

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Letters Patent Appeal No.1324 of 2019**

**In**  
**Civil Writ Jurisdiction Case No.19849 of 2016**

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- 1.1. Manisha Kumari D/o Late Yugal Kishore W/o Mrityunjay Kumar Singh R/o Mohalla- Mithanpura, P.S.- Mithanpura, District- Muzaffarpur.
- 1.2. Ravi Ranjan, S/o Late Yugal Kishore Singh, R/o Village- Sirkohiya @ Sirkohiya, P.S.- Saraiya, District- Muzaffarpur.
- 1.3. Aditya Ranjan, S/o Late Yugal Kishore Singh, R/o village- Sirkohiya @ Sirkohiya, P.S. - Saraiya, District- Muzaffarpur.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Panchayati Raj Department, Government of Bihar, Patna.
2. The Commissioner, Tirhut Commissioner, Muzaffarpur.
3. The District Magistrate, Muzaffarpur.
4. The Block Development Officer, Sahebganj, Muzaffarpur.

... .. Respondent/s

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**Appearance :**

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|----------------------|---|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| For the Appellant/s  | : | Dr. Ranjeet Kumar, Advocate<br>Mr. Manish Chandra Gandhi, Advocate<br>Mr. Himanshu Ranjan, Advocate<br>Mr. Kanishk Kaustubh, Advocate<br>Mr. Shikhar Mani, Advocate<br>Mr. Rajnish Prakash, Advocate<br>Ms. Lakshmi Kumari, Advocate<br>Mr. Aditya Srivastava, Advocate<br>Ms. Manisha Rathour, Advocate<br>Mr. Sanjeev Kumar, Advocate<br>Mr. Ayush Kumar, Advocate<br>Ms. Perna, Advocate |
| For the Respondent/s | : | Mr. S. D. Sanjay, AG<br>Mr. Manish Kumar, AC to AG<br>Mr. Lokesh, AC to AG                                                                                                                                                                                                                                                                                                                  |

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**CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI**  
**and**  
**HONOURABLE MR. JUSTICE ANIL KUMAR SINHA**  
**and**  
**HONOURABLE MR. JUSTICE PARTHA SARTHY**  
**CAV JUDGMENT**  
**(Per: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI)**



**Date: 16-09-2026**

1. By an order, dated 22<sup>nd</sup> of February, 2026, on administrative side, the Hon'ble Chief Justice was pleased to constitute this Special Bench to decide the reference made by the Division Bench, consisting of Hon'ble Mr. Justice P. B. Bajanthri (as His Lordship then was), sitting with Hon'ble Mr. Justice Sunil Dutta Mishra in L.P.A. No. 1324 of 2019, arising out of C.W.J.C. No. 19849 of 2016 on 25<sup>th</sup> of July, 2024.

2. Before we delve upon the issue of reference, it is pertinent for us to refer in short compass the factual background of this case: -

(i) The writ petitioner was a Panchayat Sachiv (Panchayat Secretary) at Jagdishpur Gram Panchayat in Sahebganj Block in the district of Muzaffarpur. Upon an allegation of taking bribe in connection disbursement of financial aid under Indira Awas Yojana, a raid was conducted on 14<sup>th</sup> of February, 2012 by the Vigilance Investigation Bureau, Government of Bihar, Patna and he was caught red-handed with bribe money of Rs. 25,000/-. A criminal case was instituted under Section 7 and 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988. Institution of Vigilance Case was followed by initiation of departmental proceeding.

(ii) Suffice it to state that during departmental enquiry,



he was held guilty for gross misconduct.

(iii) The disciplinary authority (District Magistrate) did not accept the said enquiry report in view of the fact that no evidence was led by the disciplinary authority against the delinquent employee and he set aside the order of Enquiry Officer, directing him to conduct fresh enquiry in accordance with law. During the second enquiry, the delinquent employee took the specific defence that he was falsely implicated in the case. Some beneficiaries of Indira Awas Yojana, namely, Rita Devi, Rekha Devi, Babita Devi, Ram Sevak Ram, Rajdeo Ram and the Vikas Mitra (Ram Babu Kumar) gave statement before the Enquiry Officer, which were recorded. In the second report, dated 25<sup>th</sup> of February, 2014, the Enquiry Officer held that the conduct of the incumbent contravened Rule 3(1)(i) and (iii) of the Bihar Government Employees Conduct Rules, 1976 and the charges stood proved.

