

(2026) 08 PAT CK 2523

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No.10213 of 2022

Tilak Dhari Singh

APPELLANT

Vs

The State Of Bihar & Ors.

RESPONDENT

Date of Decision : 03-08-2026

Acts Referred:

Indian Penal Code — Sections 341, 323 and 307
Bihar Prohibition and Excise Act, 2016 — Section 37(b)

Citation : (2026) 08 PAT CK 2523

Hon'ble Judges : Dr. Anshuman, J

Bench : Single Bench

Advocate : Mr. Upendra Mishra, Mr. Sanjeeb Kumar Sanju, Mr. Ravi Kumar, Mr. Bhaskar Sandilya

Final Decision : Allowed

Judgement

Date : 03-08-2026 Heard learned counsel for the petitioner. However, no one appears on behalf of the State.

2. The present writ petition has been filed for the following reliefs:-

"(i) For quashing the charge dated 06.11.2018 as well as enquiry report dated 24.06.2021 submitted against the petitioner by the Enquiry Officer, in Motihari District Departmental Proceeding No. 38/18.

(ii) For quashing the Dismissal order dated 27. 07. 2021, passed by the Superintendent of Police, East Champaran, Motihari (Respondent no.4) whereby and where under the petitioner has been dismissed from service.

(iii) For quashing the appellate order dated 28.02.2022 passed by the Deputy Inspector General of Police, Champaran Range, Betiya, (Respondent no.3) whereby and where under the appeal filed by the petitioner against the order of dismissal has been rejected and order of dismissal has been affirmed.

(iv) For quashing the Departmental Proceeding No.38 / 18, 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. Learned counsel for the petitioner submits that the petitioner was appointed as a Constable in Bihar Police in the year 1984 as Motihari Sipahi No. 926 and was posted at Shrawani Mela under Banka District. It has been submitted that the petitioner rendered service for more than 38 years and was rewarded several times for his best, sincere, and disciplined service in the Bihar Police.

4. Counsel further submits that on the unfortunate date, i.e., 28.07.2018, at about 02:40 A.M., an FIR was instituted as Chandan (Banka) P.S. Case No. 124 of 2018 under Sections 341, 323 and 307 of the Indian Penal Code and Section 37(b) of the Bihar Prohibition and Excise Act, 2016, with the allegation that the petitioner had abused and assaulted a Sipahi, namely, Upendra Kumar Singh, under intoxication and was sent to judicial custody.

5. Counsel further submits that merely on the basis of the doctor's report, without any breath analyzer test, blood test, or urine test, a charge-sheet was submitted against the petitioner. Thereafter, the petitioner was suspended vide order dated 01.09.2018. Subsequently, the Superintendent of Police, East Champaran, Motihari revoked the suspension order on 02.11.2018 and initiated Departmental Proceeding No. 38 of 2018 against the petitioner. Counsel further submits that a memo of charge was served upon him vide Memo No. 3019 dated 06.11.2018. The petitioner filed his reply on 29.03.2019 before the Enquiry Officer and requested permission to produce defence witnesses, but his request was not accepted. In gross violation of the principles of natural justice, and without any breath analyzer report, blood test, urine test, or injury report, the Enquiry Officer held the petitioner guilty of the charges framed against him. Thereafter, the petitioner was directed to submit a second show-cause. The petitioner submitted his second show-cause, but he was inflicted with the major punishment of dismissal from service vide order dated 27.07.2021 issued by Bagaha District Order No. 843 of 2021 vide Memo No. 2254 dated 27.07.2021. Counsel further submits that the petitioner preferred an appeal before the Deputy Inspector General of Police on 03.09.2021 against the dismissal order dated 27.07.2021, but the appeal was dismissed. Counsel further submits that the petitioner also preferred a memorial before the Director General of Police, but till date no response has been received from the office of the DGP. Counsel further submits that in Departmental Proceeding No. 38 of 2018, three official witnesses were examined by the Enquiry Officer, but none of them deposed anything against the petitioner, rather, they were not related to the incident. Neither the FIR, the injury report, nor the medical report was produced as evidence. Counsel further submits that the major punishment has been imposed solely on the basis of the alleged smell of liquor without any scientific test. Counsel further submits that there has been a gross violation of the principles of natural justice, as the alleged injured Sipahi, Upendra Kumar Singh, neither adduced any evidence nor came forward to support the allegations. Even then, the Enquiry Officer concluded that the petitioner was under intoxication and

recommended the punishment of dismissal from service.

