IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8071 of 2023

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Mukesh Kumar Paswan son of Sri Ram Khelawan Paswan, Resident of Village-Mohanpur, P.S.-Chautham, District-Khagaria.

... ... Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Home, Government of Bihar, Patna.
2. The Additional Chief Secretary, Department of Home, Government of Bihar, Patna.
3. The Director General of Police, Government of Bihar, Patna.
4. The Inspector General of Police, Government of Bihar, Patna.
5. The Senior Superintendent of Police, Patna.
6. The Superintendent of Police City (West), Patna.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Anand Kumar Singh, Advocate.
Mr. Ranjit Kumar Yadav, Advocate.
Mr. Ugresh Kumar, Advocate.
For the State : Mr. Shailesh Kumar, AC to GP-5.

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL JUDGMENT

Date : 29-10-2024

Heard Mr. Anand Kumar Singh, learned counsel along with Mr. Ranjit Kumar Yadav and Mr. Ugresh Kumar, learned counsels appearing on behalf of the petitioner and Mr. Shailesh Kumar, learned AC to GP-5 for the State.

2. The petitioner in paragraph no. 1 of the present writ petition has sought, *inter alia*, following relief(s), which is reproduced hereinafter:-

> *i) For quashing of order contained in Memo No.233 dated 13.04.2022 passed by Director General of Police, Bihar, Patna whereby and where under*

following punishment has been imposed to the petitioner.
a) Petitioner was demoted on the basic pay scale of Police Sub Inspector for five years.
b) Petitioner shall not get anything extra what he has already got ten during suspension period.
c) Petitioner shall not be posted as Officer-In-Charge or any responsible post for 10 years from the date of issuance of this order.
ii) For quashing of order No.2576 of 2022 contained in Memo No.6069 dated 21.04.2022 issued by the Senior Superintendent of Police, Patna whereby and where under aforesaid all the three punishments have been imposed on the petitioner and his suspension has been revoked.
iii) For quashing of Patna District order No.2610 of 2022 dated 23.04.2022 issued by Senior Superintendent of Police, Patna by which petitioner was demoted to the basic pay scale of Police Sub Inspector of Rs.35,400/- for five years.
iv) For direction to the respondent authorities to restore the seniority of the petitioner as Inspector of Police as he was holding the said post at the time of initiation of departmental proceeding.
v) For direction to the respondent authorities to restore the pay scale of petitioner of Inspector of Police at pay scale of Rs.50,500/- and also give other consequential benefit for which petitioner is entitled to before initiation of departmental proceeding.
vi) For any other relief/reliefs to which the petitioner may be found entitled to.

3. The brief facts of the case are that while the petitioner was posted on the post of Inspector of Police at Bypass Police Station, Patna, a raid was conducted by the Excise Department in the area falling under the jurisdiction of the petitioner's police station. The petitioner was present during the course of raid leading to recovery of illicit foreign liquor amounting to rupees four lac. The petitioner lodged FIR against accused persons and prepared seizure list. It is alleged that the

participation of the petitioner in the sale of illicit liquor along with one chaukidaar, namely, Lalu Paswan, cannot be denied as the godown, in which raid was conducted, is only 500 meters from the police station, which is in violation of the direction contained in Letter No. 63 dated 24.11.2020. The petitioner was suspended by the Director General of Police, Bihar vide Letter No. 142 dated 01.02.2021 for the said reason. A memo of charge contained in Memo No. 1723 dated 06.02.2021 was served to the petitioner. Thereafter, Inspector General of Police, Central Range, Patna vide letter contained in Memo no.41 dated 09.02.2021, issued show cause as to why the petitioner be not held guilty for being negligent in implementation of Excise Prohibition Law which is in violation of Rule-3(1) of the Government Official Conduct Rule, 1976, pursuant to which, the petitioner submitted his detailed show cause reply on 19.03.2021 denying all the allegation. The Inquiry Officer after holding inquiry recommended for imposition of major penalty of dismissal of the petitioner. Thereafter, the Disciplinary Authority held the petitioner guilty of the charges and passed Penalty Order contained in Memo No. 233 dated 13.04.2022. Aggrieved by the penalty order, the petitioner has preferred the present writ petition.

