IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No. 598 of 2023

In

Civil Writ Jurisdiction Case No.10435 of 2020

==========

1. The State of Bihar through the Principal Secretary Water Resources Department, Govt. of Bihar, Patna.
2. Principal Secretary, Water Resources Department, Govt. of Bihar, Patna.
3. Joint Secretary, Water Resources Department, Govt. of Bihar, Patna.
4. Officer-on-Special Duty, Water Resources Depart., Govt. of Bihar, Patna.
5. Deputy Secretary, Water Resources Department, Govt. of Bihar, Patna.
6. Chief Engineer, Water Resources Department, Muzaffarpur
7. Superintending Engnieer-cum-Inquiry Officer, Punpun Flood Safety Circle, Anishabad, Patna.

... ... Appellant/s

Versus

Makhanlal Gupta Son of Late Harihar Prasad Gupta, Resident of Mohalla-Ladu Ram Gola, Ganj No. 2, P.O.- Bettiah, P.S.- Bettiah Town, District West Champaran, (Bihar).

... ... Respondent/s

==========

Appearance :

For the Appellants	:	Mr. Vinay Kirti Singh, GA-2
		Mr. Akhileshwar Singh, AC to GA-2
		Mr. Sumant Kumar Singh, AC to GA-2
For the Respondent	:	Mr. Raju Giri, Sr. Adv.
		Mr. Harsh Vardhan, Adv.

==========

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

and

HONOURABLE MR. JUSTICE SOURENDRA PANDEY

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH)

Date : 18-11-2026

The present appeal has been filed against the judgment dated 01.09.2022, passed by the Ld. Single Judge of this Court

WEB COPY

in CWJC No. 10435 of 2020, whereby and whereunder the writ petition filed by the sole Respondent has been allowed and the order of punishment dated 19.04.2017 as also the order dated 10.09.2018 by which the review petition filed by the sole Respondent has been dismissed, have been set aside and it has been held that the sole Respondent shall be entitled to consequential benefits.

2. The brief facts of the case are that while the Respondent was posted as Assistant Engineer, Tirhut Canal Division No. I, Muzaffarpur, he received a show cause dated 06.06.2013, issued by the Officer-on-Special Duty, Water Resources Department, wherein it was mentioned that on the order of Principal Secretary, an enquiry was made by the Flying Squad Circle, Patna with regard to the quality of bricks in canal lining and also pertaining to the quantity of cement used in plaster, wherein it has been found that the compressive strength of the bricks used is 86.00 kg./cm2, whereas it should have been 100 kg./cm2 as also less cement has been used in plaster. The petitioner had then filed a reply dated 11.07.2013, stating therein that since the bricks were forcibly removed, the same had got broken on account of which the compressive strength of the bricks had been reduced and in fact even the report of the Flying Squad

WEB COPY

suggests that the average strength of the brick and the cement used were very near to the specification. Thereafter, on the basis of the said charge of the year, 2013, a disciplinary proceeding was initiated against the Respondent and *Prapatra-"Ka"* was issued vide memo dated 04.12.2014, wherein it was alleged that the bricks having compressive strength of 86 kg./cm2 were used though the strength of the bricks should have been 100 kg./cm2. The Respondent had filed a reply dated 07.01.2015 before the Enquiry Officer, *inter alia* stating therein that even as per the enquiry report of the Flying Squad, the compressive strength of four bricks were found to be 95.88 kg./cm2, 94.18 kg./cm2, 75.34 kg./cm2 and 78.48 kg./cm2 respectively, hence the compressive strength of two bricks were as per the specification, nonetheless on account of improper extraction of the other two bricks, their compressive strength had decreased and even as per the specification 15% decrease in compressive strength is permissible. It was also pointed out that the water absorption was found to be more than satisfactory.

