

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7478 of 2023

Bhola Kumar Singh Son of Late Sahdev Singh Resident of Village-
Dhanamadih, P.S.-Sarmera, District-Patna.

... .. Petitioner

Versus

1. The State of Bihar through the Director General of Police, Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Inspector Genral of Police, Tirhut Range, Muzaffarpur.
4. The Additional Director Genral of Police (Budget and Appeal), Bihar, Patna.
5. The Inspector General of Police (Budget and Appeal), Bihar, Patna.
6. The Superintendent of Police, Sitamarhi.
7. The Enquiry officer-Cum-Superintendent of Police, City, Muzaffarpur.

... .. Respondents

Appearance :

For the Petitioner : Mr. Vinay Ranjan, Advocate
For the Respondents : Mr. P.K. Verma, AAG-3
Mr. Suman Kumar Jha, A.C. to AAG-3

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

Date : 10-12-2025

This writ petition has been filed for quashing the order as contained in memo no.731 dated 16.06.2021 issued under the signature of the Inspector General of Police, Tirhut Range, Muzaffarpur, by which punishment of stoppage of increment of salary for two years with non-cumulative effect has been inflicted upon the petitioner. The petitioner has further



challenged the order as contained in memo no.558 dated 08.09.2022 passed by the Director General of Police, Bihar, Patna, in exercise of power under Rule 853A(a) of the Bihar Police Manual, 1978, by which the aforesaid punishment order 16.06.2021 was set aside and petitioner was reverted to the basic pay scale of Police Sub Inspector for five years and the petitioner was debarred from being posted as S.H.O. for 10 years and it was further directed that during suspension period the petitioner shall only be paid the subsistence allowance. Lastly, the prayer has been made to direct the respondent authorities to reinstate the petitioner on his earlier position with all consequential benefits.

2. The present case emanates from a seizure of approximately 4767.22 liters of illicit liquor from the vicinity of Sursand Police Station within the District of Sitamarhi, which was carried out by the A.L.T.F. (Excise Department), based on which, Sursand P.S. Case No.390 of 2020 dated 13.12.2020 was registered under sections 414, 467, 468, 471 read with section 120-B of the Indian Penal Code and under section section 30(a), 36 and 41 of the Bihar Excise Act.

3. The thrust of allegation against the petitioner is that he failed to gather intelligence and carry out the



provisions of the Bihar Excise Act. Based on the recovery of illicit liquor from the vicinity of Sursand police station, the F.I.R. was registered and the petitioner was placed under suspension vide District Order No.1547 of 2020 dated 29.12.2020 and a departmental proceeding was initiated against the petitioner. Subsequently, memo of charge along with list of documents and witnesses were served upon the petitioner on 05.01.2021. The petitioner submitted his response / defence on 01.03.2021. The respondent authorities sought for the last defence of the petitioner which was submitted by him on 06.04.2021. The Enquiry Officer submitted his report to the disciplinary authority - I.G. Tirhut Range, who issued a second show-cause to the petitioner based on the aforesaid enquiry report. The petitioner submitted his explanation thereto on 07.05.2021. The disciplinary authority vide impugned order dated 16.06.2021 agreeing with the enquiry report has passed the order of punishment whereby the punishment of stoppage of increment of salary for two years with non-cumulative effect has been imposed upon the petitioner.

4. It would be relevant to quote the impugned order dated 16.06.2021 by which the punishment has been imposed upon the petitioner, which reads as under:-

सीतामढ़ी जिला विभागीय जाँच (कार्यवाही)



संख्या-02/2021 विरुद्ध पु०नि० भोला कुमार सिंह, सीतामढ़ी जिला बल की संचिका में गणेश कुमार (भा०पु०से०) पुलिस महानिरीक्षक, तिरहुत क्षेत्र, मुजफ्फरपुर का पारित आदेश:-
अपचारी पु०नि० भोला कुमार सिंह, सीतामढ़ी जिला बल के विरुद्ध मद्यनिषेध कानून के क्रियान्वयन, आसूचना संकलन में बरती गयी उदासीनता एवं घोर लापरवाही का आरोप इस आधार पर लगाया गया है कि:-

