IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1208 of 2021

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Srikant Prasad Son of Ragho Prasad Resident of Village- Achalpur, Police Station- Hisua, District- Nawada.

... ... Petitioner/s

Versus

1. The State of Bihar through the Home Secretary, Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Additional Director General of Police, Law and Order, Bihar, Patna.
4. The Inspector General of Police, Rail, Bihar, Patna.
5. The Deputy Inspector General of Police, Rail, Bihar, Patna.
6. The Superintendent of Police, Rail, Muzaffarpur.
7. The Deputy Superintendent of Police, Rail, Samastipur.
8. The Deputy Superintendent of Police, Rail, Sonepur, Chapra.
9. The Assistant Sub-Inspector of Police, Rail, Sonepur, Chapra.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 1528 of 2021

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Bipin Kumar Son of Bishnudeo Yadav Resident of Village- Maisaur, Police Station- Kusheshwar Asthan, District- Darbhanga.

... ... Petitioner/s

Versus

1. The State of Bihar through the Home Secretary, Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Additional Director General of Police, Law and Order, Bihar, Patna.
4. The Inspector General of Police, Rail, Bihar, Patna.
5. The Deputy Inspector General of Police, Rail, Bihar, Patna.
6. The Superintendent of Police, Rail, Muzaffarpur.
7. The Deputy Superintendent of Police, Rail, Samastipur.
8. The Deputy Superintendent of Police, Rail, Sonepur, Chapra.
9. The Assistant Sub- Inspector of Police, Rail, Sonepur, Chapra.

... ... Respondent/s

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Appearance :
(In Civil Writ Jurisdiction Case No. 1208 of 2021)
For the Petitioner/s : Mr. Ramakant Sharma, Sr. Adv.
Mr. Rakesh Kumar Sharma, Adv.
Mr. Rabinder Kumar, Adv.

For the Respondent/s : Md. Nadim Seraj, GP-5
Mr. Shailesh Kumar, AC to GP-5
(In Civil Writ Jurisdiction Case No. 1528 of 2021)
For the Petitioner/s : Mr. Ramakant Sharma, Sr. Adv.
Mr. Rakesh Kumar Sharma, Adv.
Mr. Rabinder Kumar, Adv.
For the Respondent/s : Mrs. Babita Kumari, AC to SC-1
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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT
Date : 22-08-2025

This Court has heard Mr. Ramakant Sharma, learned Senior Advocate with Mr. Rakesh Kumar Sharma, learned Advocate for the petitioners and Mr. Shailesh Kumar, learned Advocate as well as Mrs. Babita Kumari, learned Advocate for the State.

2. Since both the impugned orders inflicting the punishment of dismissal from services are arising out of the one and the same occurrence, leading to identical charges and departmental proceeding in the premise of similar facts, hence both the writ petitions are being heard together and disposed off by this common order.

3. In CWJC No. 1208 of 2021, the challenge is made to the order contained in Memo No. 286 dated 27.02.2020, passed by the Superintendent of Police, Rail, Muzaffarpur, whereby and whereunder, in pursuant to Departmental Enquiry No. 16/2019, the petitioner has been inflicted with the punishment of dismissal. The appeal preferred by the petitioner

also came to be rejected vide order contained in Memo No. 173 dated 26.05.2020, issued under the signature of respondent no. 3, The Additional Director General of Police, Law & Order, Bihar, Patna. The challenge is also made to the aforesaid order along with the memo of charge.

4. In CWJC No. 1528 of 2021, the challenge is made to the order contained in Memo No. 287 dated 27.02.2020, passed by the Superintendent of Police, Rail, Muzaffarpur, whereby and whereunder, in pursuant to Departmental Enquiry No. 14/2019, the petitioner has been inflicted with the punishment of dismissal. The appeal preferred by the petitioner also came to be rejected vide order contained in Memo No. 172 dated 26.05.2020, issued under the signature of respondent no. 3, The Additional Director General of Police, Law & Order, Bihar, Patna. The appellate order as well as the memo of charge, are also put to challenge, herein.

5. The short facts, which led to the filing of the present writ petitions, as culled out from the materials available on record, are summarized hereinbelow:-

(i) At the relevant time, while the petitioners were posted as Constable at Rail P.P., Hasanpur; on 10.10.2019, a video was made viral in social media that in a hall like barrack

situated behind Railway P.P., Hasanpur, DPC.- 334 Manoj Kumar Singh and Bhusan Kumar Nirmal, railway employee were seen eating food sitting on chair and table. During the dining, both the aforenoted persons, picked up a bottle under the table and poured the substance in the glass and consumed the same. In the said video, the petitioner of CWJC No. 1208 of 2020 (Srikant Prasad) was found sleeping and Sub-Inspector, Baijnath Singh and petitioner of CWJC No. 1528 of 2021 (Driver Constable 07- Bipin Kumar) were found talking about a women liquor smuggler, Renu Devi.