3. The Enquiry Officer had then completed the enquiry proceedings and filed an enquiry report dated 25.01.2016, whereby and whereunder the petitioner was absolved of all the charges levelled against him and the charges had stood not

WEB COPY

proved. The charge levelled against the respondent was that the Flying Squad had extracted bricks from the work of canal lining being done at the Tirhut Main Canal, which were examined at Irrigation Quality Research Institute, Khagaul and the compressive strength of the bricks were found to be 86.00 kg./cm2 instead of 100 kg./cm2 while the colour was found to be non-uniform as also the bricks were found to be under burnt, distorted, brown and dull. The Enquiry Officer, in his enquiry report dated 25.01.2016 has observed that Clause 5.2.1.1 of IS Code 5454-1978, stipulates as follows:-

> *"Wherever specified in the material specification, the compressive strength of any individual brick tested in the sample shall not fall below the minimum average compressive strength specified for the corresponding class for the brick by more than 20 (Revised to 15% in year 2008) per cent."*

4. The Enquiry Officer has also noted in his enquiry report dated 25.01.2016 that the brick has been dug out by breaking the mortar and the joint of plaster and bricks, however the mortar on the plaster has been found of good quality, which means that the bricks have been joined together in a perfect manner as also for the purposes of digging out the brick, lot of efforts would have been taken resulting in the brick being battered leading to effect in the quality of the brick. It has been

WEB COPY

stated that the compressive strength of two bricks have been found to be 78.48 kg./cm2 and 75.34 kg./cm2, whereas the average compressive strength of the bricks is 86.00 kg./cm2. The Enquiry Officer has also stated in his enquiry report that it is impossible to ascertain as to how much effect has been sustained by the bricks on account of the same being dug out, inasmuch as even the report of the Laboratory shows that the shape of the bricks is distorted, hence comparing the parameters of a dug out brick with that of a fresh brick is not justifiable, however the water absorption has been found to be 14.00%, which is a good sign and the same proves that the bricks were of good burnt quality otherwise the water absorption would have been more than 20.00%. He has also noted that even the Flying Squad has noted in their report that the compressive strength of the bricks in question can be regarded to be near to the prescribed standards. In such view of the matter, the Enquiry Officer has held the charges levelled against the sole Respondent to have not been proved.

5. The Ld. Senior Counsel for the sole Respondent has referred to the Indian Standard Methods for Sampling of Clay Building bricks published by the Bureau of Indian Standards, New Delhi, more particularly Clause 3.2 under the heading

WEB COPY

Methods of Sampling to submit that the sample of bricks can be taken only by one of the following methods:-

> *"(i). The sample should be taken while the bricks are being moved.*
>
> *(ii). The samples can be taken from a stack, which shall be divided into a number of real or imaginary sections and the required number of bricks shall be drawn from each section.*
>
> *(iii). In case of sample to be taken from bricks loaded in lorries or trucks, the sample bricks shall be taken from a number of lorries / trucks (not less than ten, if possible) such that when equal number of bricks are drawn from each of the lorries/ trucks, the number of bricks required for the inspection and testing is provided."*

Thus, it is submitted that there is no provision of taking sample of used bricks, hence the very modus of the Flying Squad was illegal and contrary to the sampling procedure provided for in the Indian Standard Methods for Sampling of Clay Building Bricks (hereinafter referred to as "the ISM").

6. The appellants had then issued a second show cause dated 10.06.2016 to the respondent by differing with the findings of the Enquiry Officer and the reason for difference was that as per IS Code-5454, the compressive strength of a brick should be minimum 85 kg./cm2, whereas the compressive strength of two bricks out of the four sampling bricks are less than 85 kg./cm2. The Respondent had then submitted his reply on 19.07.2016,

WEB COPY

however the disciplinary authority, by an order dated 19.04.2017, issued under the pen and signature of the Joint Secretary to the Government, Water Resources Department, Government of Bihar, Patna has inflicted punishment of stoppage of two wage increments with cumulative effect. The respondent had then filed a review petition dt. 19.5.2017 before the Principal Secretary, Water Resources Department, Bihar, Patna, however the same has stood dismissed by an order dt. 06/10.09.2018 and the order of punishment dt. 19.04.2017 has been upheld. The aforesaid orders dt. 19.4.2017 & 06/10.9.2018 were challenged before this Court by the respondent by filing a writ petition bearing CWJC No. 10435 of 2020, which has been allowed by the impugned order dated 01.09.2022 and the same has been challenged by the appellants in the present appeal.