01. जब अपचारी पु०नि०-सह-थानाध्यक्ष सुरसण्ड के पद पर पदस्थापित थे, तो: पुलिस महानिरीक्षक (मद्यनिषेध), बिहार, पटना का पत्र संख्या-524 (अभियान) 20-1415/मद्यनिषेध (गो०), दिनांक-18.12.2020 के द्वारा सीतामढ़ी जिला में दिनांक 12.12.2020 को मद्यनिषेध इकाई, बिहार, पटना को प्राप्त गुप्त सूचना के आलोक में मद्यनिषेध की टीम एवं ALTF के साथ अवैध शराब की बरामदगी हेतु संरसण्ड-पुपरी मुख्य मार्ग पर थाना से मात्र 2.5 किलोमीटर की दूरी पर ग्राम विरखा के नागेन्द्र महतो के बालू सिमेन्ट की दुकान में छापामारी कर क ट्रक एवं अन्य 04 वाहन से कुल विदेशी शराब 522 कार्टन (कुल-4617.78 लीटर) के साथ श्यामबाबू साह को गिरफ्तार किया गया एवं श्यामबाबू साह के निशानदेही पर मात्र 1.5 किलोमीटर की दूरी पर स्थित ग्राम बनौली के रामनाथ ठाकुर के गैरेज में छापामारी कर 05 वाहन सहित 149.74 लीटर विदेशी शराब के साथ दो व्यक्ति 01. मो० सलामत एवं 02. मो० अनीश को गिरफ्तार किया गया। उपरोक्त तीनों गिरफ्तार व्यक्तियों के निशानदेही पर थाना से मात्र आधा किलोमीटर की दूरी पर स्थित पंकज ठाकुर के घर में छापामारी कर 08 बोतल विदेशी शराब के साथ पंकज ठाकुर को गिरफ्तार किया गया। इस प्रकार कुल 4767.22 लीटर विदेशी शराब बरामद कर जप्त किया गया। इस संबंध में सुरसण्ड थाना काण्ड संख्या-390/2020, दिनांक-13.12.2020, धारा-414/467/468/471/120(बी) भा० द०वि० एवं 30 (ए)/36/41(1) बिहार मद्यनिषेध एवं उत्पाद अधिनियम दर्ज किया गया।

02. पुलिस मुख्यालय का पत्र संख्या-63 (01) क्रियान्वयन) 2019-20-1296/मद्यनिषेध, दिनांक-24.11.2020 में भी यह आदेश निहित है कि “यदि किसी थाना क्षेत्र में राज्य स्तर/जिला स्तर पर प्राप्त आसूचनाओं के आधार पर राज्य/जिला स्तर से प्रतिनियुक्ति छापामारी दल के द्वारा अवैध शराब को बरामदगी की जाती है तो ऐसे मामलों में संबंधित थानाध्यक्ष के द्वारा आवश्यक कार्रवाई नहीं करने के लिए दोषी माने जायेंगे तथा उनके इस विफलता एवं निष्क्रियता के लिए कठोर कानूनी एवं अनुशासनिक कार्रवाई



करने का प्रावधान है।

उक्त परिपेक्ष्य में मद्यनिषेध कानून के क्रियान्वयन एवं आसूचना संकलन में बरती गयी उदासीनता एवं घोर लापरवाही के आरोप में पु०नि० भोला कुमार सिंह, थानाध्यक्ष, सुरसण्ड, जिला-सीतामढ़ी को तत्काल प्रभाव से निलंबित करते हुए विभागीय जाँच (कार्यवाही) प्रारंभ करने का आदेश दिया गया।

