

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.58 of 2024

In

Civil Writ Jurisdiction Case No.7151 of 2015

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Srikant Singh, Son of Late Yamuna Singh, Resident of Village and P.O.-
Dhanadihri, P.S.- Parasbigha, District- Jehanabad

... .. Appellant/s

Versus

1. The State of Bihar
2. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
3. The Principal Secretary-Cum-Commissioner, Rural Works Department, Government of Bihar, Patna.
4. The Chief Engineer, Rural Works Department, Government of Bihar, Patna.
5. The Special Duty Officer, Rural Works Department, Patna.
6. The Joint Secretary, Rural Works Department, Patna.
7. The Chief Engineer-4, the Conducting Officer, Rural Works Department, Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Ranjeet Kumar, Advocate Mr. Shikharmani Advocate Mr. Rishabh Gupta, Advocate Mr. Rajnish Prakash, Advocate Ms. Lakshmi Kumari, Advocate
For the Respondent/s	:	Mr.Vikas Kumar, AC to AG

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 03-09-2024

The appellant was the writ petitioner, who challenged his termination based on a trap case. Though disciplinary proceeding was initiated, no witness was examined and the enquiry found the petitioner guilty of the alleged misconduct based merely on the documents produced by the Presenting



Officer.

2. The learned Single Judge found that there is a *prima facie* case for grant of relief, insofar as quashing of the termination order dated 16.12.2014, produced as Annexure-13. While setting aside the impugned order, the matter was referred back to the Disciplinary Authority/State Government with liberty to initiate a fresh enquiry with reference to Rule 43(b) of the Bihar Pension Rules, 1950; since the petitioner had attained the age of superannuation when the writ petition was disposed of. The learned Single Judge relied on ***ECIL v. B.Karunakar, (1993) 4 SCC 727, Chairman-cum-Managing Director, Coal India Ltd. v. Ananta Saha, (2011) 5 SCC 142*** and ***State of Uttar Pradesh & Ors. v. Prabhat Kumar, 2022 Live Law SC 736.***

3. The appellant is aggrieved with the remand made, which, according to the appellant, cannot be sustained. The appellant relies on the judgments of this Court in ***Rajendra Prasad vs. State of Bihar, 2024 SCC OnLine Pat 3890*** and LPA No. 389 of 2024, titled as ***Ram Lagan Ram vs. The State of Bihar*** disposed of on 06.08.2024. The appellant also relies on ***Roop Singh Negi v. Punjab National Bank, (2009) 2 SCC 570.***

4. The learned Advocate General, on the other hand,



pointed out that ***Roop Singh Negi*** (supra) specifically found that examination of witnesses is not an inviolable rule and that it would depend on the facts of each case. It is argued that the appellant is a person who was involved in a trap case where he had made a demand for bribe and was caught red handed while accepting it. Such a person cannot be allowed to go scot-free for technical reasons and in the above circumstance, the remand made is perfectly in order. Much reliance is placed on ***Prabhat Kumar*** (supra), which was relied on by the learned Single Judge also.

5. We have considered the issue, specifically looking at ***Union of India v. Mohd. Ramzan Khan, (1991) 1 SCC 588*** and the Constitution Bench decision in ***B.Karunakar*** (supra) in LPA No. 446 of 2024, titled as ***The State of Bihar & Ors. vs. Vikash Kumar*** dated 21.08.2024. Therein also, the learned Advocate General specifically sought for a remand to the Disciplinary Authority; when, in the enquiry carried out, it was again a case of no evidence. This very Division Bench held so in Paragraphs 8, 9 and 10, which are extracted as below:-

*“8. The decisions in ***Union of India v. Mohd. Ramzan Khan, (1991) 1 SCC 588*** and ***ECIL v. B. Karunakar, (1993) 4 SCC 727***; considered the issue of denial of reasonable opportunity, when the enquiry report was not supplied to the*



delinquent employee; after the 42nd amendment of the Constitution of India. Before the 42nd amendment of the Constitution, there was a requirement to issue notice to the delinquent employee to show-cause against the punishment proposed, for which a reasonable opportunity of making representation on the penalty proposed was a mandatory condition under Article 311 (2) of the Constitution of India. The 42nd amendment removed the above condition and it was the contention of the employers that there was no requirement to supply the enquiry report. It was categorically held that whenever the Enquiry Officer is someone other than the Disciplinary Authority and the report of the Enquiry Officer holds the employee guilty of all or any of the charges; with proposal for any punishment or not, the delinquent employee is entitled to a copy of the report to enable him to make a representation to the Disciplinary Authority against the findings in the report.