6. No one appears on behalf of the State despite the fact that notice has been validly served in this case.

7. It transpires to this Court that a counter affidavit has been filed, and from the same it appears that the stand taken by the State is that the departmental proceeding was initiated vide Motihari District Departmental Proceeding No. 38 of 2018 by the competent authority, namely, the Superintendent of Police, East Champaran, Motihari. It has been pleaded that the charge memo was issued to the petitioner strictly in accordance with law. Anil Kumar, Inspector, Kesaria Circle, was appointed as the Conducting Officer, and a Presenting Officer was also appointed. It further transpires that during the departmental enquiry it was found that on the night of 27.07.2018 the delinquent attacked Upendra Kumar Singh while being under intoxication, for which Chandan P.S. Case No. 124 of 2018 was instituted. As per the supervision report and medical report, the case was found true and Charge-sheet No. 75 of 2018 was submitted against the delinquent. It has further been pleaded in the counter affidavit that an opportunity to submit a show-cause was also provided to the petitioner. The petitioner filed his explanation, but the same was not found satisfactory and he was punished. Thereafter, he preferred an appeal before the DIG, Champaran Range, which was rejected on 28.02.2022 vide Memo No. 386. Conclusively, it has been pleaded in the counter affidavit that the petitioner was dismissed after conducting a departmental proceeding, which is separate from the criminal trial, and the principle of preponderance of probabilities shall prevail the departmental proceedings. It has also been stated that criminal proceedings and departmental proceedings can proceed simultaneously.

8. After hearing the parties and upon perusal of the counter affidavit, this Court put a specific question to the learned counsel for the petitioner as to whether the petitioner had any service tenure remaining.

9. In response thereto, learned counsel for the petitioner submits that the petitioner's service tenure had already come to an end on 31.01.2023, but prior thereto he had been dismissed from service with effect from 27.07.2021 vide Memo No. 2254.

10. Upon perusal of the impugned order, it transpires to this Court that the allegation against the petitioner is that he attacked Sipahi Upendra Kumar Singh with a knife, causing injuries to him. However, during the departmental proceeding, Upendra Kumar Singh did not adduce any evidence, nor was any injury report produced. The Conducting Officer alleged that the petitioner was in a state of intoxication, but there is no medical report, breath analyzer report, blood test, or urine test to establish that the petitioner was under intoxication.

11. In this regard, a judgment of this Hon'ble Court in case of ***Dharmraj Singh @ Dhamraj Singh Vs. The State of Bihar & Ors.***, passed in ***C.W.J.C. No. 14846 of 2021, decided on 09.05.2024*** is very much clear, the relevant

conclusive para 12 to 17 reads as under:-

"12. Having heard the learned counsels for the parties and on careful perusal of the materials on record, I am surprised to note that the petitioner was arrested on the allegation that he consumed alcohol on 16th of January, 2020 from Barrack No. 3 of Reserve Police Line, Motihari. It is presumed that in Barrack No. 3, there were other personnel sleeping at that point of time. The arresting officer did not get the petitioner superficially examined by other inmates of Barrack No. 3 to ascertain as to whether smell of alcohol was coming from the mouth or not.

13. It is needless to say that breath analyzer report is not a conclusive proof of consuming the 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 appellants breath was smelling of alcohol, that his gait was unsteady, that his speech was incoherent and that his pupils were dilated. Consumption of alcohol can only be ascertained by way of blood and urine test of a person, suspected to have consumed alcohol.

14. The Hon'ble Supreme Court found that the blood and urine examination of the appellant was not done and finally held that the mere smelling of alcohol is not enough to hold that the petitioner consumed alcohol on the date of his apprehension i.e., on 16th of January, 2020.

15. Thus, this Court holds that breath analyzer report is not a conclusive proof of consumption of alcohol by the petitioner.

16. The disciplinary authority as well as the appellate authority failed to consider such aspect of the matter and the impugned order of dismissal of the petitioner suffers from manifest arbitrariness. The order of dismissal is an instance of violation of natural justice because of non-consideration of medical documents filed by the petitioner at the time of departmental inquiry.