इस कार्यालय का आदेश ज्ञापांक-27/गो०, दिनांक-12.01.2021 के द्वारा पु०नि० भोला कुमार सिंह के विरुद्ध सीतामढ़ी जिला विभागीय जांच (कार्यवाही) संख्या-02/2021 प्रारंभ किया गया। इस विभागीय जाँच (कार्यवाही) में जाँच प्राधिकार के रूप में श्री राजेश कुमार, नगर पुलिस अधीक्षक, मुजफ्फरपुर को तथा प्रस्तुतीकरण पदाधिकारी के रूप में पु०नि० अभिनन्दन मंडल, ओ०एस०डी० मुजफ्फरपुर को प्राधिकृत किया गया।

इस विभागीय जाँच (कार्यवाही) के संचालनोपरान्त श्री राजेश कुमार, नगर पुलिस अधीक्षक, मुजफ्फरपुर द्वारा अपने कार्यालय ज्ञापांक-2192/गो०, दिनांक-10.05.2021 के माध्यम से “पु०नि० भोला कुमार सिंह के विरुद्ध अवचार के लिए मैं इन्हें दोषी पाता हूँ।” का मंतव्य के साथ संचिका अंतिम आदेश हेतु अधोहस्ताक्षरी को प्रेषित की गई है।

मैंने भी संचिका में उपलब्ध आरोप, प्रदर्श, साक्षियों का बयान, अपचारी द्वारा समर्पित स्पष्टीकरण, संचालन पदाधिकारी द्वारा समर्पित मंतव्य का अवलोकन किया। अवलोकनोपरान्त पाया गया कि शराबबंदी के सफल क्रियान्वयन हेतु थानाक्षेत्र में अवैध शराब से संबंधित आसूचना संकलन, बरामदगी/छापामारी एवं शराब कारोवारियों पर पूर्णरूप से अंकुश लगाने में अपचारी पु०नि० भोला कुमार सिंह तत्कालीन थानाध्यक्ष सुरसण्ड अक्षम सिद्ध हुए हैं।

विभिन्न तिथियों को प्रेषित आदेशों के द्वारा सभी थानाध्यक्षों को पूर्ण शराबबंदी की दिशा में आसूचना संकलन करते हुए कार्रवाई हेतु आदेशित किया गया है। थानाक्षेत्र से अवैध शराब की बरामदगी के लिए संबंधित थानाध्यक्ष सीधे जिम्मेवार होते हैं। मद्यनिषेध की टीम एवं ALTF के द्वारा थाना से मात्र 1.5 एवं 2.5 किलोमीटर की दूरी से इतने अधिक मात्रा में अवैध शराब की बरामदगी अपचारी पु०नि० भोला कुमार सिंह की अपने थाना में आसूचना संकलित करने तथा प्रभावी नियंत्रण में विफलता



को दर्शाता है। अपकारी द्वारा समर्पित अंतिम बचाव स्पष्टीकरण को असंतोषजनक पाया गया।

अतएव सम्यक विचारोपरान्त जाँच प्राधिकार के मंतव्य से सहमत होते हुए सीतामढ़ी जिला विभागीय जाँच (कार्यवाही) संख्या-02/2021 में लगाये गये आरोपों के लिए बिहार सरकारी सेवक (वर्गीकरण, नियंत्रण एवं अपील) नियमावली-2005 के भाग-IV के नियम-14 में निहित प्रावधान के तहत अपचारी पु०नि० भोला कुमार सिंह का अगले 02(दो) वर्षों का वेतन वृद्धि पर रोक लगाया जाता है, जिसका प्रभाव असंचयात्मक होगा।

पुलिस महानिरीक्षक,
तिरहुत क्षेत्र, मुजफ्फरपुर।

5. Being aggrieved by the order of punishment dated 16.06.201, the petitioner preferred a departmental appeal before the Additional Director General of Police (Budget, Appeal and Welfare), Bihar, Patna on 24.08.2021. Since no decision was taken by the respondent authorities on the revocation of suspension of the petitioner and the prolonged pendency of the aforesaid departmental appeal, the petitioner preferred a writ petition viz. C.W.J.C. No.5601 of 2022. However, during the pendency of the aforesaid writ petition and also the departmental appeal, the D.G.P. Bihar in exercise of powers under Rule 853A (a) of the Bihar Police Manual, has issued a show-cause notice to the petitioner for enhancement of punishment. In pursuance of the said show-cause notice, the petitioner filed his reply. However, the D.G.P. Bihar vide impugned order dated 08.09.2022 quashed the earlier



punishment order dated 16.06.2021 and enhanced the punishment imposed upon the petitioner to the following extent :-