7. The learned counsel for the appellants has submitted that there is no procedural irregularity in conduct of the departmental proceeding, hence the Ld. Single Judge ought not to have sat in appeal and re-appreciated the entire materials/evidence on record to come to a different conclusion and quash the order of punishment dated 19.04.2017 as also the order rejecting the review petition dated 06/10.09.2018. It is further submitted that if at all the Ld. Single Judge was justified

WEB COPY

in quashing the aforesaid orders dated 19.04.2017 and 06/10.09.2018, the matter ought to have been remanded back to the disciplinary authority to commence the proceedings from the defective stage.

8. *Per contra*, the Ld. Senior Counsel for the sole respondent has submitted that the present case is a case of no evidence, as would be apparent from the findings of the Enquiry Officer and in fact, the mode and manner of sampling of bricks is also illegal and contrary to the provisions contained in ISM, apart from the fact that the sample bricks were dug out by force, by hammer and chisel which had altered the characteristic as also the compressive strength of the brick in question. In this regard, reference has been made to the judgment rendered by the Hon'ble Apex Court in the State of ***Uttar Pradesh & Others vs. Saroj Kumar Sinha***, reported in ***(2010) 2 SCC 772***. The Ld. Senior Counsel for the sole Respondent has also referred to a judgment rendered by the Hon'ble Apex Court in the case of ***Kuldeep Singh vs. Commissioner of Police & Others***, reported in ***(1999) 2 SCC 10***, wherein it has been held by the Hon'ble Apex Court that normally, the High Court and the Apex Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of guilty is based on no

WEB COPY

evidence, it would be a perverse finding and would be amenable to judicial scrutiny. The Ld. Senior Counsel for the sole Respondent has also referred to a judgment rendered by the Hon'ble Apex Court in the case of ***Roop Singh Negi vs. Punjab National Bank & Others***, reported in ***(2009) 2 SCC 570***. The Ld. Senior Counsel for the sole Respondent has next referred to yet another judgment rendered by the Hon'ble Apex Court in the case of ***Union of India & Ors. vs. P. Gunasekaran***, reported in ***(2015) 2 SCC 610*** to contend that the Hon'ble Apex Court has held that the High Court can very-well see certain aspects of the departmental proceeding, as has been mentioned in para nos. 12 of the said judgment, which is reproduced herein below:-

> *"**12.** Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:-*
>
> *(a) the enquiry is held by a competent authority;*
>
> *(b) the enquiry is held according to the procedure prescribed in that behalf;*
>
> *(c) there is violation of the principles of natural justice*

WEB COPY

in conducting the proceedings;

(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence."

9. Thus, it is submitted by the Ld. Senior Counsel for the sole respondent that the present case is admittedly a case of no evidence, especially in view of the fact that not a single witness was examined much less members of the Flying Squad, apart from the fact that the procedure for taking sample of bricks, as mentioned in ISM has not been followed, thus the Ld. Single Judge has rightly interfered with the order of punishment dated 19.04.2017 as also the order dismissing the review petition dated 06/10.09.2018.