SUBMISSION ON BEHALF OF THE PETITIONER

4. Learned counsel appearing on behalf of the petitioner, at the outset, submitted that the suspension order no. 21/2021-142 issued by the Director General of Police on 01.02.2021 addressed to the Senior Superintendent of Police, Patna and also a copy to the Additional Superintendent of Police (HQ) and Inspector General of Police, Central Range, Patna in contemplation of initiating departmental proceeding against the petitioner is not in accordance with law. As a consequence of which, charge memo contained in Memo No. 41 dated 09.02.2021 and the penalty order dated 13.04.2022 under the signature of the Inspector General of Police (Central Range), Patna are vitiated in the eye of law.

5. Learned counsel referring to Letter No. 63 (01 implementation) 2019-20-1296/Excise Prohibition dated 24.11.2020 submitted that the Director General of Police, Bihar in paragraph no. 3 of the said letter made it clear that in case of recovery of illicit liquor, the concerned Station House Officer (S.H.O.) will be deemed guilty for not taking corrective measures and taking necessary action for which appropriate action will be taken against them.

6. According to the learned counsel, the very

observation made in the suspension order to the extent that the instruction of the Prohibition & Excise Department contained in Letter No. 63/2019-20-1296 dated 24.11.2020 has not been followed by the petitioner, having not been successful in checking sale of illicit liquor within his jurisdiction, which shows his casual approach calling for strict disciplinary action against him. Learned counsel submitted that Disciplinary Authority influenced by the observation made by the Director General of Police, who had proposed strict action against the petitioner as per the condition contained in Letter No. 63 dated 24.11.2020 with a pre-determined mind, passed the order of penalty by demoting the petitioner in basic pay scale of Police Sub Inspector for five years, petitioner shall not get anything extra of what he has already got during the suspension period and the petitioner shall not be posted as Officer-In-Charge or on any responsible post for ten years from the date of issuance of the said order contained in Memo No. 233 dated 13.04.2022. Such order influenced by the order of suspension passed by the Director General of Police, who, in the suspension order, had directed the initiation of Disciplinary Proceeding against the petitioner as per the direction contained in Letter No. 63 dated 24.11.2020, had prejudiced the entire departmental enquiry

resulting into imposition of major penalty against the petitioner leading to failure of justice. Learned counsel submitted that even if procedure as laid down in Rule 17 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as the 'Rules, 2005') have been said to have been followed but the same will be considered to be an empty formality amounting to have granted post-decisional hearing in violation of principle of natural justice.

7. Learned counsel submitted that in similar facts of the case, a co-ordinate Bench of this Court has been pleased to quash the penalty order passed by the disciplinary authority with pre-determined mind following the directions contained in Letter No. 63 dated 24.11.2020 vide order dated 05.05.2023 passed in **C.W.J.C. No. 737 of 2023 (Ajay Kumar Vs. The State of Bihar & Ors.).** The Court observed that "*the letter issued by the Director General of Police can only be said to have influenced the entire proceeding right from the beginning, raises a presumption of guilt even before framing of charge, therefore, "this Court has no iota of doubt in saying that the guilt of the employee has been assumed and presumed even before giving him an opportunity of hearing*."

8. Learned counsel thus submitted that the

petitioner has been able to demonstrate from the contents of the order dated 09.02.2021 contained in Memo No. 41 in the present case also that the disciplinary authority, from the very beginning, was pre-determined to punish the petitioner and, as such, even if the provision of the C.C.A. Rules, 2005 has been followed, the same will amount to an empty formality calling for interference by this Court.