“ बिहार पुलिस हस्तक के नियम 853अ के तहत समीक्षा एवं पारित आदेश ”

श्री भोला कुमार सिंह, पु०नि० के विरुद्ध संचालित उक्त विभागीय जाँच (कार्यवाही) में अनुशासनिक प्राधिकार सह-पुलिस महानिरीक्षक, तिरहुत क्षेत्र, मुजफ्फरपुर द्वारा आदेश पारित किये जाने के पश्चात अपचारी को निलंबन से मुक्त करने के बिन्दु पर समीक्षा के क्रम में मद्यनिषेध प्रभाग, पुलिस मुख्यालय, बिहार, पटना के संचिका सं०-524 (सीतामढ़ी) 2020 में अनुशासनिक प्राधिकार द्वारा दी गयी सजा को आरोप की तुलना में समानुपातिक प्रतीत नहीं होने के कारण उक्त वि०का० का बिहार पुलिस हस्तक के नियम 8533 के तहत समीक्षा करने का निर्णय लिया गया। जिसके आलोक में वि०का० की मूल संचिका मंगाकर बिहार पुलिस मुख्यालय, पटना में समीक्षा की गयी। समीक्षोपरान्त पुलिस मुख्यालय के पत्र सं०-336/पी०-1, दि०-09.06.2022 द्वारा श्री सिंह से सजा में वृद्धि है। अपचारी के विरुद्ध मद्यनिषेध कानून के क्रियान्वयन एवं आसूचना संकलन में उदासीनता बरतने के कारण थानाक्षेत्र से भारी मात्रा में शराब बरामद होने से संबंधित गंभीर प्रकृति का आरोप प्रमाणित पाया गया है। अनुशासनिक प्राधिकार द्वारा अपचारी को दी गयी सजा आरोप की तुलना में बहुत कम है। अतः सभी तथ्यों पर विचार करते हुये बिहार पुलिस हस्तक के नियम 853अ के तहत समीक्षोपरान्त श्री भोला कुमार सिंह, पुलिस निरीक्षक सह-तत्कालीन थानाध्यक्ष, सुरसंड थाना, सीतामढ़ी को उनके विरुद्ध संचालित सीतामढ़ी जिला विभागीय जाँच (कार्यवाही) सं०-02/2021 में लगाये गये आरोपों के लिये दोषी पाते हुये निम्न दण्ड अधिरोपित किया जाता है -

- i-** सीतामढ़ी जिला विभागीय जाँच (कार्यवाही) सं०-02/2021 में अनुशासनिक प्राधिकार सह-पुलिस महानिरीक्षक, तिरहुत क्षेत्र, मुजफ्फरपुर के ज्ञापांक-731/गो०, दि०-16.06.2021 द्वारा पारित दंडादेश को निरस्त किया जाता है।
- ii-** अपचारी श्री सिंह को संचयात्मक प्रभाव से 05 (पाँच) वर्षों के लिये पुलिस अवर निरीक्षक की कोटि में मूल वेतन पर प्रत्यावर्तित किया जाता है।
- iii-** अपचारी श्री सिंह को आदेश निर्गत की तिथि से अगले 10 वर्षों तक थानाध्यक्ष के पद पर पदस्थापित नहीं किया जायेगा।
- iv.** अपचारी श्री सिंह निलम्बन अवधि में जो कुछ प्राप्त कर चुके हैं उसके अतिरिक्त कुछ देय नहीं



होगा।
अपचारी श्री सिंह को आदेश निर्गत होने की तिथि से निलंबन
से मुक्त किया जाता है”