9. The non-furnishing of the report, hence amounts to violation of principles of natural justice; in which context a remand is necessitated, to supply the enquiry report and afford a reasonable opportunity to the delinquent to represent against the prejudicial findings. The remand is to cure the technical defect, so as to avoid any prejudice being caused to the delinquent, by reason of denial of a reasonable opportunity, before being penalized and not to clear up the lacuna committed by the



Management in the conduct of the enquiry; especially when the enquiry was carried out in a negligent manner without adducing any valid evidence.

*10. **ECIL** (supra) by a larger Bench, on a reference made, reaffirmed the dictum in **Mohd. Ramzan Khan** (supra). These were cases in which the Hon'ble Supreme Court found that a reasonable opportunity, to defend the allegation of misconduct levelled and represent against the findings of the enquiry report, was not afforded to the delinquent employee; in which case alone there could be a remand made for the purpose of curing the defect and affording a reasonable opportunity to the delinquent employee."*

Then relying on **Union of India v. P.Gunasekaran, (2015) 2 SCC 610**, it was further held so in Paragraphs 12 and 13 of **Vikash Kumar** (supra), which too are extracted hereunder:-

"12. From the above extract it is very clear that the High Court under Article 226/227 is entitled to interfere when the finding of fact is based on no evidence. If in every case where no valid evidence is led at the enquiry proceedings, there is a remand made, it would be offering a premium to the negligence of the Management/ Disciplinary Authority and condoning the levity with which the departmental enquiry was conducted. It is the Disciplinary Authority who appoints the Enquiry Officer and also the Presenting Officer. We would think that the Presenting Officer would be well versed in



the procedures and also be informed of the manner in which evidence has to be led before the Enquiry Officer to prove the misconduct alleged against the delinquent employee.

13. In disciplinary enquiry proceedings, it is also the trite principle that the standard of proof is preponderance of probability as distinguished from proof beyond reasonable doubt; as would be required in a criminal prosecution. However, if there is no evidence led at the enquiry, there is no question of any preponderance of probability being drawn to find the allegations proved nor can the delinquent be penalized on the basis of peremptory findings without any valid evidence.”

6. A remand on finding the enquiry proceeding to be vitiated on a technical ground; is to avoid prejudice to the delinquent employee. As has been held, it is not a measure to cover up the negligence or laxity of the Disciplinary Authority in conducting a proper enquiry. Even in **Prabhat Kumar** (supra) though a disciplinary enquiry was constituted, since the delinquent did not appear in the departmental proceedings, he stood terminated, without conducting the enquiry. This is again a technical defect which could have been cured by the Enquiring Authority by proceeding with the enquiry after declaring the delinquent *ex parte* and allowing the witnesses to produce the documents, which would prove the charge. This is quite distinct



from the facts of the present case, which clearly indicate that despite a disciplinary enquiry there was no witness examined.

7. Mere production of documents would not be valid evidence, was the finding in ***Roop Singh Negi*** (supra). In the present case, the complainant could have been examined or at least, the officer who carried out the trap could have been examined. The Presenting Officer appointed by the Disciplinary Authority merely produced certain documents, which indicated that a trap case was filed against the petitioner. Such production of documents without examination of witnesses to prove the same cannot be sustained, as has been held in ***Roop Singh Negi*** (supra). We also place reliance on the judgment in ***Vikash Kumar*** (supra).

8. The Appeal stands allowed setting aside the order of remand and directing the appellant to be treated as having been reinstated in service from the date of his termination and he being entitled to all benefits, including pay and allowances from the date of his suspension; if any, till the date of his superannuation, permitting set off only of subsistence allowance paid during the period of suspension. The appellant would also be entitled to the retirement benefits as applicable.

9. The directions hereinabove shall be complied with



and the payments of arrears of salary & allowances, retirement benefits and pension shall be made within a period of six months from the date of uploading of this judgment; failing which, the appellant would be entitled to 5% p.a. simple interest on the said amounts from the date of expiry of the period of six months, till the payment is made. While making the payment of arrears, the appellant shall be issued with written computation of amounts due to him from the date of his suspension. If the amounts are not paid within the time provided by us, the interest shall first be paid by the State Government and then the State Government would be entitled to proceed against any officer who committed default in complying with our directions, for recovery.

10. Interlocutory application, if any, shall stand closed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	06.09.2024
Transmission Date	