9. Learned counsel, on merits, submitted that the petitioner had filed show-cause along with the enclosures and vide Letter dated 22.7.2021, had requested the Conducting Officer to examine the two witnesses, namely, S.I. Vipin Kumar Singh, Additional Officer-in-Charge, Bypass Police Station and Constable-29, Shivam Kumar, Bypass Police Station. The Learned counsel further submitted that the Presenting Officer also did not produce any witness to support the charges levelled against him. Learned counsel informs that the petitioner in his reply to the show-cause contained in Memo No. 572 dated 22.10.2021 had also submitted in his written statement that at the time of raid, he was himself present with raiding team and had arrested the owner and employee of the godown and registered FIR being Bypass P.S. Case No. 38 of 2021. The petitioner with regard to Letter No. 63 dated 24.11.2020

submitted that just after his posting, within the period of four months, he had registered 74 cases relating to excise matter and had arrested 130 accused persons and recovered total amount of 2541.86 litres of illicit liquor and had effectively implemented prohibition within his jurisdiction, which he had stated in his show-cause reply but the Disciplinary Authority has not given his finding on this fact amounting to have proceeded in violation of Section 17(3) (i) (ii) of the Rules, 2005, which clearly stipulates to each and every point raised by the defence vitiating the entire proceeding.

10. Learned counsel next contended that petitioner along with one chaukidaar, namely, Lalu Paswan were suspended. While, against the petitioner, major penalty has been imposed but the chowkidaar Lalu Paswan has been exonerated from the charges by the Senior Superintendent of Police vide order contained in Memo No. 1761 dated 03.02.2022.

11. In the above background, it has been submitted that for the same material charges, two different penalty orders have been passed. The Disciplinary Authority in the case of the petitioner has been influenced by the direction contained in Letter No. 63 (01 implementation) 2019-20-1296/Excise Prohibition dated 24.11.2020 right from the beginning has

presumed the guilt of the petitioner even before framing of charges, and, as such, the entire Disciplinary Action taken against the petitioner is vitiated in the eye of law calling for the interference of this Court.

SUBMISSION ON BEHALF OF THE RESPONDENTS

12. *Per contra*, learned counsel appearing on behalf of the respondents, at the outset, submitted that the present writ petition is not maintainable as the petitioner has an efficacious alternative remedy of appeal against the order dated 13.04.2022 contained in Memo No. 233 and, as such, the present writ petition deserves to be dismissed.

13. Learned counsel further submitted that within 500 meters of the police station, huge quantity of illicit liquors was recovered, which shows that petitioner was negligent in implementing complete prohibition within his jurisdiction, which is against the guidelines issued by the Director General of Police, Bihar. Learned counsel further submitted that there is no procedural lapses in conduct of the Disciplinary Proceeding and supported the order passed by the Disciplinary Authority. Learned counsel further submitted that the petitioner was given ample opportunity in course of Departmental Enquiry and the ground raised by the petitioner that he was not given

opportunity to cross-examine the witnesses and there is no endorsement by the Enquiry Officer are far from truth. He made it clear that witnesses have deposed in presence of the Presenting Officer and the petitioner, therefore, the petitioner, in course of enquiry had never raised any objection on the issue of cross-examination. The petitioner has admitted vide his application dated 18th August, 2021 that due to flood in his native village, he did not requested to bring any witnesses from his side (Annexure-R5/D). The Enquiry Officer, upon meticulous consideration of the materials on record including the deposition of witnesses and material exhibits, came to a categorical conclusion that the petitioner has committed misconduct in view of proved charges in course of Enquiry by the Enquiry Officer and after due examination of the materials and evidences on record. Accordingly, the petitioner was given second show-cause in accordance with the provision of Rule 18 and after giving due opportunity of hearing, the Disciplinary Authority awarded punishment vide Memo No. p-1/4-9-79-2021/233 dated 13.04.2022, communicated by the Office of the Director General of Police, Bihar, who is Competent Authority in accordance with the Police Manual. Learned counsel further submitted that facts of the present case are entirely different in

so far as the facts of C.W.J.C. No. 737 of 2023 is concerned. The petitioner of the writ petition was not given any opportunity to cross-examine the witnesses, while in the present case, the petitioner has himself chose not to produce any defence witness.