(ii) On account of the viral video in social media, the Dy.S.P., Samastipur Rail was authorized to enquire into the matter, who submitted his report on 12.10.2019. Based upon the aforesaid report, the Superintendent of Police, Rail Muzaffarpur directed for institution of an FIR, accordingly, Rail Samastipur (Hasanpur) P.S. Case No. 179 of 2019 was registered for the offences punishable under Section 37(a) of the Bihar Prohibition and Excise Act, 2016 on 16.10.2019.

(iii) The blood and urine sample of the police personnels were collected on 14.10.2019 and forwarded to the Forensic Science Laboratory, Muzaffarpur and after clinical examination, report was furnished on 03.01.2020. In the

meanwhile, the petitioners were placed under suspension and a decision was taken to initiate a departmental proceeding against the petitioners. After appointment of the Enquiry Officer as well as Presenting Officer, the memo of charge containing the imputation, constituting misconduct and unbecoming a member of a discipline force, on account of their suspected presence in the room. The memo of charge contains the list of documents as well as the list of witnesses.

(iv) The petitioners submitted their detailed written statement/explanation refuting all the allegations. In course of enquiry, two of the witnesses were examined and after conclusion of the enquiry, the Conducting Officer submitted his report vide Memo No. 58 dated 20.01.2020. The second show-cause notices were issued to the petitioners. In response, thereto, the petitioners submitted their show-cause reply. However, on being dissatisfied with their second show-cause reply, inflicted the punishment of dismissal from the services. The petitioners aggrieved with the order(s) of punishment, preferred appeal, but to no succor and the same also came to be rejected.

6. Learned Senior Advocate while assailing the impugned orders of punishment has contended that the charges levelled against the petitioners were too vague to understand.

The alleged viral video was approximately 3-4 months old and the petitioners did not have any knowledge, who made the video or made it viral. Even as per the viral video clips, the petitioner in CWJC No. 1208 of 2021 (Srikant Prasad) was found sleeping in the room, whereas, the petitioner in CWJC No. 1528 of 2021 (Bipin Kumar) was found talking to Sub-Inspector Baijnath Singh.

7. There is nothing in the video that it is the petitioners who were found consuming the liquor/alcohol. This fact has also been corroborated by the witnesses, namely, Smt. Smita Suman. Sr. Dy.S.P. Samastipur and ASI Shiv Shankar Singh, who were examined and cross examined in the enquiry.

8. The Enquiry Officer failed to appreciate that the blood and urine test was collected on 14.10.2019 with respect to incidence, which took place 3-4 months ago and thus, even for the sake of argument, it is accepted that urine report suggest ethyl alcohol by the Forensic Science Laboratory; though it is not corroborated by the blood test report, that may give a fresh cause of action, but could not satisfy the subjected charges. All the more, the report is itself contradictory and, as such, the order of punishment is not based upon any substantive material.

9. The entire enquiry report is based upon surmises

and conjectures and only on being found their presence in the room, suspicion has been raised against the petitioners and thereby, the Enquiry Officer returned the finding of guilt. The disciplinary authority also failed to consider the show-cause reply of the petitioners and inflicted the harshest punishment of dismissal only on the basis of suspicion and the Forensic Science Laboratory report, which could not be relied on account of being contradictory to each other. The appellate order is also wholly perverse and non speaking, inasmuch as, no ground of challenge has been discussed and deliberated.

10. Narrating the aforesaid facts, reliance has also been placed on a Bench decision of this Court in the case of ***Sonu Kumar Vs. The State of Bihar & Ors.***, CWJC No. 17527 of 2019, wherein, based upon a viral video, in which the delinquent was seen consuming alcohol, had been subjected to departmental proceeding and inflicted with the order of dismissal. However, the Court on being found that the finding of misconduct being without evidence, to support the charges, has set-aside the impugned order of punishment.

