

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.600 of 2023

In
Civil Writ Jurisdiction Case No.12132 of 2013

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Awadh Tiwari S/o- Late Keshwar Tiwari Resident of Village - Jaipur, P.S. -
Mehandiya, District - Arwal

... .. Appellant/s

Versus

1. The State of Bihar
2. The Secretary, Water Resources Department, Govt. of Bihar, Patna.
3. The Joint Secretary, Water Resources Department, Govt. of Bihar, Patna.
4. The Deputy Secretary, Water Resources Department, Government of Bihar,
Patna.
5. The Engineer-in-Chief, Middle Water Resources Department, Government
of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Siya Ram Sahi, Advocate Ms. Shally Kumari, Advocate
For the Respondent/s	:	Mr. Anjani Kumar, AAG-4 Mr. Alok Kumar Rahi, AC to AAG-4

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

Date : 01-07-2025

1. The instant appeal has been preferred against the judgment dated 14.3.2023 whereby the learned Single Judge was pleased to dismiss CWJC no.12132 of 2013.

2. The relevant facts in brief are that in the year 1989 while posted as Junior Engineer in the Minor Distributory Division-IX, Ghatshila Camp, Galudih, as a result of an agreement entered into, M/s Barauni Tiles was required to



supply PCC tiles which the appellant was to receive. The appellant received the same, however without waiting for the quality test report of the tiles, payment was made to the contractor, causing financial loss to the Government.

3. By an order contained in Resolution no.1691 dated 17.7.1991, a decision was taken to initiate a departmental proceeding against the appellant under Rule 55 of Civil Services (Classification, Control and Appeal) Rules, 1930 which was subsequently converted into a proceeding under Rule 55A of the Rules. The appellant was served with a memo of charge according to which he during his tenure had received sub-standard tiles for the purpose of lining of canal. The tiles supplied at the ratio 1:2.97 of cement and sand against the specified ratio of 1:2. A sum of Rs.11,73,000/ had been paid to the contractor causing loss to the State exchequer. Further charge was to the effect that the appellant was negligent and casual in his duty causing financial loss to the State. He had prepared the bill for payment to the contractor without getting the quality of the supplied tiles tested.

4. The appellant submitted his reply to the show cause notice and on consideration of the contents thereof, the respondents came out with an order of punishment dated



11.12.1999 according to which there was stoppage of promotion for a period of ten years and further order of recovery of a sum to the tune of Rs.1,46,625/.

5. The appellant moved this Court in CWJC no.1015 of 2000 against the order of punishment which was allowed vide order dated 17.2.2006, the order of punishment quashed and the respondents were directed to refund the recovered amount on the basis of the said order to the appellant forthwith. The respondents preferred an appeal (LPA no.790 of 2007) against the order allowing the writ application (CWJC no.1015 of 2000). Though the judgment passed in the writ application was not interfered with and the appeal dismissed, however it was observed that if the law permits, the State of Bihar can proceed against the concerned employee in accordance with law.

6. The respondents came out with an order dated 18.1.2011 stating therein that a decision was taken to proceed against the appellant and two others under Rule 17 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005. Enclosed with the said order was the chargesheet containing the charges, as stated above, to which the appellant filed his reply.

7. In the meantime, the appellant having retired from



service on 31.5.2011, the departmental proceeding against the petitioner was converted into a proceeding under Rule 43(b) of the Bihar Pension Rules.

8. The enquiry officer submitted his report dated 12.1.2012 not finding the charges to have been proved against the appellant. Disagreeing with the contents of the enquiry report, a detailed second show cause contained in Memo no.683 dated 26.6.2012 was issued under the signature of the Engineer-in-Chief (Central), Water Resources Department, a copy of which has been brought on record as Annexure-B to the counter affidavit of the respondents in the writ application.

9. A perusal of the contents of the said letter would show that the point of difference of the disciplinary authority with the report of the enquiry officer was two fold. Firstly, that inspite of the ratio of cement and sand in the tiles supplied by the contractor being 1:2.97 in place of the specified 1:2, steps had been taken by the appellant in the measurement book for payment to the contractor, though he should have obtained the directions of the higher authorities with respect to the quality test report and only thereafter should have proceeded to take steps for payment. The second point of difference was to the effect that a direction had been given to the Barauni Tiles i.e. the



contractor to replace the tiles but the contractor had not carried out the directions. In spite of having knowledge of this fact, the appellant proceeded to make entries in the measurement book and recommend for payment of amount to the contractor.