14. Learned counsel submitted that no interference is called for in the present case on the ground that the petitioner has alternative remedy of appeal as per the provision of CCA Rules, 2005 read with Rule 851 of Bihar Police Manual before the State Government. Learned counsel further submitted that so far as the contention of the petitioner that from the very beginning, the Disciplinary Authority was influenced by the observation contained in the suspension order passed by the Director General of Police, in no manner, can be said to have influenced the Disciplinary Authority in conduct of the Disciplinary Proceeding or in any manner, can be said that the Disciplinary Authority with a pre-determined mind has passed the punishment order against the petitioner.

Analysis and Conclusion

15. Heard the parties.

16. The main issue involved in the present writ petition is, as to whether, the Disciplinary Authority, who has to take decision in accordance with the procedure prescribed under

Rule 17, C.C.A. Rules, 2005, can even before initiation of the Departmental Proceeding can be said to have been influenced by Letter No. 63 (01 implementation) 2019-20-1296/Excise Prohibition dated 24.11.2020 and the Suspension Order passed by the Director General of Police, Bihar, particularly paragraph no. 3 raises a presumption of guilt even before framing of charge and giving opportunity of post decisional hearing is violative principle of natural justice and Article 21 of the Constitution of India?

17. To answer the above question, I find it proper to reproduce following paragraphs of the suspension order no. 21/2021-142 dated 01.02.2021, which is, *inter alia*, as follows:

> "बिहार में पूर्ण शराबबंदी लागू होने के बावजूद थाना क्षेत्र में अवैध रूप से बाईपास थाना से मात्र 500 मीटर की दूरी पर अवस्थित गोदाम से शराब की बरामदगी होना थानाध्यक्ष, बाईपास थाना की आसूचना संकलन में पूर्णरूप से विफलता है। उक्त परिप्रेक्ष्य में पु0नि0 मुकेश कुमार पासवान, थानाध्यक्ष, बाईपास थाना (पटना) तथा थानासथानीय चौकीदार 1/2 लल्लू पासवान द्वारा मद्य निषेध कानून के कियान्वयन एवं आसूचना संकलन में बरती गयी उदासीनता एवं घोर लापरवाही के कारण के कारण इनके थाना क्षेत्र में अवैध शराब की भंडारण एवं बिक्री धडल्ले से हो रही है। ये अपने थाना क्षेत्र के शराब कारोबारियों पर पूणर्परूप से अंकुश लगाने में अझम पाये गये है।
>
> बिहार पुलिस मुख्यालय (मद्यनिषेध प्रभाग), बिहार, पटना का पत्र संख्या–63 (01 कियान्वयन) 2019–20–1296/मद्यनिषेध, दिनांक–24.11.2020 में यह भी आदेश निहित है कि यदि किसी थाना क्षेत्र में राज्यप स्तर/जिला स्तर पर प्राप्त आसूचनाओं के आधार पर राज्य/जिला स्तर से प्रतिनियुक्त छापामारी दल के द्वारा अवैध शराब की बरामदगी की जाती है तो ऐसे मामलों में संबंधित थानाध्यक्ष एवं चौकीदार पर आसूचना संकलन नहीं करने तथा आवश्यक कार्रवाई नहीं करने के लिए दोषी माने जायेंगे तथा उनके इस विफलता एवं निष्क्रियता के लिये कठोर कानूनी एवं अनुशासनिक कार्रवाई की जायेगी।"
>
> अतः उक्त परिप्रेक्ष्य में मद्यनिषेध कानून के कियान्वयन एवं आसूचना संकलन में बरती गयी उदासीनता एवं घोर लापरवाही के आरोप में पु0नि0 मुकेश कुमार पासवान, थानाध्यक्ष, बाईपास थाना (पटना) एवं स्थानीय थाना के चौकीदार 1/2– लल्लू पासवान को तत्काल प्रभाव से निलंबित किया जाता है तथा विभागीय कार्यवाही प्रारंभ करने का आदेश दिया जाता है। कृत कार्रवाई एवं विभागीय कार्यवाही संख्या से अवगत करायेंगे।