10. Now, coming to the other aspect of the matter as to whether after quashing of the order of punishment dated 19.04.2017 as also the order dismissing the review petition dated 06/10.09.2018, the matter ought to have been remanded

WEB COPY

back to the disciplinary authority to be commenced from the defective stage, the Ld. Senior Counsel for the sole respondent has referred to a judgment rendered by the Hon'ble Apex Court in the case of ***Allahabad Bank & Others vs. Krishna Narayan Tewari***, reported in ***(2017) 2 SCC 308*** to submit that where there is long time-lag or there are other supervening circumstances and the writ Courts consider it unfair or harsh or otherwise unnecessary to direct fresh enquiry, High Court may exercise its discretion in not remanding the matter back to the disciplinary authority. Thus, it is submitted that as far as the present case is concerned, the departmental proceeding was initiated in the year, 2014 but during the interregnum period, the respondent has stood retired and now we are in the year, 2026, when already more than a decade has passed, thus it would not be in the interest of justice to remand the matter back to the disciplinary authority. The Ld. Senior Counsel for the sole respondent has also submitted that in a case where no valid evidence has been led at the enquiry proceedings, no useful purpose would be served by remanding the matter back to the disciplinary authority, hence no remand is warranted in the present case, inasmuch as the prosecution has miserably failed to produce any evidence, whatsoever during the course of the

WEB COPY

departmental enquiry.

11. We have heard the learned counsel / Sr. Counsel for the parties and perused the materials on record, from which we find that the facts of the present case lie in a very narrow encompass, inasmuch as a charge-sheet in *Prapatra "Ka"* dated 04.12.2014 was issued to the Respondent, inter alia on the allegation that the bricks having compressive strength of 86 kg./cm2 were used though the strength of the bricks should have been 100 kg./cm2, whereafter the Enquiry Officer had conducted the departmental enquiry and submitted an enquiry report dated 25.01.2016, finding the charges levelled against the Respondent to have not been proved. At this juncture, it would be apropos to state that the Enquiry Officer has come to a finding in his enquiry report dated 25.01.2016 that the brick has been dug out by breaking the mortar and the joint of plaster and bricks, however the mortar on the plaster has been found of good quality, which means that the bricks have been joined together in a perfect manner as also for the purposes of digging out the brick, lot of efforts would have been taken resulting in the brick being battered leading to effect in the quality of the brick. It has been also stated that the compressive strength of two bricks have been found to be 78.48 kg./cm2 and 75.34 kg./cm2, whereas the

WEB COPY

average compressive strength of the bricks is 86.00 kg./cm2. The Enquiry Officer has further stated in his enquiry report that it is impossible to ascertain as to how much effect has been sustained by the bricks on account of the same being dug out, inasmuch as even the report of the Laboratory shows that the shape of the bricks is distorted, hence comparing the parameters of a dug out brick with that of a fresh brick is not justifiable, however the water absorption has been found to be 14.00%, which is a good sign and the same proves that the bricks were of good burnt quality otherwise the water absorption would have been more than 20.00%. The enquiry officer has also noted that even the Flying Squad has noted in their report that the compressive strength of the bricks in question can be regarded to be near to the prescribed standards. In such view of the matter, the Enquiry Officer has held the charges levelled against the sole Respondent to have not been proved.

12. The disciplinary authority had differed with the findings of the Enquiry Officer and issued a second show cause notice dated 10.06.2016 on the ground that as per IS Code-5454, the compressive strength of a brick should be minimum 85 kg./cm2, whereas the compressive strength of two bricks out of the four sampling bricks are less than 85 kg./cm2. The respondent had

WEB COPY

then submitted his reply on 19.07.2016 but the disciplinary authority had passed an order of punishment dated 19.04.2017, inflicting the punishment of stoppage of two wage increments with cumulative effect. The respondent had then filed a review petition, however the same has also stood dismissed by an order dated 06/10.09.2018. The said orders dated 19.04.2017 and 10.09.2018 were challenged by the Respondent before this Court by filing a writ petition bearing CWJC No. 10435 of 2020, which has been allowed by the impugned order dated 01.09.2022 and the said orders dated 19.04.2017 and 10.09.2018 have been quashed.

13. Having heard the Ld. Counsel/Sr. Counsel for the parties, we find that two issues arise for consideration in the present case, one as to whether the Ld. Single Judge was justified in quashing the order of punishment dated 19.04.2017 and order dismissing the review petition filed by the Respondent dated 06/10.09.2018 and the second, i.e. as to whether upon quashing of the said orders dated 19.04.2017 and 10.09.2018, the Ld. Single Judge ought to have remanded the matter back to the disciplinary authority to commence the proceedings from the defective stage.