(iv) A second show-cause notice was issued to the incumbent. After considering the enquiry report and the reply of the delinquent employee, the disciplinary authority passed an order of dismissal from service against the writ petitioner vide Memo No. 286/Estb., dated 15<sup>th</sup> of July, 2014. The said order was under challenge in C.W.J.C. No. 19849 of 2016 before the



learned Single Judge. By a judgement and order, dated 27<sup>th</sup> of August, 2019, the learned Single Judge dismissed the writ petition. The order passed in the writ petition was challenged in L.P.A. No. 1324 of 2019 under Clause 10 of the Letters Patent, seeking to set aside the order passed in the aforesaid writ petition dated 27<sup>th</sup> of August, 2019. The appeal was held by the Division Bench, presided over by Hon'ble Mr. Justice P. B. Bajanthri and by an order dated 20<sup>th</sup> February, 2025, the Division Bench referred the matter to a Larger Bench for consideration of the issues involved.

(v) In the impugned order, the Division Bench observed that in the light of the decision of the Hon'ble Supreme Court in *Managing Director, ECIL, Hyderabad & Ors. v. B. Karunakar & Ors.*, reported in (1993) 4 SCC 727, the Division Bench was of the view to remand his case for fresh enquiry.

(vi) Another decision of the Hon'ble Supreme Court in *Chairman cum Managing Director, Coal India Ltd. v. Ananta Saha*, reported in (2011) 5 SCC 142 was placed before the Division Bench wherein the decision of B. Karunakar (supra) was considered and it was held by the Hon'ble Supreme Court in paragraph 48:-

“.....the Court  
held that where the punishment awarded



*by the disciplinary authority is quashed by the court/tribunal on some technical ground, the authority must be given an opportunity to conduct the enquiry afresh from the stage where it stood before the alleged vulnerability surfaced. However, for the purpose of holding fresh enquiry, the delinquent is to be reinstated and may be put under suspension. The question of back wages, etc. is determined by the disciplinary authority in accordance with law after the fresh enquiry is concluded.”*

(vii) The Division Bench also considered another decision of the Hon’ble Supreme Court in the case of ***State of U.P. & Others v. Prabhat Kumar***, reported in ***2022 Livelaw SC 376***. The Division Bench quoted paragraph nos. 4 to 8 of the judgement as hereunder:-

*“4. The appeal preferred by the respondent before the State Public Service Tribunal was allowed on the ground that no inquiry was conducted after the employee was charge-sheeted. Thus, it is a case of no evidence of misconduct. The order of punishment was passed for the reason that the delinquent has chosen not to appear in the departmental proceedings.*

*5. It is not disputed that no*



*evidence was led by the department to prove the misconduct against the respondent. In the absence of any proof of misconduct, the order of punishment of dismissal from service was rightly interfered with by the Tribunal as affirmed by the High Court.*

*6. The allegation against the respondent is of absence from duty for more than 327 days which was made the basis for issuing the charge-sheet. Even after the charge-sheet was served, the respondent failed to participate in the departmental proceedings or to join duties. This Court in Anant R. Kulkarni v. Y.P. Education Society, (2013) 6 SCC 515 held that once the Court set aside an order of punishment on the ground that the enquiry was not properly conducted, the Court should not preclude the employer from holding the inquiry in accordance with law. It must remit the case concerned to the disciplinary authority to conduct the enquiry from the point that it stood vitiated, and to conclude the same in accordance with law. This Court held as under:*

*"13. It is a settled legal proposition that once the court sets aside an order of punishment on the ground*



*that the enquiry was not properly conducted, the court should not severely preclude the employer from holding the inquiry in accordance with law. It must remit the case concerned to the disciplinary authority to conduct the enquiry from the point that it stood vitiated, and to conclude the same in accordance with law. However, resorting to such a course depends upon the gravity of delinquency involved. Thus, the court must examine the magnitude of misconduct alleged against the delinquent employee. It is in view of this that courts/tribunals are not competent to quash the charge-sheet and related disciplinary proceedings before the same are concluded on the aforementioned grounds. (Vide ECIL v. B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704 : AIR 1994 SC 1074], Hiran Mayee Bhattacharyya v. S.M. School for Girls [(2002) 10 SCC 293 : 2003 SCC (L&S) 1033], U.P. State Spg. Co. Ltd. v. R.S. Pandey [(2005) 8 SCC 264 : 2006 SCC (L&S) 78] and Union of India v. Y.S. Sadhu [(2008) 12 SCC 30 : (2009) 1 SCC (L&S) 126 : AIR 2009 SC 161])"*