18. I have perused the pleadings made in the writ petition and the counter affidavit and entire material on record, I find that from the bare perusal of the charge memo, it would show that it has been framed on the direction of the Director General of Police, Bihar, who, vide Letter No. 142 dated 01.02.2021, had directed the Senior Superintendent of Police, Patna (Annexure-4 to the writ petition) by referring his direction contained in Letter No. 63 (01 implementation) 2019-20-1296/Excise Prohibition dated 24.11.2020 that in case of recovery of illicit liquor from any police station's territorial jurisdiction, the concerned Station House Officer (S.H.O) would be held **guilty** and strict action is required against him. Following the condition contained in Letter No. 63 dated 24.11.2020, the Director General of Police, had suspended the petitioner vide order contained in Letter No. 21/2021-142 dated 01.02.2021 resulting into passing of the Penalty Order by the Disciplinary Authority. ***(Emphasis supplied)***

19. As regard to the issue involved in the present case, I also find it proper to reproduce paragraph nos. 34, 35 and 42 of the judgment passed by a co-ordinate Bench of this Court in C.W.J.C. No. 737 of 2023 dated 05.05.2023, which is, *inter alia,* reproduced hereinafter:

"34. Upon going through the entire materials as

discussed hereinabove, this Court has no iota of doubt that there was an inherent defect in the framing of charge itself inasmuch as a bare perusal of it would show that it has been framed on the direction of the Director General of Police, Bihar vide his letter no. 48 dated 29.11.2020 addressed to the Senior Superintendent of Police (Annexure '1' to the writ application). In this letter the Director General of Police has referred his own direction contained in letter no. 63 dated 24.11.2022, paragraph '3' whereof pre-judges the guilt of the S.H.O. and the Chowkidar in case of recovery of illicit liquor from the area of the police station. This has no statutory sanction. Once the Director General of Police issued this direction to the S.S.P., the S.S.P./S.P. had no opportunity to apply his own independent mind as to whether the petitioner is liable to be proceeded against or of the kind of charges may be framed against him. The direction was coming from the top of the police echelon as if on mere recovery of illicit liquor of 25 liters from the Kankarbagh Police Station area, the Officer-in-Charge of the said police station is liable to be held guilty.

35. In the opinion of this Court, paragraph '3' of the letter no. 63 (01 fdz;kU;o;u) 2019-20-1296/ e\fu'ks/k dated 24.11.2020 which has influenced the entire proceeding right from the beginning, paragraph '3' raises a presumption of guilt even before framing of charge, therefore, this Court has no iota of doubt in saying that the guilt of the employee has been assumed and presumed even before giving him an opportunity of hearing. Such presumption of guilt has no sanction of law and the same is violative of Article 21 of the Constitution of India. It is contrary to the principles of fair play in action.

42. Before this Court parts with this order, in view of the discussions made hereinabove, this court directs the Director General of Police, Bihar, Patna (respondent No. 4) to revisit paragraph '3' of the letter no. 63 (01 fdz;kU;o;u) 2019-20-1296/e\fu'ks/k dated 24.11.2020 which assumes and pre-judges the guilt against the Station House Officer and Chowkidar even before framing of charge and conduct of an independent enquiry. This has no sanction of law. Because of this stipulation in this case the whole proceeding right from framing of charge has been influenced and a serious prejudice has been caused to the petitioner."

20. The Apex Court in respect of scope of judicial review in Paragraph Nos. 14 and 15 in the case of ***Municipal Council, Neemuch Vs. Mahadeo Real Estate & Ors.,*** reported in ***(2019) 10 SCC 738*** has made following observations which

are, *inter alia*, reproduced hereinafter:

> *"14. It could thus be seen that the scope of judicial review of an administrative action is very limited. Unless the Court comes to a conclusion that the decision-maker has not understood the law correctly that regulates his decision-making power or when it is found that the decision of the decision-maker is vitiated by irrationality and that too on the principle of "Wednesbury unreasonableness" or unless it is found that there has been a procedural impropriety in the decision-making process, it would not be permissible for the High Court to interfere in the decision-making process. It is also equally well settled that it is not permissible for the Court to examine the validity of the decision but this Court can examine only the correctness of the decision-making process.*
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> *15. This Court recently in W.B. Central School Service Commission v. Abdul Halim, reported in (2019) 18 SCC 39 had again an occasion to consider the scope of interference under Article 226 in an administrative action:*
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> *"31. In exercise of its power of judicial review, the Court is to see whether the decision impugned is vitiated by an apparent error of law. The test to determine whether a decision is vitiated by error apparent on the face of the record is whether the error is self-evident on the face of the record or whether the error requires examination or argument to establish it. If an error has to be established by a process of reasoning, on points where there may reasonably be two opinions, it cannot be said to be an error on the face of the record, as held by this Court in Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale, AIR 1960 SC 137. If the provision of a statutory rule is reasonably capable of two or more constructions and one construction has been adopted, the decision would not be open to interference by the writ court. It is only an obvious misinterpretation of a relevant statutory provision, or ignorance or disregard thereof, or a decision founded on reasons which are clearly wrong in law, which can be corrected by the writ court by issuance of writ of certiorari."*

21. In this context, I also find it proper to refer the decision of the Hon'ble Supreme Court in the case of ***H.L. Trehan and Ors. Etc vs. Union of India & Ors. Etc*** reported in

AIR 1989 SC 568 wherein, it has been held that governmental organization issued a circular adjusting prejudicially the terms and conditions of its employees without giving a chance of hearing. The legitimacy of the circular was tested on the ground of infringement of the principles of natural justice. It is gainful to reproduce paragraphs nos. 12 and 13 of the aforesaid judgment, which, *inter alia,* are as follows:

> *"12. It is, however, contended on behalf of CORIL that after the impugned circular was issued, an opportunity of hearing was given to the employees with regard to the alterations made in the conditions of their service by the impugned PG NO 931 circular. In our opinion, the post-decisional opportunity of hearing does not subserve the rules of natural justice. The authority who embarks upon a post-decisional hearing will naturally proceed with a closed mind and there is hardly any chance of getting a proper consideration of the representation at such a post-decisional opportunity. In this connection, we may refer to a recent decision of this Court in K.I. Shephard & Ors. v. Union of India & Ors., JT 1987 (3) 600. What happened in that case was that the Hindustan Commercial Bank, The Bank of Cochin Ltd. and Lakshmi Commercial Bank, which were private Banks, were amalgamated with Punjab National Bank, Canara Bank and State Bank of India respectively in terms of separate schemes drawn under section 45 of the Banking Regulation Act, 1949. Pursuant to the schemes, certain employees of the first mentioned three Banks were excluded from employment and their services were not taken over by the respective transferee Banks. Such exclusion was made without giving the employees, whose services were terminated, an opportunity of being heard. Ranganath Misra, J. speaking for the Court observed as follows:*
>
> *"We may now point out that the learned Single Judge of the Kerala High Court had proposed a post-amalgamation hearing to meet the situation but that has been vacated by the Division Bench. For the reasons we have indicated, there is no justification to think of a post-decisional hearing. On the other hand, the normal rule should apply. It was also contended on behalf of the respondents that the excluded employees could now represent and their case could be examined. We do not think that would meet the ends of justice. They have already been thrown our of employment and having been deprived of livelihood they must be facing serious*

> *difficulties. I here is no justification to throw them out of employment and then given them an opportunity of representation when the requirement is that they should have the opportunity referred to above as a condition precedent to action. It is common experience that once a decision has been taken. there is a tendency to uphold it and a representation may not really yield any fruitful purpose."*
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> *13. The view that has been taken by this Court in the above observation is that once a decision has been taken, there is a tendency to uphold it and a representation may not yield any fruitful purpose. Thus, even if any hearing was given to the employees of CORIL after the issuance of the impugned circular, that would not be any compliance with the rules of natural justice or avoid the mischief of arbitrariness as contemplated by Article 14 of the Constitution. The High Court. In our opinion was perfectly justified in quashing the impugned circular."*

22. I further find that the Post Decisional hearing is one with close mind and it is a fact that it is detrimental in nature and it would be a formality in case it is done with a prejudiced mind with pre-supposed decision of awarding the punishment and hence post decisional hearing would not be as effective. Furthermore, the basic prospect of natural justice requires pre decisional hearing and not post decisional hearing and the law granting post decisional hearing has been well settled by the Apex Court by holding that if the authorities have taken decision to take action before initiation of departmental proceeding, granting post decisional hearing will only be held to be an empty formality calling for violation of principle of natural justice.