11. Dispelling the aforesaid contention, learned Advocate for the State submitted that the entire departmental proceeding was conducted in terms with the Bihar Government

Servants (Classification, Control & Appeal) Rules, 2005. Having noticed the viral video, affecting and tarnishing the image of the police force, an enquiry was conducted by the Sr. Deputy Superintendent of Police, who submitted the report suspecting the role of the petitioners, constituting an act of misconduct. The aforesaid incidence also led to institution of a criminal case and the police on being found case true, has also submitted charge-sheet.

12. The Forensic Science Laboratory clearly suggest the petitioners had consumed liquor, which is prohibited and punishable in the State of Bihar under the Bihar Prohibition and Excise Act, 2016. The act of the petitioners was very grave in nature and flagrant violation of discipline and thus, they were placed under suspension. The witnesses were examined, who supported the charges. The Enquiry Officer returned the finding of guilt. The petitioners were extended ample opportunity, however, they could not be able to show their innocence and finally, the disciplinary authority on being found the charges proved, inflicted the punishment of dismissal, which is proportionate to the charges. The appeal(s) preferred by the petitioners also did not find any favour and accordingly, the appeal(s) were also rejected.

13. This Court has carefully perused the materials available on record and also considered the rival submissions of the learned Advocate for the respective parties.

14. There is no dispute with regard to the facts that on 10.10.2019, a Whatsapp video went viral, which led to enquiry and submission of the enquiry report on 12.10.2019, disclosing that one Manoj Kumar Singh along with railway employee were taking some liquor like substance in a room where both the petitioners were present. The aforesaid incidence led to institution of the FIR against the petitioners and others. In course of enquiry, it has been found that the incidence was of 3-4 months ago, when a female liquor trafficker was apprehended and remanded to judicial custody, after institution of the FIR. It is also admitted in the report that the viral video did not show that both the petitioners were consuming the liquor and in fact, all of them have submitted their respective explanation that on the said date, one Manoj Kumar Singh, DPC.- 334 and Bhushan Kumar Nirmal, Mechanical Engineer of Railway were taking cold drinks. Neither the maker of the video nor the person who had produced or who had made it viral have been enquired upon. The blood and urine sample were collected on 12.10.2019 and sent to the FSL on 14.10.2019. The report was submitted

under Memo No. R.F.S.L. No. 759/19 dated 04.01.2020. It is reported that ethyl alcohol was detected in exhibits marked B2, B3, B4 and B5, and ethyl alcohol could not be detected in exhibits marked A1, A2, A3, A4, A5 and B1. It is only this report, which has made the basis of punishment.

15. The memo of charge contains three documentary evidence. Firstly, the order of suspension of the petitioners; secondly, the preliminary enquiry report submitted by the Dy.S.P., Railway, wherein she narrated the incidence seen in the viral video and lastly a copy of the CD of viral video dated 10.10.2019. The list of witnesses contains the name of two witnesses, one is the person who submitted the preliminary enquiry report, the Dy.S.P. Rail Police Samastipur and second Police Sub-Inspector, Shiv Shankar Singh.

16. The witnesses were duly examined but both of them have only stated that after having seen the viral video, it appears that two persons were consuming liquors and these petitioners were found sleeping and sitting, respectively in the room. In course of examination, both of these witnesses have categorically admitted that the petitioners were not found seen consuming or taking meal or liquor. The persons, who were found consuming the liquor like substance, were not even

talking to the petitioners. The bottle which was found kept there does not appear to be a bottle of liquor.

17. Notwithstanding the aforesaid fact, the presence of the petitioners in the said room was found suspicious. Albeit, the Enquiry Officer came to the definite conclusion that in course of enquiry, the witnesses could not be able to prove the evidence of consuming liquor by the petitioners, however, as the petitioners have been made accused, based upon a viral video and in course of investigation, the ethyl alcohol is found in the urine sample and the supervising officers of the investigation has found the petitioners guilty of consuming liquor and, therefore, returned the finding of guilt against the petitioners.

18. Time without number, the Court has held that the charges levelled against the delinquent officers must be found to have been proved. The Enquiry Officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The Hon'ble Apex Court in the case of ***Roop Singh Negi Vs. Punjab National Bank & Ors.,*** reported in ***(2009) 2 SCC 570*** has unequivocally held that the purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. The Court in the

aforesaid case said that since no witness was examined to prove the said documents and the management witnesses were merely tendered the documents and did not prove the contents thereof. Reliance, *inter alia*, was placed by the enquiry officer on the FIR, which could not have been treated as evidence.