*7. This Court in a Constitution*



*Bench judgment reported as ECIL v. B. Karunakar, (1993) 4 SCC 727 held that if the Court finds that furnishing of the enquiry report would have made a difference to the result, in such case it should set aside the order of punishment. Where the Court sets aside the order of punishment, the proper relief which should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome.*

*8. Therefore, the matter is remitted back to the disciplinary authority to conduct the departmental proceedings from the stage prior to the order of punishment. The period from the date of the order of punishment till*



*the consequent action after the fresh proceedings shall be decided after the disciplinary proceedings are concluded.”*

(viii) According to the appellant, this Court in the light of the ratio decided by the Division Bench of this Court in ***State of Bihar & Ors. v. Vikash Kumar, LPA No. 446 of 2024, dated 21.08.2024*** and ***Srikant Singh v. State of Bihar & Ors.***, reported in ***2024 SCC OnLine Pat 7877***, should consider that the instant case is not a case for remand. The Division Bench held on due consideration of the aforesaid cases that in the aforesaid cases, the Coordinate Bench did not appreciate the principle or object laid down therein insofar as quashing penalty order on technical defect like non-examination of witnesses and other technicalities, matter ought to be remanded to disciplinary / inquiring authority to commence inquiry from the defective stage. Therefore, matter is required to be referred to the larger bench insofar as consideration whether alleged charge relating to demand and acceptance of illegal gratification of Rs. 25,000/- (Rupees Twenty Five Thousand) is serious charge and in the event of quashing the penalty, order of dismissal and appellate authority order, matter is required to be remanded in the light of observation made by the Hon'ble Supreme Court in



the case of *Managing Director ECIL Hyderabad v. B. Karunakar [(1993) 4 SCC 727]* and Prabhat Kumar (supra).

(ix) Thus, the Division Bench framed the following issue for reference:-

*“Combined reading of the aforesaid decisions, we are of the opinion that in the event of quashing of penalty order in a disciplinary proceedings on technicality to the extent of non-examination of witnesses, non-furnishing of list of documents etc. Penalty order is to be interfered read with the fact that serious alleged charge, it is a case for remand or not?”*

*Having regard to the Co-ordinate Bench decisions read with the Hon’ble Supreme Court decisions cites (sic) supra on the point as to whether the present case is to be remanded to the disciplinary authority or not is to be considered by the larger Bench. Therefore, matter is referred to the larger Bench.”*

3. When this Court took up the matter to give reply to the reference, the learned Advocate for the appellant refers to a subsequent development that during the pendency of the instant proceeding, the appellant died. Therefore, the decision of the



Division Bench as well as the reference and our obligation to record a reply thereof have rendered infructuous on the death of the appellant.

4. We, however, declined to consider such view of the learned Advocate for the appellant. An order of dismissal from service affects monetary entitlement of pay and allowances of the incumbent. It also affects the pensionary benefits and the family pension as well as the right of family pension to be paid to the widow of the deceased after the death of an employee.

5. Therefore, even after the death of employee, monetary claim in connection with the pay and allowances and pensionary benefits deserve consideration. If the order of dismissal is sustained, an employee cannot be considered as such under the establishment. Similarly, this would affect the right of pension and family pension. Therefore, vide order, dated 23<sup>rd</sup> of April, 2026, we allowed an application under Order XXII Rule 3 of the CPC. The legal heirs and representatives of the deceased appellant were substituted.

6. Vide order, dated 23<sup>rd</sup> of April, 2026, we had gone through the order of reference. On perusal of the issue for reference, we *prima facie* found that there were two parts of reference.



7. Second part is on the issue as to whether the present application is to be remanded to the disciplinary authority or not. This part becomes infructuous in view of the death of the appellant.