23. In the present case, the Director General of

Police with pre-determined mind had observed that strict disciplinary action is required to be taken against the petitioner in accordance with Letter No. 63 (01 implementation) 2019-20-1296/Excise Prohibition dated 24.11.2020, which resulted into passing of penalty order against the petitioner by the disciplinary authority who with pre conceived mind took decision to impose penalty in compliance of the letter of the Director General of Police. The facts also reveals that the statement of the witnesses has not been recorded in the manner prescribed and in this regard it would be gainful to refer the case of ***Union of India and Ors. v/s P. Thayangarajan,*** reported in ***(1999) SCC 733,*** wherein Hon'ble Apex Court has held that "the conducting officer of the enquiry has to record the statement of the witness himself in the presence of the parties and the same cannot be done in any other manner." The facts further reveals that for similar charges show cause was issued to one Chaukidar,namely, Lalu Paswan was also suspended along with the petitioner has been exonerated from all the charges by the Senior Superintendent of Police vide order contained in Memo No. 1761 dated 03.02.2022, the same also calls for interference in light of the law laid down by the Apex Court in the case of ***Man Singh vs. State of Haryana*** reported in ***(2008)***

12 SCC 331, wherein the Apex Court observed in paragraph no. 20, which is, *inter alia*, reproduced hereinafter :

> *"20. We may reiterate the settled position of law for the benefit of the administrative authorities that any act of the repository of power whether legislative or administrative or quasi-judicial is open to challenge if it is so arbitrary or unreasonable that no fair-minded authority could ever have made it. The concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equals have to be treated equally even in the matter of executive or administrative action. As a matter of fact, the doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of "fair play" and reasonableness."*

The Apex Court in the case of ***RajendraYadav vs. State of M.P. & Ors.*** reported in ***(2013) 3 SCC 73***, has held, *inter alia*, as under:

> *"9. The doctrine of equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The disciplinary authority cannot impose punishment which is disproportionate i.e. lesser punishment for serious offences and stringent punishment for lesser offences."*

24. I further find it apt to observe here that no documents as such has been proved against the petitioner which goes to show that there exists guilt on the part of the present

petitioner. It is a well settled principle of law that gathering evidence by way of enquiry with an intention to support the pre decisional punishment will just emphasize the matter and the same is also against the principle of Natural Justice. In the case of ***State of Punjab vs Davinder Pal Singh Bhullar & Ors.*** reported in ***(2011) 14 SCC 770***, the Apex Court has held as under:

> ".....sublato fundamento cadit opus" meaning thereby that foundation being removed, structure/work falls, comes into play and applies on all scores in the present case.....";
>
> "Since the foundation of initiation of the departmental proceeding and its conduct have been shown to be entirely illegal, the foundation has to be necessarily removed, as a result of which the structure/work of punishment given to this writ petitioner stood, is bound to fall."

25. A similar methodology was employed by the Supreme Court in ***Swadeshi Cotton Mills Co. Ltd. v. Union of India*** reported in ***(1981) 1 SCC 664*** where a void administrative choice was approved by post-decisional hearing. An order assuming control over the administration of an organization by the Government without earlier notice or hearing was held to be bad as it abused the audi alteram partem rule. Be that as it may, the Court approved the impugned order on the grounds that the Government had consented to give post-decisional hearing.

26. In view of the above discussions, I don't want to enter into question, as to whether, the Additional Director General of Police is the competent authority or the Director General of Police, in case of the petitioner who is a Inspector of Police and the penalty order having been passed by the Director General of Police calls for interference of this Court being without jurisdiction as claimed by the petitioner. However, a reference can be made to the observations of the Apex Court made in Paragraph Nos. 17 and 18 in the case of **State of Tamilnadu Vs. Pramod Kumar, IPS & Anr.** reported in **2018 (17) SCC 677,** which are, *inter alia*, reproduced hereinafter.