19. In the case in hand, the memo of charge does not contain the FSL report, based upon which the finding of the Enquiry Officer proved the charges nor any of the witnesses have been examined to prove the report and contents, thereof. The Hon'ble Supreme Court in the case of ***Sher Bahadur Vs. Union of India & Ors., (2002) 7 SCC 142*** has held that, "*sufficiency of evidence postulates existence of some evidence which links the charged officer with the misconduct alleged against him. Evidence, however, voluminous it may be, which is neither relevant in a broad sense nor establishes any nexus between the alleged misconduct and the charged officer, is no evidence in law*."

20. Admittedly, in the preliminary enquiry report, it has been found that the incidence, as shown in the viral video was of 3-4 months ago, which led to institution of the FIR on 12.10.2019. The sample of blood and urine was collected and sent to the FSL on 14.10.2019 and the report of the FSL has

been submitted under Memo dated 04.01.2020. Thus, in any view of the matter, the FSL report of the urine containing ethyl alcohol cannot be said to be with respect to an incidence which took place 3-4 months ago.

21. It would be pertinent to state here that alcohol consumption and intoxication are frequent elements in criminal and civil litigation. The books on medical jurisprudence invariably, suggest that determining whether a person has consumed alcohol and their level of intoxication requires scientifically sound and legally reliable evidence. Blood and urine reports are primary forensic tools, but their evidentiary value depends on scientific methodology, detection window and judicial scrutiny. So far the scientific reliability of a blood report is concerned, it is said that blood alcohol concentration directly measures alcohol present in the blood at the time of sample collection. The blood alcohol concentration results are accurate and widely accepted in Courts for quantifying the degree of intoxication. Alcohol is detectable in blood for up to 12 hours post-consumption. Special biomarkers can extend detection to days/weeks for chronic use. However, legal protocols require proper collection, preservation (often using sodium fluoride), and documentation to ensure reliability. Mismanagement of

samples or lack of chain of custody undermines evidentiary value.

22. Similarly, the urine test detect alcohol and its metabolites (such as EtG and EtS), which can indicate recent consumption up to 24-80 hours post-intake. It also provides evidence of recent use but not precise impairment at a specific point in time. Urine alcohol levels reflect blood alcohol concentration at time of urination, however, not necessarily at the time of offence/alleged intoxication. It results susceptible to dilution, recent fluid intake and possible contamination. Moreover, it is easier to adulterate than blood samples.

23. Bare reading of the aforenoted summarization of the evidentiary value of blood and urine report, in case of consumption of alcohol, any prudent person, can very well reach to the conclusion that the FSL report, which is made the very basis to prove the charges cannot be with regard to an incidence, which took place 3-4 months ago. The mode and manner in which it is produced and relied upon by the Enquiry Officer, that is also not at all admissible in the eyes of law.

24. Now coming to the evidentiary value of the viral video, it would be pertinent to refer to a decision rendered by the Hon’ble Apex Court in the case of ***Arjun Panditrao***

Khotkar Vs. Kailash Kushanrao Gorantyal & Ors., (2020) 7 SCC 1, wherein the Court underscored the requirement of certificate under Section 65-B(4) of the Evidence Act before placing reliance upon the electronic evidence. To appreciate the legal position of the evidentiary value of electronic evidence, this Court thinks it apt and proper to encapsulate paragraph nos. 60, 61 and 84, hereinbelow:-

> *"60. It may also be seen that the person who gives this certificate can be anyone out of several persons who occupy a "responsible official position" in relation to the operation of the relevant device, as also the person who may otherwise be in the "management of relevant activities" spoken of in sub-section (4) of Section 65-B. Considering that such certificate may also be given long after the electronic record has actually been produced by the computer, Section 65-B(4) makes it clear that it is sufficient that such person gives the requisite certificate to the "best of his knowledge and belief". [Obviously, the word "and" between knowledge and belief in Section 65-B(4) must be read as "or", as a person cannot testify to the best of his knowledge and belief at the same time.]*
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> *61. We may reiterate, therefore, that the certificate required under Section 65-B(4) is a condition precedent to the admissibility of evidence by way of electronic record, as correctly held in Anvar P.V. [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] , and incorrectly "clarified" in Shafhi Mohammad [Shafhi Mohammad v. State of H.P., (2018) 2 SCC 801 : (2018) 2 SCC 807 : (2018) 2 SCC (Civ) 346 : (2018) 2 SCC (Civ) 351 : (2018)*