8. In paragraph no. 11 of the order, dated 23<sup>rd</sup> of April, 2026, we recast the point of reference as hereunder:-

*“11. On further perusal of the issue for reference, this Bench respectfully notes that in the first part of the reference there were some inadvertent grammatical error for improper use of punctuation. The first part of the issue is, therefore, rewritten as here under:-  
“Combined reading of the aforesaid decisions, we are of the opinion that in the event of quashing of penalty order in a disciplinary proceeding on technicality to the extent of non-examination of witnesses, non-furnishing of list of documents etc., can the penalty order be interfered read with the fact of seriousness of the alleged charge and in such case if the disciplinary proceeding is required to be remanded or not?”*

9. We take up the above issue for reference as of general importance and proceed to subscribe our reasons thereof.



**Arguments on behalf of the Appellant**

10. The learned counsel appearing for the substituted appellants has advanced the following submissions:-

(i) That the entire departmental proceeding culminating in the order of dismissal of the original appellant from service stands vitiated on account of gross violation of the principles of natural justice and mandatory provisions of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005.

(ii) That in the first enquiry, the Enquiry Officer, after considering the materials on record, including the statements of beneficiaries and the clarification given by the Branch Manager, had categorically recorded that the allegations levelled against the appellant were not proved. Despite this, the Disciplinary Authority (District Magistrate, Muzaffarpur) remitted the matter for a fresh enquiry without recording proper reasons for disagreement and without affording adequate opportunity to the appellant, in violation of Rule 18 of the Bihar CCA Rules, 2005.

(iii) That even in the second enquiry, the Presenting Officer failed to lead any formal evidence. No prosecution witnesses were examined and no documents, relied upon in the charge memo, were exhibited or proved in accordance with law.



The beneficiaries and other persons were merely called and their statements recorded, but they were not produced as witnesses for cross-examination by the appellant. This amounts to a complete failure on the part of the department to discharge the onus of proving the charges.

(iv) That the charge memo itself was defective inasmuch as the list of witnesses and list of documents were not appended thereto in clear violation of Rule 17(3)(ii)(b) of the Bihar CCA Rules, 2005. The appellant was thus denied a fair opportunity to defend himself.

(v). That the Disciplinary Authority passed the order of dismissal without properly considering the appellant's explanations, dated 22.12.2012 and 21.02.2014 and without recording specific reasons for disagreement with the findings of the first enquiry report, thereby rendering the punishment order unsustainable.

(vi) That the learned Single Judge, while dismissing the writ petition vide order, dated 27<sup>th</sup> of August, 2019, failed to appreciate the aforesaid patent illegalities and procedural violations and proceeded on the erroneous premise that the standard of preponderance of probability was satisfied, without examining whether the charges were proved in accordance with



the mandatory procedural safeguards.

(vii) That reliance is placed on the decisions of this Hon'ble Court in *Awadhesh Prasad Sharma v. The State of Bihar*, reported in *2012 (3) PLJR 742* and *Deonath Singh v. Bihar School Examination Board*, reported in *2007 (2) PLJR 14*, wherein it has been held that the onus lies on the Presenting Officer to prove the charges by leading evidence and exhibiting documents, and that non-examination of persons whose statements are relied upon vitiates the enquiry on account of violation of principles of natural justice.

(viii) That the vigilance trap case, though pending, cannot substitute for a proper departmental enquiry conducted in accordance with the Rules. In the absence of legal proof in the departmental proceeding, the order of dismissal is liable to be set aside.

(ix) That during the pendency of the present appeal, the original appellant expired on 07.02.2026 and his legal heirs (the substituted appellants) have been brought on record. They are entitled to the same relief as the deceased appellant would have been entitled to.

(x) Referring to a decision of the Hon'ble Supreme Court in B. Karunakar case (supra), it is contended by the



learned Advocate for the appellant that 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.

(xi) Thus, where 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.

(xii) Thus, it clear that the High Court under Article 226 of the Constitution of India 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.

(xiii) It is further submitted by the learned Advocate for the appellant that the Hon'ble Supreme Court clearly stated, in the judgement of B. Karunakar (supra); Anant R. Kulkarni v. Y.P. Education Society & Ors., reported in (2013) 6 SCC 515; Chairman, Life Insurance Corporation of India & Ors. v. A Masilamani. reported in (2013) 6 SCC 530; and State of Uttar Pradesh v. Ram Prakash Singh, reported in (2025) SCC OnLine SC 891, the principle as to when the departmental proceeding may be remanded.