14. As far as the first issue is concerned, we find from the

WEB COPY

records that neither any evidence was led by the department nor the members of the Flying Squad were examined during the course of the departmental enquiry nor there is any cogent evidence on record so as to suggest, much less prove the guilt of the respondent, inasmuch as the Enquiry Officer has also come to a finding that since the bricks itself had been damaged on account of being dug out by force with the help of chisel and hammer, the same had definitely resulted in the compressive strength of the bricks being effected, which is apparent from the distorted shape of the bricks, hence it is not justifiable to compare the strength of the dugout and used bricks with that of fresh bricks, especially since the water absorption ratio of the bricks had been found to be good, meaning thereby that the bricks were of good quality and moreover, even the Flying Squad had written in its enquiry report that compressive strength of the bricks in question can be considered to be near the comparative standard. We further find from the provisions contained in ISM that there is no provision for taking bricks samples of used bricks, inasmuch as the compressive strength of the same would obviously be not the same as that of fresh bricks. Thus, we are of the view that the department/respondents have failed to bring on record any evidence regarding the

WEB COPY

charges levelled against the respondent, hence admittedly the present case is a case of no evidence, therefore if a decision is arrived at on the basis of no evidence, upon which no reasonable person would act, the order would be perverse. Consequently, we find that the order of punishment passed by the disciplinary authority dated 19.04.2017 is not supported by any cogent much less legally valid reasons, hence we find that the Ld. Single Judge has rightly quashed the order of punishment dated 19.04.2017 as also the order dated 06/10.09.2014 rejecting the review petition filed by the Respondent.

15. Now, coming to the second issue as to whether the matter ought to have been remanded back to the disciplinary authority by the Ld. Single Judge, after quashing of the order of punishment dated 19.04.2017, we find from a bare perusal of paragraph no. 12 of the judgment rendered by the Hon'ble Apex Court in the case of ***P. Gunasekaran*** (supra) that in exercise of powers under Article 226/227 of the Constitution of India, the High Court is entitled to interfere when the finding of fact is based on no evidence. Thus, if in such a case where the department has failed to lead any evidence at the enquiry proceedings, a remand is made, it would be offering a premium to the laxity of the department and condoning the levity with

WEB COPY

which the departmental proceeding was conducted. In the present case, it appears that the departmental proceeding has been initiated against the sole respondent vexatiously, inasmuch as even with all promptitude and due diligence, no evidence could have been collected by the disciplinary authority / the department for proving the guilt of the delinquent.

16. It is a trite principle of law that in a disciplinary enquiry proceeding, the standard of proof is preponderance of probability as distinguished from proof beyond reasonable doubt, as 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.

17. Therefore, for the foregoing reasons, we do not find any reason to remand the matter back to the disciplinary authority to commence enquiry from the defective stage, since firstly despite the department/appellants having had the opportunity to lead evidence have failed to lead any evidence during the course of departmental enquiry and secondly now at this stage when more than a decade has already passed by from the date of initiation of the departmental proceedings, there is no possibility of any

WEB COPY

fresh evidence being led at this stage. Thus, we are of the considered view that it would not be either fruitful or in the interest of justice, by any stretch of imagination to remand the matter back to the disciplinary authority, especially in view of the fact that the order of punishment dated 19.04.2017 is not based on any valid evidence.

18. Having regard to the facts and circumstances of the case and for the foregoing reasons, we totally agree with the findings arrived at in the impugned judgment dated 01.09.2022, rendered by the Ld. Single Judge of this Court in CWJC No. 10435 of 2020, hence the present appeal is dismissed with cost being vexatious in nature.

(Mohit Kumar Shah, J)

(Sourendra Pandey, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	19.08.2026
Uploading Date	18.11.2026
Transmission Date	NA

WEB COPY