

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRA

WEDNESDAY, THE 5TH DAY OF AUGUST 2015/14TH SRAVANA, 1937

OP.No. 441 of 2003 (C)

PETITIONER:

P.P.KURIAKOSE,
ASSISTANT EXECUTIVE ENGINEER, K.S.E.B.
ELECTRICAL SUB DIVISION, SULTHAN BATTERY, WAYANAD.

BY ADV. P.P.KURIAKOSE (PARTY-IN-PERSON)

RESPONDENT(S):

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1. KERALA STATE ELECTRICITY BOARD,
REP. BY ITS SECRETARY, VYDHYUTHI BHAVANAM, PATTOM P.O.
TRIVANDRUM.
 2. THE CHAIRMAN,
KERALA STATE ELECTRICITY BOARD, VYDHYUTHI BHAVANAM
PATTOM P.O., TRIVANDRUM.
 3. THE CHIEF ENGINEER,
K.S.E.B., H.R.M., VYDHYUTHI BHAVANAM
PATTOM P.O., TRIVANDRUM.
 4. THE DEPUTY CHIEF ENGINEER,
ELECTRICAL CIRCLE OFFICE, KALPETTA.
 5. M.ABDUL KALAM,
EXECUTIVE ENGINEER, K.S.E.B., ELECTRICAL DIVISION
KALPETTA AND ENQUIRY OFFICER.

BY ADV. SRI.P.SANTHALINGAM (SR.)
ADV. SRI.S.SHARAN, SC, K.S.E.B. BOARD

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 05-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN OP.NO.441/03

PETITIONER'S EXTS:

- EXT.P1: COPY OF CIRCULAR ISSUED BY THE 1ST RESPONDENT DT.22.11.99.
- EXT.P2: COPY OF -DO- -DO- DT.3.6.2000.
- EXT.P3: COPY OF MEMO OF CHARGES PREPARED BY RESPONDENTS 4 AND 5 DT.1.8.2000.
- EXT.P4: COPY OF REPLY TO EXT.P3 DT.9.8.2000.
- EXT.P5: COPY OF ENQUIRY REPORT OF THE 5TH RESPONDENT DT.3.1.2002.
- EXT.P6: COPY OF NOTICE PROPOSING TO IMPOSE PUNISHMENT OF BARRING OF NEXT 3 INCREMENTS AND RECOVERY OF ₹ 66,050/- DT.8.2.02.
- EXT.P7: COPY OF DETAILED REPLY TO EXT.P6 DT.11.3.2002.
- EXT.P8: COPY OF ORDER NO.EBVS 5/36/2000 OF THE 3RD RESPONDENT DT.27.4.02.
- EXT.P9: COPY OF APPEAL AGAINST EXT.P8 SUBMITTED TO THE 2ND RESPONDENT DT.24.6.02.
- EXT.P10: COPY OF JUDGMENT IN OP NO.28124/2002-W OF THIS COURT DT.1.10.02.
- EXT.P11: COPY OF ORDER OF THE 2ND RESPONDENT REDUCING THE PENALTY TO BARRING OF TWO INCREMENTS DT.8.11.02.
- EXT.P12: COPY OF ORDER NO.LAS 1/14505/02 CONFIRMING EXT.P11.

RESPONDENTS' EXTS: NIL

TRUE COPY

P.S.TO JUDGE

dsn

ANIL K.NARENDRA, J

O.P.No.441 Of 2003

DATED THIS THE 5th DAY OF AUGUST, 2015

JUDGMENT

The petitioner, who is an Assistant Executive Engineer in the Kerala State Electricity Board has filed this Original Petition seeking a writ of certiorari to quash Exts.P3, P5, P6, P8, P11 and P12 and for other consequential reliefs.

2. Going by the averments in the Original Petition, while the petitioner was holding the post of Assistant Engineer, Electrical Section, Meenangadi, he was issued with Ext.P3 memo of charges dated 1.8.2000 of the 4th respondent alleging that he has committed the following irregularities which warrants disciplinary action;

- “(1) Effected 30 Nos. Normal W.P. service connections registered in between 5.10.99 to 28.10.99, on 11.5.2000, violating standing order of K.S.E.Board.
- (2) Effected the aforesaid service connections by diverting the materials which were actually allotted for giving OH service connections upto 31.12.1996 and PPS work for the year I & II.
- (3) Caused loss to the revenue of the K.S.E.Board to the extent of ₹66,050/-.”