6. At the outset, the learned counsel for the petitioner has submitted that the petitioner is a diligent police officer and during his tenure from 11.08.2019 till his suspension i.e. 17.12.2020 he has lodged 47 cases under the Bihar Excise Act and recovered huge quantities of illicit liquor and also seized multiple vehicles. Further, the petitioner has apprehended and arrested 39 persons under the Bihar Excise Act. Therefore, it is the submission of learned counsel for the petitioner that the finding arrived at by the Enquiry Officer as well as the disciplinary authority that there is grave dereliction of duty on the part of the petitioner to carry out the complete ban on illicit liquor under the provisions of the Bihar Excise Act is totally misplaced and misconceived. Moreover, mere recovery of illicit liquor from the vicinity of the Sursand Police Station would not *ipso facto* amount to guilt or dereliction of duty on the part of the petitioner particularly in absence of any allegation of connivance or complicity.

7. Learned counsel for the petitioner has submitted that before serving the memo of charge no show-cause notice was served upon the petitioner and straightway a departmental proceeding was initiated and the petitioner was



placed under suspension. He further submits that the disciplinary authority while issuing the second show-cause after submission of the enquiry report has not served a copy of the enquiry report to the petitioner, thereby preventing the petitioner from effectively defending himself on the basis of the finding of the Enquiry Officer, which has caused serious prejudice to the petitioner.

8. Learned counsel for the petitioner also submits that there are only two witnesses, that too formal witnesses in the departmental proceeding and they have only identified the signatures of the respective senior officers. Moreover, the aforesaid two witnesses were not even present at the place of occurrence during the raid.

9. It has been submitted by learned counsel for the petitioner that during the pendency of the departmental appeal and the writ petition bearing C.W.J.C. No.5601 of 2022, the D.G.P. Bihar exercise *suo moto* revisional jurisdiction under Rule 853A(a) of the Bihar Police Manual and issued a show-cause for enhancement of punishment which had already been imposed upon the petitioner by the disciplinary authority vide impugned order dated 16.06.2021. It is the submission of learned counsel for the petitioner that the D.G.P. Bihar without



considering the response submitted by the petitioner has passed the impugned order dated 08.09.2022, by which the punishment was enhanced.

10. The learned counsel for the petitioner has assailed the order of the D.G.P. Bihar as having been grossly barred by limitation since the earlier order imposing punishment was passed on 16.06.2021 whereas, the D.G.P. Bihar taking *sou moto* revision had passed the impugned order enhancing the punishment on 09.06.2022 i.e. almost after a lapse of one year, which is in teeth of Rule 28 of the Bihar CCA Rules, 2005.

11. It is the submission of the learned counsel for the petitioner that both, the impugned punishment order as well as the revisional orders are bad in law since the submissions advanced by the petitioner was not considered by the authorities.

12. A counter affidavit has been filed by the respondents wherein the respondents have supported the impugned order enhancing the punishment of the petitioner. It is submitted by the learned counsel for the respondent State that the petitioner failed to perform his duty in accordance with the provisions of law, inasmuch as, the petitioner miserably failed in intelligence collection which is an imperative police function with respect of enforcing the complete ban on illicit liquor and



for enforcing the provisions of the Bihar Excise Act.

13. The learned counsel for the respondent State has also submitted that no prejudice is caused to the petitioner and the entire disciplinary proceedings has been carried in accordance with law. It is emphasized by the learned counsel for the State that the petitioner was duly allowed to place his questions for cross-examination and no prejudice was caused to the petitioner. After considering the totality of materials the order imposing the punishment was passed, which the petitioner had assailed under appeal.