10. The appellant filed his response to the show cause notice dated 26.6.2012 of the disciplinary authority differing with the contents of the enquiry report. Having considered the reply of the appellant, the respondents proceeded to pass an order contained in Memo no.374 dated 20.3.2013 under Rule 43(b) of Bihar Pension Rules imposing punishment of 5% pension. The writ application preferred by the appellant against the said order of punishment having been dismissed, the instant appeal has been preferred.

11. It is submitted by learned counsel appearing for the appellant that in the enquiry conducted in the departmental proceeding against the appellant, the enquiry officer in his report dated 12.1.2012 did not find any of the three charges to have been proved. Though the disciplinary authority issued a second show cause notice dated 26.6.2012, however on perusal of the same it would transpire that no reason has been given therein for differing with the contents of the enquiry report but the same is merely a repetition of the charges as contained in the



chargesheet issued in the departmental proceeding. It is thus submitted that the second show cause notice as also the order of punishment are both unsustainable. In support of his contention, learned counsel for the appellant has relied on the judgment of the Hon'ble Supreme Court in the case of ***Ram Kishan vs. Union of India & Ors. (AIR 1996 SC 255)***.

12. In response, it has been submitted by learned Additional Advocate General appearing for the State of Bihar that not having agreed with the contents of the enquiry report not finding any of the charges to have been proved against the appellant, a detailed show cause notice dated 26.6.2012 had been given to the appellant by the disciplinary authority giving reasons thereof on the point of difference. Having received and considered the reply of the appellant to the show cause notice that the order of punishment has been passed. With respect to the judgment relied on by learned counsel for the appellant, it is submitted that the same has no application in the facts of the instant case.

13. Heard learned counsel for the appellant and learned Additional Advocate General for the State of Bihar. Also perused the material on record including the contents of the writ application.



14. The facts of the case having been narrated in detail herein above are not being repeated again. The appellant who was proceeded against departmentally under the CCA Rules while still in service, on his retirement on 31.5.2011, the proceedings were converted into one under Rule 43(b) of the Bihar Pension Rules. The enquiry officer submitted his report on 12.1.2012 not finding any of the charges levelled against the appellant to have been proved. The disciplinary authority disagreeing with the contents of the enquiry report issued a second show cause notice to the appellant on 26.6.2012 to which the appellant submitted his reply. Not finding the reply to be satisfactory, another show cause notice was issued to the appellant on 3.12.2012 stating therein that it was proposed to impose a punishment on the appellant under Rule 43(b) of the Bihar Pension Rules. The appellant was given time of 15 days to submit his reply which was filed by the appellant on 22.12.2012.

15. Having considered the reply of the appellant and not finding the same to be satisfactory, the order of punishment was passed which was challenged unsuccessfully in the writ application.

16. So far as the contention of the learned counsel for



the appellant that the second show cause notice dated 26.6.2012 did not contain the reasons for difference of the disciplinary authority with the contents of the report of enquiry officer is concerned, this Court having perused both the enquiry report and the show cause notice finds no merit in the said contention. The reason for difference of the disciplinary authority with the enquiry report is clearly stated in the second show cause notice which is to the effect that steps had been taken by the appellant for payment to the contractor inspite of the quality test report of the supplied tiles not being upto the mark as also being in know of the fact that the contractor had not carried out the directions to replace the tiles.

17. So far as the judgment in the case of **Ram Kishan (supra)** relied on by the learned counsel for the appellant is concerned, the same is of no assistance to the appellant herein, the facts of the two cases being distinct and distinguishable. While the instant case relates to steps of payment having been taken by the delinquent/appellant inspite of sub-quality tiles having been supplied by the contractor, the case cited relates to misconduct of the Constable/appellant therein of having facilitate supply of alcohol to an under-trial prisoner and of having abused his superior officer.



18. In view of the facts and circumstances of the case, the appellant has not been able to show any illegality in the order of the learned Single Judge.

19. The Court finds no merit in the instant appeal.

20. The appeal is dismissed.

(Partha Sarthy, J)

(Ashutosh Kumar, ACJ)

Saurabh/-

AFR/NAFR	NA
CAV DATE	NA
Uploading Date	03.07.2025
Transmission Date	NA