3. Though a statement of allegations on which the above charges are laid was enclosed along with Ext.P3 memo of charges, the petitioner has not chosen to produce it along with the Original Petition. On receipt of Ext.P3 memo of charges, the petitioner submitted Ext.P4 explanation denying all the charges levelled against him. Dissatisfied with the explanation submitted by the petitioner, disciplinary action was initiated against him. The Enquiry Officer submitted Ext.P5 enquiry report dated 3.1.2002 concluding that, all the charges levelled against the petitioner stands proved to the extent of the findings contained in the enquiry report. The findings of the Enquiry Officer in Ext.P5 enquiry report reads thus:

- (1) The WP service connections registered in between 5-10-99 to 28-10-99 in different categories under normal WP priority has been effected, violating the Board orders and circulars, by the delinquent himself is found correct.
- (2) OYEC amount of ₹66,050/- applicable for effecting 30 Nos. of WP service connections by diverting the materials of PPS and Minimum Guarantee LE works is found correct. The aforesaid act of the delinquent resulted in a loss of the revenue of the K.S.E.Board to the extent of ₹66,050/-. This should be realized."

4. Based on Ext.P5 enquiry report, the petitioner was

issued with Ext.P6 show cause notice dated 8.2.2002 of the 3rd respondent, proposing a punishment of barring of next three increments with cumulative effect, besides the recovery of ₹ 66,050/- together with interest from 11.5.2000 being the loss alleged to have sustained by the Board. A copy of Ext.P5 enquiry report was also appended to Ext.P6 show cause notice.

5. On receipt of Ext.P6 show cause notice, the petitioner submitted Ext.P7 reply dated 11.3.2002. In Ext.P7 reply, the petitioner has specifically pointed out that, the various findings in Ext.P5 enquiry report are legally unsustainable, that the reliance placed on Ext.P1 circular dated 22.11.1999 is legally unsustainable, that he was denied a reasonable opportunity before the Enquiry Officer to defend the charges levelled against him and that the Enquiry Officer played a major role in the drafting of show cause notice based on which enquiry proceedings commenced and as such there is clear violation of the principles of natural justice. The petitioner has also contended that the findings in Ext.P5 enquiry report are perverse.

6. After submission of Ext.P7 reply, the disciplinary authority issued Ext.P8 order dated 27.4.2002 imposing the

petitioner the punishment proposed in Ext.P6 show cause notice, that is, barring of his next three increments with cumulative effect, besides recovery of an amount of ₹66,050/- together with interest as per rules in force with effect from 11.5.2000, being the loss sustained by the Board. The reasoning of the disciplinary authority in Ext.P8 order reads thus:

"The reply submitted by Shri P.P.Kuriakose has been examined by the undersigned with reference to all the relevant records of the case, report of enquiry and his reply to the memo of charges issued to him. It is found that the contentions raised by Shri P.P.Kuriakose are not acceptable and do not deserve any consideration taking into account of the facts and circumstances of the case. Every opportunity has been given to the accused to defend his case during the course of enquiry. The punishment proposed is not excessive while taking into account the gravity of the charges proved against Shri P.P.Kuriakose."

7. Against the punishment imposed in Ext.P8 order, the petitioner filed Ext.P9 appeal dated 24.6.2002 before the 2nd respondent, who is the appellate authority. During the pendency of that appeal, the petitioner has approached this Court in O.P.No.28124/2002 seeking an early disposal of Ext.P9 appeal. By Ext.P10 judgment, dated 1.10.2002, the said Original Petition

was disposed of directing the 2nd respondent herein to consider and pass appropriate orders on Ext.P9 appeal in accordance with law, within three months from the date of receipt of a copy of the judgment, after affording an opportunity of being heard to the petitioner. It was also made clear that, till a decision is taken, the direction in Ext.P8 order shall remain in abeyance.

8. Subsequent to the direction contained in Ext.P10 judgment of this Court, the 2nd respondent issued Ext.P11 order dated 8.11.2002 thereby reducing the punishment imposed on the petitioner as one barring two increments with cumulative effect and recovery of loss of ₹66,050/- together with interest as per the rules in force, with effect from 11.5.2000, being the loss sustained to the Board on account of the omissions and commissions on the part of the petitioner. The reasoning of the 2nd respondent in Ext.P11 order reads thus:

“.... ... The undersigned has examined the matter in detail and it is evident that as per the formal enquiry report, the charges stand proved and the accused officer was given enough opportunity to defend the case. No fresh points have been brought out in the appeal petition. ”

In Ext.P11 it has been stated that, taking a lenient view, the

appellate authority orders that the punishment of barring three increments with cumulative effect besides the recovery of ₹66,050/- plus interest as per rules in force with effect from 11.5.2000" awarded to the petitioner is reduced to that of barring of two increments with cumulative effect and recovery of loss of ₹66,050/- plus interest as per rules in force with effect from 11.5.00 being the loss sustained to the Board on account of omissions and commissions on the part of the petitioner.