14. It is submitted by the respondent State that during the process to decide on the release of delinquent-petitioner from suspension, the entire case was reviewed at the level of Police Headquarters under Rule 853A(a). Since the order imposing punishment was found to be not commensurate with the gravity of allegations levelled, which was found proved against the petitioner, the D.G.P. Bihar in exercise of the powers under Rule 853A(a) has initiated *suo moto* revision and issued a show cause to the petitioner regarding enhancement of the punishment. It is submitted that thereafter the entire case records were considered and reviewed including the defence of the petitioner which was found to be inadequate and unacceptable



and therefore in view of the gross negligence and dereliction of duty, the punishment of the petitioner was enhanced and the earlier order imposing punishment was quashed by the D.G.P, Bihar.

15. Lastly, it is submitted by the learned counsel for the respondent State that Rule 853A(a) of the Bihar Police Manual, 1978 empowers the D.G.P, Bihar to be the competent authority, to review any proceeding against a policemen at any stage and pass appropriate orders as he may deem fit and proper. It is therefore the submission of the learned counsel for the respondent State that the impugned order by which the D.G.P, Bihar had enhanced the punishment of the petitioner is clearly in exercise of the powers under Rule 853A and suffers from no illegality.

16. Considered the submissions advanced by the parties and perused the materials available on record.

17. In the present case, the disciplinary proceeding against the petitioner has been initiated owing to the huge recovery of illicit liquor from the vicinity of the Police Station where the petitioner was posted as S.H.O. Heavy reliance has been placed on a letter / direction issued vide letter no.63 (01-Implementation) 2019-20-1296 / Excise, dated



24.11.2020 which has been considered by a coordinate Bench of this Court in the case of *Ajay Kumar vs. State of Bihar & Ors.* (C.W.J.C. No. 737 of 2023) and has observed as under -

“31. At this stage, this Court would reproduce paragraph ‘3’ of the letter no 63 (01 क्रियान्वयन) 2019-20-1296/मद्यनिषेध dated 24.11.2020 as under:-

“3. यदि किसी थाना क्षेत्र में राज्य स्तर/जिला स्तर पर प्राप्त आसूचनाओं के आधार पर राज्य/जिला स्तर से प्रतिनियुक्त छापाकारी दल के द्वारा अवैध शराब की बरामदगी की जाती हैं तो ऐसे मामलों से संबंधित थानाध्यक्ष एवं चौकीदारी 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 जाय।”

32. In fact, the enquiry officer has referred the aforesaid paragraph in his enquiry report to conclude the guilt against the petitioner.

The Concept of deemed guilty

33. Advanced Law Laxicon, 3rd Edition, Volume 2 D-I Reprint 2009 the word ‘Deemed’ has been described as under:-

“Deems means ‘is of opinion’ or ‘considers’ or ‘decides’ and there is no implication of steps to be taken before the opinion is formed or the decision is taken.” (R.v. Brixton Prison Governor ex p. Soblen, 1963 2QB 243 : (1962) 3 All ER 641. The true synonym for the word



‘deemed’ is ‘judged’ and the other shades of meaning came later. Whenever the word ‘deemed’ is used in statute in relation to a person or thing, it implies that the legislature after due consideration exercised its judgment in conferring that status or attribute to a person or thing. M.R. Mehhotra v. State, AIR 1958 All 492, 498.”

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 क्रियान्वयन) 2019-20-1296/मद्यनिशेध 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.*

36. *This Court has already noticed that in course of enquiry only two departmental witnesses came and they proved only the signature of the concerned authorities on the order. There is not a single witness to say as to how the petitioner may be said to have acted negligently and because of his failure to collect information and implementation of the prohibition laws in Kankarbagh area, illegal operation of Bhatti or factory or illegal sale of liquor has taken place. Not a single example has been cited in course of enquiry to demonstrate that during the period of service of the petitioner, repeated recoveries were made from the same area.*



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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 क्रियान्वयन) 2019-20-1296/ मद्य निशेध 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.*” (Emphasis Supplied)

18. Subsequently again another coordinate Bench of this Court vide judgment and order dated 29.10.2024 passed in the case of **Mukesh Kumar Paswan vs. State of Bihar and Ors. (C.W.J.C No. 8071 of 2023)** has held as under -