(xiv) In Anant R. Kulkarni (supra), the Hon'ble Supreme Court in paragraph no. 13 observed:-

*“13. It is a settled legal proposition that once the court sets aside an order of punishment on the ground that the enquiry was not properly conducted, the court should not severely preclude the employer from holding the inquiry in accordance with law. It must remit the case concerned to the*



*disciplinary authority to conduct the enquiry from the point that it stood vitiated, and to conclude the same in accordance with law. However, resorting to such a course depends upon the gravity of delinquency involved. Thus, the court must examine the magnitude of misconduct alleged against the delinquent employee. It is in view of this that courts/tribunals are not competent to quash the charge-sheet and related disciplinary proceedings before the same are concluded on the aforementioned grounds.”*

(xv) The learned Advocate for the substituted appellants also submits that the Division Bench found discrepancy in the final decision passed by this Court in the State of Bihar & Ors. v. Vikash Kumar, decided in LPA No. 446 of 2024 and Srikant Singh v. State of Bihar & Ors., reported in 2024 SCC Online PAT 7877.

(xvi) The Division Bench held that in both the judgments, the Coordinate Bench did not appreciate the principle or object laid down therein in so far as quashing penalty order on technicality, like non-examination of witnesses and other procedure. Vikash Kumar (supra) was pronounced on 21<sup>st</sup> of August, 2024.



(xvii) It is already recorded that the learned Advocate for the appellants has built up the foundation of his argument on the principles laid down by the Hon'ble Supreme Court in B. Karunakar's case (supra), Hiran Mayee Bhattacharyya v. Secretary S. M. School for Girls & Ors, reported in (2002) 10 SCC 293, U.P. State Spinning Co. Ltd. v. R. S. Pandey & Anr., reported in (2005) 8 SCC 264 and Union of India v. Y. S. Sadhu Ex-Inspector, reported in (2008) 12 SCC 30.

(xviii) In almost all the judgments, it is laid down by the Hon'ble Supreme Court that in case the punishment is set aside by the Court / Tribunal on the ground that the enquiry stood vitiated for technical reasons, it is the duty of the Writ Court to pass an order reinstating the delinquent employee and initiate the departmental proceeding from the stage where technicality causes defect of departmental proceeding.

(xix) The learned counsel elaborates his argument, referring to the provisions contained in Article 311 of the Constitution of India.

(xx) Article 311 of the Constitution runs thus: -

***“311. Dismissal, removal or  
reduction in rank of persons employed  
in civil capacities under the Union or a  
State***



*(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.*

*(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges;*

*Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:*

*Provided further that this clause shall not apply--*

*(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or*



*(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or*

*(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry.*

*(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.”*

11. A plain reading of the provisions contained in Article 311 leads us to a conclusion that in a departmental proceeding, penalty may be imposed on the basis of evidence adduced during such enquiry. Thus, if a delinquent employee is found guilty without any evidence being recorded or accepting evidence which is not legally admissible or on account of inherent defect in the charge-sheet by non-disclosure of the



names of the witnesses or the documents intended to be relied upon, the technical defect crops up.

12. In ***State Bank of Patiala v. S. K. Sharma***, reported in ***(1996) 3 SCC 364***, the Hon'ble Supreme Court categorized technical defects into two broad categories: (I) fundamental / substantive nature of procedure / technicality; and (ii) Other procedure/technicality.

13. The Division Bench of this Court, presided over by the Hon'ble Chief Justice K. Vinod Chandran, as His Lordship then was, in which one of us was also a party in ***Srikant Singh v. State of Bihar & Ors.***, reported in ***2024 SCC OnLine Pat 7877***, referred to paragraph 12 and 13 of ***Union of India v. P. Gunasekaran***, reported in ***(2015) 2 SCC 610***. The said two paragraphs are extracted below: -

*“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 presume that the Presenting Officer would be well versed in respect of the decision passed by the Patna High Court in L.P.A No.58 of 2024 dt.03-09-2024, the procedures and 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.”*

14. Thus, it is absolutely clear that an order of remand of a departmental proceeding on technical ground can only be passed to avoid prejudice to the delinquent employee, the order of remand cannot be passed to cover up the negligence or laxity



on the part of the disciplinary authority of conducting proper enquiry. At the same time, in a disciplinary proceeding, a delinquent cannot be terminated from service without conducting enquiry on the ground that the delinquent never appeared in the enquiry proceeding. In such case, enquiry proceeding is required to be conducted ex parte. Again, mere production of document cannot be held to be a valid evidence.