17. For the reasons stated above, this Court is of the view that the order of dismissal, passed by the Deputy Inspector of Police, Champaran Range, Bettiah, dated 2nd of July, 2020; the order of the Additional Director General of Police, Bihar, Patna, dated 30th of September, 2020, affirming the order of dismissal; and order, dated 29th of June, 2021 passed by the Director General, Bihar, Patna, dismissing the memorial appeal of the petitioner, are quashed and set aside."

11.1. Subsequently, the order passed by the Hon'ble Division Bench of this Court in L.P.A. No. 1095 of 2024 decided on 26.02.2026, the relevant para 4 to 8 reads as under:-

"4. The learned Single Judge while allowing the writ petition held that proper procedure was not followed by the appellant-authorities, and only on basis of the fact that the petitioner's breath smelled like alcohol, action was taken against the petitioner. The relevant paragraphs of the impugned judgment are reproduced as under:

"8. Having heard the learned counsels for the parties and on careful perusal of the materials on record, I am surprised to note that the petitioner was arrested on the allegation that he consumed alcohol in the night of 31.12.2019 and thereafter only on the basis of the report of doctor, and that too by Breath Analyzer, a case was registered against the petitioner, without examining his blood and urine.

9. It is needless to say that Breath Analyzer report is not a conclusive proof of consuming

the 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 appellant's breath was smelling of alcohol, that his gait was unsteady, that his speech was incoherent and that his pupils were dilated. Consumption of alcohol can only be ascertained by way of blood and urine test of a person suspected to have consumed alcohol.

10. The Hon'ble Supreme Court found that the blood and urine examination of the appellant was not done and finally held that the mere smelling of alcohol is not enough to hold that the petitioner consumed alcohol on the date of his apprehension.

11. Thus, this Court holds that Breath Analyzer report is not a conclusive proof of consumption of alcohol by the petitioner.

12. The disciplinary authority as well as the appellate authority failed to consider such aspect of the matter and the impugned order of dismissal of the petitioner suffers from manifest arbitrariness. The order of dismissal is an instance of violation of natural justice because of non-consideration of medical documents filed by the petitioner at the time of departmental inquiry."

5. Learned counsel for the appellants submits that the learned Single Judge did not consider the fact that due procedure had been followed in the present matter, and the order of dismissal was passed in accordance with law. The respondent having been found in violation of departmental rules and regulations was dismissed from the service. Learned counsel further submits that the application of **Bachubhai Hassanalli Karyani v. State of Maharashtra** reported in **(1971) 3 SCC 930** is unwarranted in the present case. **Bachubhai Hassanalli Karyani** (supra) is related to proving the guilt of an accused in a criminal trial, and the facts therein can be distinguished from the present case. In a criminal trial the guilt of the accused has to be proved beyond reasonable doubts, whereas, disciplinary proceedings are conducted on the basis of preponderance of probabilities.

6. Learned counsel for the respondent submits that the learned Single Judge passed the impugned order after careful consideration of materials available on record, and is well founded and supported by reason. Therefore, the order of the learned Single Judge requires no interference by this court.

7. On perusal of materials on record, and the submissions advanced by the parties, it is evident that a major punishment was imposed on the respondent based on the allegation that he had consumed alcohol, and was found in an intoxicated state. The allegation was supported only by report of a doctor on the basis of breathalyzer test. It is also not disputed that no blood or urine test of the petitioner was conducted, which could conclusively show the consumption of alcohol, if any.

8. Further, appellants have been unable to show that how **Bachubhai Hassanalli Karyani** (supra) does not find any application in the present case. The Hon'ble Supreme Court, has clearly laid down in **Bachubhai Hassanalli Karyani** (supra) that drunkenness cannot be said to be conclusively proved unless urine or blood test is carried out. The relevant paragraphs of the said judgment are reproduced as under:

"4.The doctor had admitted that a person, placed in the circumstances in which the appellant was put as a result of the accident, would be under a nervous strain and his gait might be unsteady. The doctor had also admitted that a person could smell of alcohol without being under the influence of drinking. No urine test of the appellant was carried out and although the blood of the appellant was sent for chemical analysis, no report of

the analysis was produced by the prosecution.

5. It seems to us that on this evidence it cannot be definitely held that the appellant was drunk at the time the accident occurred."