“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 थानास्थानीय चौकीदार 1/2 लल्लू पासवान द्वारा मद्य निषेध कानून के क्रियान्वयन एवं आसूचना संकलन में बरती गयी उदासीनता एवं घोर लापरवाही 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 पूर्णरूप से अंकुश लगाने में अझम पाये गये हैं। बिहार पुलिस मुख्यालय (मद्यनिषेध प्रभाग), बिहार, पटना का पत्र संख्या-63 (01 क्रियान्वयन) 2019-20-1296/मद्यनिषेध, दिनांक-24.11.2020 में यह भी आदेश निहित है कि यदि किसी थाना क्षेत्र में राज्य 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



क्रियान्वयन 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. The aforesaid co-ordinate Bench of this Court in ***Mukesh Kumar Paswan (Supra)*** placing reliance on the earlier judgment of this Court in ***Ajay Kumar (Supra)*** and upon the decisions of the Hon’ble Supreme Court in ***Municipal Council, Neemuch vs. Mahadeo real Estate and Ors.*** reported as ***(2019) 10 SCC 738*** and ***H.L. Trehan and Ors. vs. Union of India & Ors.*** reported as ***AIR 1989 SC 568*** had held as under:-

“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.*

xxxx

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....” (emphasis supplied).

20. From the conspectus of the aforesaid two exhaustive decisions of the coordinate Benches of this Court is that the administrative authority acting in the capacity of a *quasi-judicial* authority can not enter and undertake a disciplinary proceeding imposing punishment, much less, revise and substitute it with a much harsher punishment with a pre-determined mindset. The concept of strict liability by virtue of ‘deemed guilt’ of a public servant in absence of any cogent material establishing direct connivance, complicity, negligence



or involvement is totally alien to the service jurisprudence. A public servant, no doubt, has to act and perform the duties of his office diligently and to the best of his abilities, but territorial responsibility can not be *ipso facto* equated with strict liability or deemed guilt, in absence of negligence or laxity being deliberate, which is evidenced based on cogent materials available on record.

21. Now, turning to the facts of the present case, the basis of proceeding against the present petitioner is the recovery of huge amount of illicit liquor made from the vicinity of the police station. In the disciplinary proceedings, only two formal witnesses have been examined who have merely proved the signatures of the senior police officers. The documents adduced in the disciplinary proceedings are the F.I.R lodged by the petitioner himself and the order of suspension and its communication made by the Superintendent of Police. In the cumulative, it is evident that the only thread against the petitioner remains the fact that huge recovery was made from the jurisdiction of police station of which the petitioner was the in-charge and as such, a charge of dereliction of duty has been leveled. It is not discernible as to how these documents establish the guilt of the petitioner so far as his involvement / connivance



or his failure to gather police intelligence is concerned.

22. As already noted by the afore-quoted decisions of the Coordinate Benches of this Court in *Ajay Kumar (supra)* and *Mukesh Kumar Paswan (supra)*, that deemed guilt can not be sustained particularly in cases where there is a total absence of material to establish the guilt, connivance, complicity, negligence or laxity of the petitioner, independently.

23. Further, in the present case, the Director General of Police had exercised his *suo-moto* revisional powers under Rule 853-A(a) of the Bihar Police Manual, whereby the punishment imposed has been enhanced. Even from the perusal of the aforesaid order dated 08.09.2022, it becomes clear that there are no materials on record that could have justified the imposition of the punishment, much less, enhancement of the punishment.

24. Accordingly, the present writ petition is allowed.

25. The impugned orders contained in memo no.731 dated 16.06.2021 issued by the Inspector General of Police, Tirhut Range, Muzaffarpur, by which punishment of stoppage of increment of salary for two years with non-



cumulative effect has been imposed upon the petitioner, and the order as contained in memo no.558, dated 08.09.2022 passed by the Director General of Police, Bihar, are quashed and set aside.

(Sandeep Kumar, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	14.10.2025
Uploading Date	10.12.2025
Transmission Date	