#### **15. Submission on behalf of Respondents**

(i) The learned Advocate General on behalf of the State, on the other hand, submits that the petitioner was posted as Panchayat Secretary. In a trap case, he was allegedly caught red handed while taking bribe of Rs. 25,000/- in the month of February, 2012. The District Magistrate, Muzaffarpur suspended him when he was arrested in Vigilance P.S. Case No. 21 of 2012. Suspension of the delinquent was followed by departmental enquiry. The delinquent was supplied with contents of allegation proposed against him. He submitted show-cause against the said allegation and charge memo was issued against him with statement of imputation along with other documents. It is admitted on behalf of the respondent that list of witnesses was not produced with the charge memo. The delinquent appeared before the Enquiry Officer on 17<sup>th</sup> of



November, 2012 and submitted his reply on 22<sup>nd</sup> of December, 2012. The witnesses on behalf of the prosecution did not support the case of the employee and they turned hostile. The delinquent was given opportunity to present statement of defence but he did not file any such statement of defence. On the basis of the available documents, he was dismissed from service w.e.f. 18.06.2014. Service appeal filed by the petitioner was also dismissed on 9<sup>th</sup> of February, 2015. The petitioner filed C.W.J.C. No. 19849 of 2016, which was dismissed vide order dated 27<sup>th</sup> of August, 2019. In L.P.A., the appellant / delinquent pleaded that he was not supplied with the documents in support of the charge. Secondly, the allegation of demanding bribe of Rs. 25,000/- was not proved. There were procedural error in conducting the enquiry against the delinquent when the witnesses turned hostile, the department, the appellate authority as well as Constitutional Court ought to have held that it was a case of no evidence. Fourthly, the charge was not even proved on the basis of preponderance of probability and the law enunciated by the Hon'ble Supreme Court in conducting departmental proceeding.

(ii) It is admitted by the learned Advocate General that if the enquiry is found to be defective, as for example, non-



supply of documents, non examination of witnesses etc., the Court directs the authorities to resume the proceeding from the stage where error occurred. Therefore, due to procedural error for violation of technicalities, violation of principle of natural justice etc., the order of punishment maybe set aside and the enquiry proceeding may be remitted back to the enquiry authority for initiation of the same from the state where defect occurred.

**16. Differences between the Co-Ordinate Bench decisions of this Court and the Principles laid down by the Hon'ble Supreme Court**

(i) During the hearing of the present appeal, as well as in the Memo of Appeal, learned counsel for the appellant has placed reliance on four decisions of co-ordinate Benches of this Court. Two of these decisions were cited in the Memo of Appeal, and two were specifically noted and discussed by the Division Bench comprising Hon'ble Mr. Justice P.B. Bajanthri and Hon'ble Mr. Justice Sunil Dutta Mishra in the order dated 20 February 2025.

(ii) The decisions cited in the Memo of Appeal are:

(a) Awadhesh Prasad Sharma v. State of Bihar, 2012

(3) PLJR 742; and



(b) *Deonath Singh v. Bihar School Examination Board*, 2007 (2) PLJR 14.

(iii) The decisions specifically noted by the Division Bench in the order dated 20.02.2025 are:

(a) *The State of Bihar and others vs. Vikash Kumar* (LPA No. 446 of 2024, decided on 21.08.2024); and

(b) *Srikant Singh vs. State of Bihar and others*, 2024 SCC OnLine Pat 7877.

(iv) In *Awadhesh Prasad Sharma* (supra), this Court held that under Rule 17 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005, the onus lies on the Presenting Officer to lead evidence and prove the documents annexed to the charge memo. Mere annexure of documents without formal exhibition and proof is insufficient to sustain a finding of guilt against the delinquent officer.

(v) In *Deonath Singh* (supra), this Court held that if the Inquiry Officer proposes to rely upon the earlier statement of any person, it is his solemn duty to call that person as a witness, record the statement afresh, and afford the delinquent an opportunity of cross-examination. Non-examination of such persons was held to constitute a clear violation of the principles of natural justice and to vitiate the finding of guilt.



(vi) In ***Srikant Singh*** (supra), the co-ordinate Bench treated a finding of guilt based solely on documents produced by the Presenting Officer without examination of any witness as a case of “no evidence”. The Bench held that the High Court under Articles 226/227 of the Constitution can interfere with such findings. It was further observed that remand is appropriate only when an enquiry is vitiated on technical grounds. Ordering a remand in a pure no-evidence case was viewed as rewarding the negligence of the disciplinary authority. The decisions of the Hon’ble Supreme Court in ***Mohd. Ramzan Khan*** (supra), ***B. Karunakar*** (supra) and ***Prabhat Kumar*** (supra) were distinguished on the ground that those cases dealt with technical defects involving violation of natural justice, where remand is ordered to cure such defects.

