/personnels established/deputed in Beur Police Station including SHO from the administrative post with immediate effect and post there



competent and capable police officer/personnels in order to implement the new excise police. The direction contained in the afore noted letter, led to an enquiry duly conducted by the City S.P., who submitted a report under Letter No. 987 dated 13.02.2017. The report in sum and substance reveals that on 28/29.01.2017 one vehicle laden with liquor was seized and brought to Beur Police Station. However, the police patrolling party in collusion with the OD Officer released the vehicle and the apprehended person, after extorting Rs.1,64,000/-.

14. The City S.P. recorded the statement of all the police personnels, who were posted and present at Beur Police Station and it transpired that in the night of 28/29.01.2017 at about 12:30, the Sub Inspector, Sunil Kumar along with Jitendra Kumar, the private driver of the police station and one unknown person had been talking to each other in the police station and thereafter the unknown person taken away the vehicle. Later on, they came to know that the vehicle was laden with the liquor and released unauthorisedly after extorting money. On the fateful night, the petitioner was also in the night duty and in course of patrolling at about 11:30 pm, he found a motorcycle parked near four-wheeler vehicle, whereupon he asked his driver to enquire as to why the vehicle is parked. He has been



informed by the Guard that the private driver of the SHO, Dharendra Kumar Pandey was sitting along with his friend and they told him that they are going just right now, whereupon the petitioner with the patrolling party proceeded ahead and at about 5:00 am returned to the barrack. Later on, the news surfaced that the petitioner is also one of the person who was found involved along with others in unauthorisedly releasing the vehicle after extorting money. The report finally revealed that it is Jitendra Kumar, the private driver of the SHO, who was involved in trade of illicit wine with the help of other police personnels. The aforesaid report led to suspension of the petitioner along with others including Inspector of Police, Sunil Kumar, Vishwambar Prasad besides Dharendra Kumar Pandey, SHO Beur Police Station.

15. Suffice it to observe that since initial departmental proceeding initiated against the petitioner culminated into dismissal and affirmance in the appeal was set aside while hearing review at the level of the Director General of Police, Bihar and the matter stands remitted for fresh departmental proceeding; hence the same is not being discussed.

16. Now coming to the memo of charge which has been served upon the petitioner on 28.03.2019 in pursuant to the



order of the Director General of Police, it plainly alleged that while the petitioner was posted at Beur Police Station in pursuant to the direction of the DIG, Central Range, Patna, an enquiry was conducted in relation to illegal manufacturing and trade of illicit wine, at the level of the City S.P. In the report submitted by him, the petitioner is found to be guilty. The conduct of the petitioner is found to be unbecoming of a police officer and shows misconduct, disobedience and negligence of duty. To support the aforesaid charges, a list of documents and the witnesses have been appended to the memo of charge. Bare perusal of the memo of charge, there is no whisper with regard to any incidence which took place on 28/29.01.2017 and it is not made clear as to what action of the petitioner constitutes misconduct and disobedience as well as negligence of duty. The persons whose statements were recorded by the City S.P. in course of preliminary enquiry were not witness to the memo of charge, rather the (I) Incharge, General Branch, DIG, Central Range, (ii) Confidential Reader of SSP Crime Reader, (iii) City S.P. and (iv) ASI, New Police Line have been shown as witnesses. None of the persons, witnessed to the occurrence of the said date i.e., 28/29.01.2017 have been named in the witness; all the more, the list of witnesses suggests only



designation of the post not the names of the persons.

17. It would be worth noting that rule 17 of the Rules, 2005 clearly mandates that where it is proposed to hold an inquiry against a Government servant under this Rule, the disciplinary authority shall draw up or cause to be drawn up the substance of the imputations of misconduct or misbehaviour as a definite and distinct article of charge. There must be a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain (a) a statement of all relevant facts including any admission or confession made by the Government Servant and (b) a list of such document by which, and a list of such witnesses by whom, the articles of charge are proposed to be sustained. The witnesses examined during the course of departmental proceeding were merely a formal witness and have only recognized and certified the signature made on various documents. None of them have stated about the complicity of the petitioner. It is very surprising that finding of guilt returned by the Enquiry Officer manifestly based upon the initial enquiry report dated 13.02.2017 submitted by the City S.P. but neither the author of the report was examined nor the witnesses whose statements were recorded in course of preliminary enquiry. Time



without number the Apex Court has cautioned that mere tendering of documents, does not prove the contents thereof, there is neither oral nor documentary evident to prove the charge of misconduct of the petitioner in the alleged occurrence.

