

**Court No.49**

**Case :-** WRIT - A No. - 42698 of 2010

**Petitioner :-** Dashrath Singh

**Respondent :-** State of U.P. and Others

**Counsel for Petitioner :-** V. S. Chauhan, Devesh Kumar, Dharmendra Singh, Niraj Kumar Singh, Umesh Tripathi, Utkarsh Malviya

**Counsel for Respondent :-** C. S. C., Arvind Kumar

**Hon'ble Siddhartha Varma, J.**

Heard Sri Utkarsh Malviya, learned counsel for the petitioner and Sri Vikram Bahadur Yadav, learned counsel for the respondents.

This writ petition has been filed against the order dated 31.10.2009 passed by the Superintendent of Police, Lalitpur dismissing the petitioner from service, the order dated 31.1.2010 passed by the Deputy Inspector General of Police, Jhansi Range, Jhansi dismissing the Appeal and the order dated 29.4.2010 passed by the Additional Director General of Police (Telecommunications), Uttar Pradesh, Lucknow dismissing the Revision filed by the petitioner.

The petitioner who was posted as a Constable at Reserve Police Lines, Lalitpur was allegedly found drunk on 20.6.2009. It was alleged that while he was drunk, he had misbehaved with the Station Officer Sri Baljeet Singh. It had, still further, been alleged that after a complaint about the petitioner's drunkenness was made, a medical examination was done and he was suspended on

23.6.2009. A preliminary enquiry was conducted and upon finding that the allegations were prima facie correct, enquiry under Rule 14 of the U.P. Police Officers of the Subordinate Ranks (Punishment & Appeal) Rules, 1991 was conducted. The Enquiry Officer, upon finding that the petitioner was guilty of misbehaviour while he was drunk, submitted his enquiry report on 30.6.2009. In the Preliminary Enquiry report the Enquiry Officer had also given a finding that the petitioner was to be punished with a major penalty. Thereafter under Rule 14(1) of the Rules, the Enquiry Officer issued a charge sheet to the petitioner on 30.7.2009 charging him with the allegation that on 20.6.2009 after consuming liquor, he had misbehaved with the Station Officer. The petitioner replied to the charges on 10.8.2009 and thereafter upon completing the enquiry, the Enquiry Officer on 3.10.2009 submitted his enquiry report again with a recommendation for a major penalty. The Disciplinary Authority i.e. the Superintendent of Police, Lalitpur upon receiving the enquiry report, issued a show-cause notice on 9.9.2009 to the petitioner to submit his reply. The petitioner submitted a detailed reply on 26.10.2009 to the show cause notice with a request to drop all proceedings against the petitioner. Thereafter on 31.10.2009, an order of punishment was passed by the Superintendent of Police, Lalitpur whereby the petitioner was dismissed from service. The petitioner against the order dated 31.1.2010 filed an appeal before the Deputy Inspector General of

Police, Jhansi Range, Jhansi which came to be dismissed on 31.1.2010. Thereafter the Revision filed by the petitioner against the order dated 31.1.2010 also met the same fate on 29.4.2010. This order was passed by the Additional Director General of Police (Telecommunications), Uttar Pradesh, Lucknow. Aggrieved thereof the petitioner has filed the instant writ petition.

Broadly, the petitioner has made the following submissions:

(i) There was no conclusive medical examination done on the petitioner. Learned counsel for the petitioner submitted that unless a proper urine test or a blood test was done, the fact that the petitioner had consumed alcohol and had thereafter in an inebriated state misbehaved with the Station Officer could not be conclusively proved. Learned counsel, to bolster his case, relied upon a decision of the Supreme Court in **Bachubhai Hassanalli Karyani vs. State of Maharashtra : (1971) 3 SCC 930** and the judgments of this Court in **Krishna Kumar vs. Union of India** (Writ-A No.67355 of 2007 decided by order dated 15.5.2019) and in **Shiv Raj singh vs. State of U.P. & Ors.** (Writ-A No.2230 of 2014 decided by order dated 28.3.2018).

(ii) Learned counsel for the petitioner further submitted that the medical report was prepared under the influence of the Station Officer who was physically present at the hospital despite the fact that his presence was not required at all and, therefore, the

examining doctor namely Doctor Arjun Singh was under the influence of his presence.

(iii) The Enquiry Officer upon completing the enquiry had given his opinion with regard to the fact as to what punishment the petitioner had to be given. Learned counsel for the petitioner submitted that the job of the Enquiry Officer came to an end upon finding that the petitioner was guilty of the charge. It was the Disciplinary Authority which was required to look into the punishment which was to be given. Learned counsel for the petitioner further submitted that the Disciplinary Authority had to also, while imposing punishment, look into the surrounding circumstances i.e. how long the petitioner had served and how had his conduct been in the past. In the instant case, learned counsel for the petitioner submitted that the petitioner was never punished ever before and this fact was to be looked into by the Disciplinary Authority. To bolster his case, learned counsel for the petitioner has relied upon a decision of the Supreme Court in **State of Uttaranchal & Ors. vs. Kharak Singh : (2008) 8 SCC 236.**

(iv) Learned counsel for the petitioner further submitted that the order of dismissal was not the only order which could have been passed by the Disciplinary Authority. A lesser punishment could also have sufficed and the Disciplinary Authority could have considered awarding a lesser punishment. Learned counsel

further submitted that the enquiry was conducted in a slipshod manner and no witness of the incident was ever examined.

Learned Standing Counsel, however, opposed the writ petition and submitted that the petitioner was guilty of indiscipline as he had entered into an argument with the Station Officer in an inebriated state and since the police force was a disciplined force, the petitioner was rightly punished.

Having considered the submissions raised by learned counsel for the parties, the Court is of the view that the conclusion which the Enquiry Officer had arrived at about the drunkenness of the petitioner was definitely erroneous. In the instant case neither was any urine test done nor was any blood test conducted at that point of time. The finding that the petitioner was in a drunken state which was arrived at simply because the petitioner was smelling of alcohol was an absolutely erroneous decision on the part of the Enquiry Officer. Resultantly, the enquiry itself which was based on a wrong input, was absolutely baseless. The moment an allegation was made with regard to drunkenness, either a urine test ought to have taken place or a blood test ought to have been conducted. In the absence of these two tests, the report by the Enquiry Officer become erroneous. Still further, the Court finds that when the Disciplinary Authority was punishing the petitioner, it should have considered the fact that the petitioner had not in any manner indulged in any activity which could be termed as "indiscipline".

Under such circumstances, the Court is of the view that the orders impugned cannot be sustained in the eyes of law. Therefore, the order dated 31.10.2009 passed by the Superintendent of Police, Lalitpur; the order dated 31.1.2010 passed by the Deputy Inspector General of Police, Jhansi Range, Jhansi and the order dated 29.4.2010 passed by the Additional Director General of Police (Telecommunications), Uttar Pradesh, Lucknow are quashed and are set aside. The petitioner shall be entitled to all consequential benefits.

The writ petition, accordingly, stands allowed.

**Order Date :- 12.05.2022**

**GS**

(Siddhartha Varma, J.)