(vii) In ***State of Bihar vs. Vikash Kumar***, the co-ordinate Bench examined a situation where the evidence consisted of the statement of a person who merely narrated what an eye-witness had stated (hearsay evidence). The Bench characterised it as a case of “no valid evidence”. While acknowledging that remand may be ordered to cure technical defects, the decision emphasised that remand in a no-valid-evidence situation would amount to condoning the disciplinary



authority's negligence.

(viii) The Division Bench in the order dated 20 February 2025 observed that the decisions in **Srikant Singh** and **Vikash Kumar** (supra) had not fully appreciated the principle of remand laid down by the Hon'ble Supreme Court. The Bench specifically referred to the following decisions of the Supreme Court:

(a) Managing Director, ECIL, Hyderabad vs. B. Karunakar, (1993) 4 SCC 727 (paragraphs 31, 32 and 61);

(b) Chairman-cum-Managing Director, Coal India Ltd. vs. Ananta Saha, (2011) 5 SCC 142 (paragraph 48); and

(c) State of U.P. vs. Prabhat Kumar, 2022 LiveLaw SC 376 (paragraphs 4 to 8).

(ix) In **B. Karunakar** (supra), the Hon'ble Supreme Court held that where the enquiry officer's report is not furnished to the delinquent employee, the Court or Tribunal should first cause the report to be supplied and examine whether non-supply caused prejudice. If the Court comes to the conclusion that non-supply would have made no difference, it should not interfere. If, however, the order of punishment is set aside on this technical ground, the proper relief is to direct reinstatement of the employee with liberty to the authority to



proceed with the inquiry from the stage of furnishing the report, placing the employee under suspension if necessary. The question of back wages is to be decided later according to the final outcome of the fresh inquiry.

(x) In ***Coal India Ltd. vs. Ananta Saha*** (supra), the Hon'ble Supreme Court reiterated that when a punishment awarded by the disciplinary authority is quashed by the Court on some technical ground, the authority must be given an opportunity to conduct the enquiry afresh from the stage where the alleged vulnerability surfaced. For the purpose of holding a fresh enquiry, the delinquent is to be reinstated and may be put under suspension. The question of back wages is determined by the disciplinary authority after the fresh enquiry is concluded.

(xi) In ***State of U.P. vs. Prabhat Kumar*** (supra), the Hon'ble Supreme Court held that where no evidence was led by the department after the charge-sheet was issued, it is a case of no evidence of misconduct, and the order of punishment of dismissal can be interfered with. At the same time, the Court reiterated the settled principle that once the Court sets aside an order of punishment on the ground that the enquiry was not properly conducted, the Court should not preclude the employer from holding the inquiry in accordance with law. The matter is



to be remitted to the disciplinary authority to conduct the enquiry from the point that it stood vitiated.

(xii) The differences that emerge from the above decisions may be summarised as under:

**(a) On the nature of the defect:**

The decisions of this Court (Awadhesh Prasad Sharma, Deonath Singh, Srikant Singh and Vikash Kumar) treat non-examination of witnesses, non-exhibition of documents, and reliance on hearsay as either a violation of natural justice or as amounting to “no evidence” / “no valid evidence”. The Hon'ble Supreme Court decisions, while recognising cases of no evidence, also treat non-furnishing of the enquiry report and other procedural lapses as technical grounds.

**(b) On the consequence of the defect:**

The co-ordinate Bench decisions of this Court lean towards treating such defects as justifying interference and are reluctant to order remand in pure no-evidence situations, viewing remand as potentially rewarding departmental negligence.

(xiii) The Hon'ble Supreme Court decisions consistently hold that when the order of punishment is set aside on technical or procedural grounds (including defective conduct



of the inquiry), the normal and proper course is to remit the matter to the disciplinary / inquiring authority to resume the inquiry from the stage at which it stood vitiated.