> ***"17.*** *There are two issues which arise for consideration in this case. One pertains to the validity of the charge memo and the other relates to the continuance of Respondent 1 under suspension. As the two issues are distinct and not connected to each other, we proceed to deal with them separately.*
>
> ***Validity of the charge memo***
>
> ***18.*** *Rule 8 of the All India Services (Discipline and Appeal) Rules, 1969 prescribes a procedure for imposing major penalties. A major penalty specified in Rule 6 cannot be imposed except after holding an enquiry in the manner prescribed in Rule 8. Where it is proposed to hold an enquiry against a member of the service under Rule 8, the disciplinary authority shall "draw up or caused to be drawn up" the substance of the imputation of misconduct or misbehaviour into definite and distinct article of charge. The Rule further provides for an opportunity to be given to the delinquent to submit his explanation, the appointment of an inquiring authority and the procedure to be followed for imposition of a penalty with which we are not concerned in this case. The disciplinary authority as defined in Rule 2(b) is the authority competent to impose on a member of the service any of the penalties specified in Rule 6. Rule 7 provides that the authority to institute proceedings and to impose penalty on a member of All India Service is the State Government, if he is serving in connection with the affairs of the State. There is no doubt that the Government of Tamil Nadu is the disciplinary authority.*

The authority to act on behalf of the State Government as per the Business Rules is the Minister for Home Department. There is no dispute that the Hon'ble Chief Minister was holding the said department during the relevant period (2011-2016).”

27. Considering the facts and circumstances of the present case and the law laid down by the Apex Court referred in above paragraphs, I find that even though the petitioner was proceeded as per the provision of C.C.A. Rules, 2005 and opportunity of hearing was given to the petitioner, in view of the conditions/directions contained in Letter No. 63 (01 implementation) 2019-20-1296/Excise Prohibition dated 24.11.2020 of the Director General of Police, in my opinion, the authorities had pre-determined to impose penalty on the petitioner and proceeded to hold quasi judicial inquiry giving the post-decisional opportunity of hearing which does not sub serve the rule of natural justice and is contrary to the principle of fair play. The authority who embarks upon a post decisional hearing will naturally proceed with a closed mind and there is hardly any chance of getting a proper consideration of the representation at such a post-decisional opportunity. Accordingly, I set aside and quash the suspension order no. 21/2021-142 dated 01.02.2021 (Annexure-4 to the writ petition), charge memo contained in Memo No. 41 dated 09.02.2021 (Annexure-7 to the writ petition) and the penalty

order contained in Memo no. 233 dated 13.04.2022 (Annexure-1 to the writ petition) and the subsequent orders, if any, are also hereby set aside and quashed.

28. I find it proper to record here that the Article 47 of the Constitution of India while mandating the duty of the State to raise standards of living and to improve the public health at large and as such State Government enacted Bihar Prohibition and Excise Act, 2016 with the said objective, but for several reasons, it finds itself on the wrong side of the history. The prohibition has, in fact, given rise to unauthorized trade of liquor and other contraband items. The draconian provision have become handy for the police, who are in tandem with the smugglers. Innovative ideas to hoodwink law enforcing agency have evolved to carry and deliver the contraband. Not only the police official, excise official, but also officers of the State Tax department and the transport department love liquor ban, for them it means big money. The number of cases registered is few against the king pin / syndicate operators in comparison to the magnitude of the cases registered against the poor who consume liquor and those poor people and are prey of hooch tragedy. The life of majority of the poor section of the State who are facing wrath of the Act are daily wagers who are only earning member

of their family. The Investigating Officer deliberately does not substantiate the allegations made in the prosecution case by any legal document and such lacunae are left and the same allows the Mafia scot free in want of evidence by not conducting search, seizure and investigation in accordance with law.

29. Be that as it may, in light of the recorded evidence, if the Disciplinary Authority finds that the petitioner should be subjected to disciplinary action, in that circumstance, petitioner is required to be put under suspension to proceed afresh in light of the law laid down by the Apex Court.

30. The writ petition stands disposed of.

31. There shall be no order as to costs.

(Purnendu Singh, J)

mantreshwar/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	13.11.2024
Transmission Date	N.A.