> *1 SCC (Cri) 860 : (2018) 1 SCC (Cri) 865] . Oral evidence in the place of such certificate cannot possibly suffice as Section 65-B(4) is a mandatory requirement of the law. Indeed, the hallowed principle in Taylor v. Taylor [Taylor v. Taylor, (1875) LR 1 Ch D 426] , which has been followed in a number of the judgments of this Court, can also be applied. Section 65-B(4) of the Evidence Act clearly states that secondary evidence is admissible only if led in the manner stated and not otherwise. To hold otherwise would render Section 65-B(4) otiose.*
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> *84. But Section 65-B(1) starts with a non obstante clause excluding the application of the other provisions and it makes the certification, a precondition for admissibility. While doing so, it does not talk about relevancy. In a way, Sections 65-A and 65-B, if read together, mix up both proof and admissibility, but not talk about relevancy. Section 65-A refers to the procedure prescribed in Section 65-B, for the purpose of proving the contents of electronic records, but Section 65-B speaks entirely about the preconditions for admissibility. As a result, Section 65-B places admissibility as the first or the outermost checkpost, capable of turning away even at the border, any electronic evidence, without any enquiry, if the conditions stipulated therein are not fulfilled."*

25. In the case of ***Sonu Kumar*** (supra), learned co-ordinate Bench of this Court while setting-aside the order of dismissal, which was culminated upon a departmental proceeding based upon a viral video, where the delinquent was seeing consuming liquor, the learned Court has placed reliance upon a Bench decision of this Court in the case of ***Bharat***

Prasad Yadav Vs. The State of Bihar & Ors., CWJC No. 18331 of 2019. In case of ***Bharat Prasad Yadav*** (supra), the learned Single Judge also placing reliance upon the ***Arjun Panditrao Khotkar*** (supra), has observed that since the viral video clip containing in CD has not been proved during the course of enquiry by resorting to the procedure established by law, as such, is inadmissible by way of evidence, as per the Evidence Act, 1892. The Court, in aforenoted case, besides aforesaid observation, further held that neither the maker of the video clip was examined, as a witness nor the mobile through which the video was made viral has been recovered, much less exhibited and, moreover, no eyewitness to the alleged incidence has been examined by the prosecution in the aforesaid departmental enquiry, resulted in the entire enquiry proceedings having been rendered nugatory on account of no evidence being available on record to substantiate the allegations leveled against the petitioner.

26. Similar is the finding in the case of ***Sonu Kumar*** (supra) where the learned co-ordinate Bench having taken note of the fact that no evidence was led before the Enquiring Authority that there was alcohol in the said bottle and what the delinquent was drinking was alcohol. Moreover, in the said case,

neither there was any breath analyzer test nor the blood sample of the delinquent was taken for chemical examination, apart from the procedure not been followed to substantiate the electronic evidence held the impugned decision of the disciplinary authority, based upon no evidence and a perfunctory and thereby, set-aside the impugned order of dismissal.

27. This Court is conscious of the limitation while exercising the power of judicial review in a matter relating to departmental enquiry/proceeding, which obviously caution the Court to re-examine or re-appraise the evidence and substitute its own conclusion in place of the conclusions arrived at by the Enquiry Officer or the disciplinary authority on that evidence.

28. The Hon'ble Apex Court in the case of ***Kuldeep Singh Vs. Commissioner of Police & Ors., (1999) 2 SCC 10***, has held that, true it is that the Court cannot sit in appeal over those findings and assume the role of the appellate authority. But this does not mean that in no circumstance can the Court interfere. The power of judicial review available to the High Court as also to the Apex Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein, if there was no evidence to support the findings or the findings recorded were such as could

not have been reached by an ordinary prudent man or the findings were perverse or made at the dictates of the superior authority. It would be worth benefiting to encapsulate paragraph nos. 7, 8, 9 and 10:-

> *"7. In Nand Kishore Prasad v. State of Bihar [(1978) 3 SCC 366 : 1978 SCC (L&S) 458 : AIR 1978 SC 1277 : (1978) 3 SCR 708] it was held that the disciplinary proceedings before a domestic tribunal are of quasi-judicial character and, therefore, it is necessary that the Tribunal should arrive at its conclusions on the basis of some evidence, that is to say, such evidence which and that too, with some degree of definiteness, points to the guilt of the delinquent and does not leave the matter in a suspicious state as mere suspicion cannot take the place of proof even in domestic enquiries. If, therefore, there is no evidence to sustain the charges framed against the delinquent, he cannot be held to be guilty as in that event, the findings recorded by the enquiry officer would be perverse.*
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> *8. The findings recorded in a domestic enquiry can be characterised as perverse if it is shown that such findings are not supported by any evidence on record or are not based on the evidence adduced by the parties or no reasonable person could have come to those findings on the basis of that evidence. This principle was laid down by this Court in State of A.P. v. Rama Rao [(1964) 2 LLJ 150 : AIR 1963 SC 1723 : (1964) 3 SCR 25] in which the question was whether the High Court under Article 226 could interfere with the findings recorded at the departmental enquiry. This decision was followed in Central Bank of India Ltd. v. Prakash Chand Jain [(1969) 2 LLJ 377 : AIR 1969 SC 983] and Bharat Iron Works v. Bhagubhai Balubhai Patel [(1976) 1 SCC*