### **17. Conclusion**

(i) In conclusion, we hold that on the basis of pivotal judgments pronounced by the Hon'ble Supreme Court in Union of India v. Mohd. Ramzan Khan, reported in (1991) 1 SCC 588; B. Karunakar (supra); Chairman cum Managing Director Coal India Ltd. v. Ananta Saha & Ors, reported in (2011) 5 SCC 142; Prabhat Kumar (supra); Anant R. Kulkarni (supra); Chairman, Life Insurance Corporation of India & Ors. v. A Masilamani, reported in (2013) 6 SCC 530; The State Bank of Patiala v. S. K. Sharma, reported in (1996) 3 SCC 364; State of Uttar Pradesh v. Ram Prakash Singh, reported in 2025 (2) PLJR (SC) 331; State of U.P. v. Rajit Singh, reported in 2022 (2) PLJR 196 (SC); Sunil Sikri v. Guru Harikishan Public School & Anr., reported in (2022) 16 SCC 85; Allahabad Bank v. Krishna Narayan Tiwari, reported in (2017) 2 SCC 308; UP State Spinning Co. Ltd. v. R. S. Pandey, reported in (2005) 8 SCC 264; and Hiran Mayee Bhattacharyya (supra), the issue of remand of a departmental proceeding by a Writ Court can only be considered when the enquiry proceeding vitiates on technical ground to cure the



technical defect, so as to avoid any prejudice being caused to the delinquent by reason of denial of reasonable opportunity before being penalized and not to clear up the lacuna committed by the Enquiry Officer or Disciplinary Authority in the conduct of enquiry, especially when the enquiry was carried out in a negligent manner without adducing any valid evidence.

(ii) It is not possible for the Court to frame exhaustive instances of technical defects. It depends upon case to case. In order to substantiate our decision we would like to quote the latest decision of the Hon'ble Supreme Court in Ram Prakash Singh (supra). In paragraph 71 of the said report, the Hon'ble Supreme Court observed as hereunder:

*“71. This, in this case, would mean reverting to the stage of production of witnesses on behalf of the department. When not a single witness could be produced for examination in 2010 and 2014, we do not think that witnesses would now be available to support the charges. Even otherwise, these proceedings have certain incidents of 2004-05 as the origin. Having regard to the lapse of time since then coupled with the retirement of the respondent from service in 2010 and, more particularly, when the appellant despite an earlier*



*opportunity granted by the Tribunal has failed to avail the same by continuing the enquiry in accordance with law, it would be highly unfair and unjust to subject the respondent to face the enquiry once again. Gravity of the offence alleged to have been committed is certainly a vital consideration; however, repeated opportunities cannot be claimed without there being overwhelming public interest warranting such opportunity. No doubt, the respondent was charged with involvement in a financial scam but a line has to be drawn. Or else, it could be an unending affair till such time based on a legal and valid report of enquiry, the disciplinary authority passes an appropriate order. On facts, we are satisfied that second opportunity was not required to be given. Also, we have noticed from the materials on record that two of the respondent's colleagues (one of them a senior officer) who were also proceeded against have been practically let off with no punishment or punishment of stoppage of increments. Thus, we are satisfied that no useful purpose will be served by reviving the disciplinary proceedings and in remitting the case to the appellant. On the contrary, the issue*



*must be given a quietus because the Tribunal or the High Court did not commit any illegality. We hold that the Tribunal and the High Court were correct and justified in not granting one more opportunity to the appellant to resume proceedings from the stage invalidity in the proceedings was detected. The impugned order of the High Court, not suffering from any legal infirmity, does not warrant any interference and deserves to be upheld.”*

(iii) Thus, if in a disciplinary proceeding, an order of punishment is recorded without even examining any witness, the issue whether it is a technical defect or not shall only be considered on the facts and circumstances of the case. However, in the words of the Hon'ble Supreme Court “..... *repeated opportunities cannot be claimed without there being overwhelming public interest warranting such opportunity*”.

(iv) Therefore, while considering the question as to whether a departmental enquiry suffers from technical defect or not warranting an order of remand, the facts of each case should be considered and under the facts and circumstances of each case, presence or absence of technical defect is required to be considered by the Court and on such consideration, the Court



shall pass the order, holding, inter alia, as to whether a particular case is fit for remand on technical defect.

(v) We answer the reference on the basis of our observation stated above under the heading “Conclusion”.

**(Bibek Chaudhuri, J)**

**Anil Kumar Sinha, J:** I agree.

**(Anil Kumar Sinha, J)**

**Partha Sarthy, J:** I agree.

**(Partha Sarthy, J)**

skm/-

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