11.2. Another judgment passed by this Hon'ble Court in case of **Manoj Kumar Thakur Vs. The State of Bihar & Ors passed in C.W.J.C. No. 4181 of 2021, decided on 25.06.2025**, its relevant para 4 & 5 reads as under:-

*"4. While assailing the orders impugned, learned Advocate for the petitioner contended that the entire allegation against the petitioner rest upon a Breath Analyser Test, based upon which it is alleged that the petitioner was found under influence of liquor while creating ruckus at Gate No. 2. However, the Breath Analyser Test cannot be said to be a conclusive proof of consumption of alcohol in absence of any urine and blood test. The above mentioned issue was the subject for consideration in the case of **Manju Devi vs. The State of Bihar & Ors. [CWJC No. 2590 of 2022]**, wherein a Bench of this Court placing reliance upon the decision in **Bachubhai Hassanalli Karyani vs. State of Maharashtra [(1971) 3 SCC 930]** recorded the observation of the Apex Court that no conclusion with regard to consumption of alcohol by a person can be made on the facts that the appellant's breathe was smelling of alcohol, that his gait was unsteady and speech was incoherent and that his pupils were dilated. The consumption of alcohol can only be ascertained by way of blood and urine test by a person suspected to have consumed alcohol.*

*5. It is the specific contention of the petitioner that the petitioner had never been subjected to any blood and urine test, hence Breath Analyser report alone could not be an admissible evidence to return the finding that the petitioner was found in an inebriated condition or in the influence of liquor. It is further contended that in identical facts the coordinate Bench of this Court in the case of **Manju Devi (supra)** has set aside the order of dismissal which was passed only upon the finding of the Enquiry Officer that the delinquent was found under the influence of alcohol on the basis of the Breath Analyser Test. Reliance has also been placed on a judgment rendered by the Apex Court in the case of **Munna Lal vs. Union of India & Ors. [(2010) 15 SCC 399]** as also the decision rendered by this Court in the case of **Jawahar Kumar Singh vs. The State of Bihar & Ors. [2019(2) PLJR 156]**."*

12. This Court, upon perusal of the concluding part of the impugned order, is very much surprised that without any material on record, neither the alleged injured person having come forward, nor any injury report being available, nor any material to establish that the petitioner was under intoxication, the disciplinary authority has imposed the punishment.

13. Upon perusal of the memo of appeal, it transpires to this Court that the only fact accepted by the petitioner himself is that a scuffle took place between him and Upendra Kumar Singh. However, Upendra Kumar Singh has not come forward at any stage. This Court is of the view that imposing the punishment of dismissal in such circumstances is extremely disproportionate and unacceptable.

14. It further transpires to this Court that no order has been passed on the memorial.

15. This Court hereby directs that there is no necessity of passing any order on

the memorial. The matter is remanded back to the concerned Superintendent of Police, Bagaha, East Champaran, Motihari, Bihar (respondent No. 4), to pass a fresh order after considering the fact that neither the alleged injured person nor the injury report nor any breath analyzer report, urine test, or blood test forms part of the enquiry report, save and except the petitioner's admission in the memo of appeal that a heated discussion/scuffle had taken place under peculiar circumstances, which itself is not part of the record of the departmental proceeding. In any view of the matter, this Court is not satisfied with the findings recorded by the disciplinary authority as well as the appellate authority.

16. In view of the above, this Court reaches the conclusion that the impugned punishment order is without merit, as neither the injury report, nor the testimony of the alleged injured person, nor the breath analyzer report, urine test, or blood test is available.

17. Hence, those orders, i.e., Memo No. 2254 order dated 27.07.2021 passed by the Superintendent of Police, East Champaran, Motihari, Bihar (respondent No. 4) [Annexure-10], Memo No. 386, dated 28.02.2022, passed by the Deputy Inspector General of Police, Champaran Range, Beitya (respondent No. 3) [Annexure-12], are hereby set aside.

18. It is made clear that even if it is accepted that a scuffle had taken place, the punishment imposed is extremely excessive. Therefore, the matter is remanded to the competent authority, namely, Superintendent of Police, Bagaha, East Champaran, Motihari, Bihar (respondent No. 4) to pass a fresh order within 90 days from the date of production/receipt of a copy of this order.

19. Accordingly, the present writ petition stands allowed.