18. In case of ***Roop Singh Negi vs Punjab National Bank & Ors [(2009) 2 SCC 570]***, an employee, Roop Singh Negi, who was dismissed from service on the accusation that he had taken blank draft book from the Bank, during internal enquiry conducted by the Bank, the finding of his guilt heavily relied on a confession he allegedly made to the police several years prior, however, this purported confession along with other supporting documents was simply presented without anyone testifying to its authenticity or relevance. The delinquent had never been given opportunity to question/cross examination any witness who could have shed light on the initial complaint or evidence against him. Nonetheless, the delinquent had been acquitted in the criminal case. The Bank proceeded to dismiss him. When the matter reached the Supreme Court it strongly emphasized that for serious penalties like dismissal, it is absolutely essential to have witnesses present and record the oral evidence after giving opportunity of fair chance to cross examine them. The Court made it clear that merely presenting



the documents or relying on old, unproven reports is insufficient; fundamental fairness and the principles of natural justice demand a more robust and transparent process of proving charges.

19. In the case of *Ayaaubkhan Noorkhan Pathan* (supra), the Court unequivocally affirmed that right to cross examination is an indispensable part of natural justice. It clarified that denying this opportunity renders an enquiry a ‘mere formality’ and also stated that affidavit cannot be considered sufficient evidence without the deponent being subjected to cross examination, as they are not evidence under the Indian Evidence Act’ unless specifically ordered by the court.

20. This Court also finds that no role whatsoever has been assigned to the Presenting Officer and it appears that the Enquiry Officer has assumed the role of Presenting Officer. The issue regarding role of presenting Officer was duly considered by a Bench of this Court in the case of *Panchanan Kumar vs. The Bihar State Electricity Board & Ors.[1996(1) PLJR 401]* where the Court held as follows:

“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.”

21. The role of the Enquiry Officer in a departmental enquiry cannot be treated as a casual exercise and the Enquiry Officer has to be wholly unbiased and cannot be allowed to proceed with a close mind’ as has been ruled by the Apex Court in the case of ***State of Uttar Pradesh & Ors. vs. Saroj Kumar Sinha [(2010) 2 SCC 772]***.

22. The authorities and Tribunals have been cautioned that mere conjectures and surmises would not take place of proof. The perverse finding without any evidence to link to conclusively established the charge would not be sufficient to hold guilty even on preponderance of probabilities to cause a misconduct by a delinquent officer in a disciplinary proceeding. In this regard reference may be made to a decision rendered by the Apex Court in the case of ***Commissioner of Police, Delhi & Ors vs Jai Bhagwan [(2011) 6 SCC 376]***.

23. The decisions, whereupon reliance has been placed by the learned Advocate for the State, it is made clear that there is no confrontation with the settled legal position that the High Court while exercising the power of judicial review under



Article 226 of the Constitution cannot act as a court of appeal over the decision of the authorities holding a departmental enquiry against the public servant, nevertheless, the High Court can see whether:

“(a) the enquiry is held by a competent authority;

(b) the enquiry is held according to the procedure prescribed in that behalf;

(c) there is violation of the principles of natural justice in conducting the proceedings;

(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.”

24. The aforesaid principles and scope of interference have been crystallised by the Apex Court in the case of ***Union of India v. P. Gunasekaran [(2015) 2 SCC 610]***.

25. There is no doubt that if the finding of the Enquiry



Officer and the disciplinary authority is not supported by any evidence, that would be recorded as an error of law, which can be corrected by a writ of certiorari. The principle succinctly summed up by the legendary centenarian V.R. Krishna Iyer, J. in ***State of Haryana v. Rattan Singh [(1977) 2 SCC 491]*** while underscoring the fair play in the action of the respondents disciplinary authority crystalised as follows:

“4.....It is well settled 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. It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case-law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good.....”