518 : 1976 SCC (L&S) 92 : 1976 Lab IC 4 : AIR 1976 SC 98 : (1976) 2 SCR 280] . In Rajinder Kumar Kindra v. Delhi Admn. [(1984) 4 SCC 635 : 1985 SCC (L&S) 131 : AIR 1984 SC 1805 : (1985) 1 SCR 866] it was laid down that where the findings of misconduct are based on no legal evidence and the conclusion is one to which no reasonable man could come, the findings can be rejected as perverse. It was also laid down that where a quasi-judicial tribunal records findings based on no legal evidence and the findings are its mere ipse dixit or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated.

9. Normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of "guilt" is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny.

10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with."

29. In the light of the aforenoted settled legal position, this Court on careful consideration of the enquiry report as well as the impugned order of punishment finds that the very charge is based upon suspicion, regarding the presence of the

petitioners in the room, where two persons were seen consuming liquor. There is a specific finding of the Enquiry Officer that none of the witnesses and the documentary evidence have supported the charge of consumption of liquor by the petitioners. Notwithstanding, the aforesaid fact, placing reliance upon the FSL report showing ethyl alcohol in the urine samples collected during the course of investigation, that too with respect to Rail Samastipur (Hasanpur) P.S. Case No. 179 of 2019, the copy of which has also not been supplied to the petitioners nor any witnesses have been produced to prove the same and, as such, it cannot be held to be admissible, based upon which the finding has been returned by the Enquiry Officer. However, this fatal flaws has been completely overlooked by the disciplinary authority.

30. This Court before moving further also notices that the Presenting Officer did not perform any role by presenting the case of the department before the enquiry authority and, *prima facie*, it seems that the Enquiry Officer himself assumed the role of the Presenting Officer. The Court on number of occasions highlighted the role of Presenting Officer *viz-a-viz* the Enquiry Officer. Reference may be taken to the decisions in case of ***State of Uttar Pradesh & Ors. Vs. Saroj Kumar Sinha,***

(2010) 2 SCC 772; and ***Panchanan Kumar Vs. The Bihar State Electricity Board & Ors., (1196) 1 PLJR 401***.

31. Coming to the impugned order passed by the disciplinary authority inflicting the punishment of dismissal, the same is only found to be based upon the FSL report, which has been duly deliberated and discussed by this Court in the aforenoted paragraphs, that the same cannot be said to be in relation to an incidence which led to initiation of the present departmental proceeding. Besides other infirmities noted hereinabove, neither the FSL report nor the viral video clip have been proved in the mode and manner required under the law and, as such, the order of the disciplinary authority, which is based on the finding of the enquiry authority is also without no evidence and perfunctory one, wholly unjust, illegal and unsustainable.

32. The appellate orders also appear to be completely non speaking and there is no deliberation and discussion, as to why the grounds raised by the petitioners are not found worthy for consideration. The role of the disciplinary authority as assigned under Rule 17 and the appellate authority under Rule 27 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 has been completely overlooked.

33. Accordingly, both the impugned orders of dismissal contained in Memo Nos. 286 & 287 dated 27.02.2020 as well as appellate order as contained in Memo Nos. 172 & 173 dated 26.05.2020 are hereby set-aside. Both the writ petitions stands allowed.

34. The petitioners are directed to be reinstated forthwith, with all the consequential benefits to be paid within a period of twelve weeks, from the date of receipt/production of a copy of this order/judgment.

35. The parties shall bear their cost.

36. Pending application(s), if any, also stands disposed off.

37. The office is directed to return the records relating to disciplinary proceeding to the Government Pleader No. 5, after pronouncement/uploading of this order/judgment.

(Harish Kumar, J)

shivank/-

AFR/NAFR	NAFR
CAV DATE	24.06.2025
Uploading Date	25.08.2025
Transmission Date	NA