26. It would also be relevant to take note of the facts, which have materials bearing over the issue that in identical



situation one Sunil Kumar was also subjected to a departmental proceeding based upon the report dated 13.02.2017 submitted by the City S.P. leading to his dismissal from service was questioned before this Court in CWJC No. 16616 of 2021, wherein the Court while setting aside the impugned order of punishment has quashed and cancelled the enquiry report on being found the same does not contain any evidence either oral or documentary against the petitioner. In the subjected case, the charges *qua* the petitioner, was also identical based upon the same enquiry report dated 03.02.2017 leading to similar departmental proceeding and exactly identical punishment, and thus uniformity demands uniform treatments.

27. This Court cannot lose sight of the fact that the initial enquiry in connection with the purported manufacturing of illicit wine and its trade, pursuant to the direction of the Inspector General of Police, was clearly in relation to involvement of all the police personnels of the Beur police station. The enquiry report, which is made the basis to inflict punishment, clearly reveals that the entire incidence of manufacturing of trade of illicit wine undertook on account of patronage given by the SHO of Beur Police Station namely, Dharendra Kumar Pandey, albeit, he has been let off from all the



charges and exonerated only with a caution; copy of the order is also placed on record as Annexure-20 to the writ petition. So far the contention of the petitioner that the Senior Superintendent of Police is not the disciplinary authority and as such any recommendation of inflicting punishment of dismissal is beyond his jurisdiction needs not to be examined for the simple reason that the impugned order came to be passed by the Inspector General of Police, Central Range, Patna, who is the competent authority. Moreover, it is trite that the recommendation for punishment is not at all binding upon the disciplinary authority, who is bound to apply its independent mind to the materials available on record.

28. Upon perusal of the impugned order, there is no iota of confusion that it is only the preliminary enquiry report which led to initiation of departmental proceeding and its culmination into dismissal of the petitioner. It would be worth benefiting to note that a Two-Judge Bench of the Hon'ble Supreme Court in the case of *K. Prabhakar Hegde vs. Bank of Baroda [Civil Appeal No. 6599 of 2025, vide judgment dated 19th August, 2025]* has clearly observed that if a preliminary enquiry report or the finding therein are sought to be relied on, the witnesses whose evidence are relied on in preparing the



same ought to be brought before the Enquiry Officer and the charged officer afforded an opportunity of cross examine them. If the preliminary report is sought to be relied upon in the enquiry report, then such preliminary enquiry report must be provided to the delinquent employee. The Court further clarified that a preliminary enquiry report or the finding therein cannot be used to come to the conclusions recorded in the report of enquiry if such preliminary enquiry report/finding, are based on oral and/or documentary evidence which are obtained behind the charged employee. Thus having noticed the mandate of the Apex Court, there is no hesitation to hold the impugned orders are in complete breach of the principle of natural justice.

29. The impugned order of dismissal also smacks of no application of mind and total non consideration of the issue raised by the petitioner, apart from the same being not supported by any reason or evidence. The reliance of the petitioner based upon a decision in *Oryx Fisheries Pvt. Ltd* (supra) would also be relevant here where the Court has emphasized implicit duty to the authorities performing quasi judicial function to assign reasons for its conclusion.

30. This Court *prima facie* finds that neither the memo of charge contains the distinct imputation nor the finding of the



Enquiry Officer is based on any legal or valid evidence. The Presenting Officer also failed to discharge its duty to present the case of the Department. The order of punishment impugned herein based upon the enquiry report is also perverse and cryptic. There is no discussion and deliberation to the reply to the second show cause notice as to why they are not found to be acceptable and on all reasons and discussions made hereinabove, this Court is left with no option but to set aside the impugned order as contained in order dated 02.06.2020 bearing Memo No. 173. The Appellate Authority also committed identical mistake when he failed to consider the grounds of appeal. The duty of Appellate Authority has been duly assigned in Rule 27 of the Rules, 2005 that has also been given a complete go by. Thus, the appellate order also stands aside. On account of the impugned orders having been set aside, the consequences shall follow.

31. The writ petition stands allowed.

32. The parties shall bear their own cost.

(Harish Kumar, J)

Anjani/-

AFR/NAFR	
CAV DATE	24.06.2025
Uploading Date	27.08.2025
Transmission Date	