9. Since Ext.P11 order was one passed without hearing the petitioner, the 2nd respondent issued Ext.P12 order after hearing the petitioner, thereby confirming the punishment imposed in Ext.P11, holding that there exist no circumstances warranting revision of the reduced punishment already ordered in Ext.P11. The reasoning of the 2nd respondent in Ext.P12 order reads thus:

"The fixing of target dates by the Board for giving service connection is to ensure uniformity in the matter throughout the State so that consumers in different parts of the State are not discriminated. If every Engineer is given discretionary powers, depending on availability of materials, there will be a rat race among officers in charge of Sections, Divisions, etc. to manage somehow or other to

procure materials and give connections arbitrarily. Any discretionary power, if not used judiciously, would lead to arbitrariness and corruption. Therefore, the petitioner's action in having given Service Connection to consumers beyond the target date fixed by the Board results in defeating the Board's declared policy in the matter and tantamount to violation of Board's orders.

Moreover the petitioner's plea that the impugned service connections were given as materials were available also does not hold substance. Actually the materials so utilized were entrusted with the petitioner for some other specific purpose and the petitioner ought not have deviated the materials for another purpose. It should be within the reasonable knowledge of the petitioner that prospective consumers throughout the entire State, identical to the ones to whom service connections were given at the instance of the petitioner, were waiting for their turn and the impugned action had upset Board's scheme in the matter of electric connection. The petitioner has committed an irregular act in this respect also."

It is aggrieved by the aforesaid orders, the petitioner is before this Court in this Original Petition, seeking various reliefs.

10. Heard the arguments of the petitioner, who appeared in person, and also the learned Senior Counsel appearing for the respondent Board.

11. As borne out from the pleadings and materials on record, disciplinary proceedings were initiated against the petitioner based on Ext.P3 memo of charges. Dissatisfied with the explanation offered by the petitioner in Ext.P4, an Enquiry Officer was appointed, who conducted the enquiry and submitted Ext.P5 enquiry report with a finding that the charges levelled against the petitioner stand proved to the extent mentioned in the enquiry report. Based on Ext.P5 enquiry report, the petitioner was issued with Ext.P6 show cause notice, to which he submitted Ext.P7 reply, raising specific contentions against the legality of the enquiry and also on the findings of the Enquiry Officer in Ext.P5 enquiry report. But a reading of Ext.P8 order passed by the disciplinary authority would make it explicitly clear that in a total non-application of mind, the said authority imposed a major punishment on the petitioner of barring of next three increments with cumulative effect, besides recovery of an amount of ₹66,050/- together with interest as per rules in force with effect from 11.5.2000 being the loss sustained by the Board. Though in Ext.P8 order, the disciplinary authority has stated that he has examined the reply submitted by the petitioner with

reference to the relevant records of the case and the report of the Enquiry Officer, the reasons for rejecting the specific contentions raised by the petitioner in Ext.P7 reply is not discernible from Ext.P8 order.

12. The 3rd respondent being the disciplinary authority, is bound to consider the various contentions raised by the petitioner in Ext.P7 reply and arrive at a conclusion that, the enquiry conducted against the petitioner is legally sustainable and that he was afforded a reasonable opportunity to defend the charges levelled against him and that the various findings in the enquiry report are legally sustainable. Then the disciplinary authority has to consider whether any punishment can be imposed on the petitioner based on the findings in the enquiry report. A reading of Ext.P8 order would not indicate as to whether the disciplinary authority has exercised its powers in the manner stated above. Therefore, the conclusion is irresistible that Ext.P8 order passed by the disciplinary authority imposing a major penalty on the petitioner is vitiated by total non-application of mind.

13. It was aggrieved by Ext.P8 order passed by the 3rd respondent, the petitioner filed Ext.P9 statutory appeal before the

2nd respondent, who is the appellate authority. As in the case of Ext.P8 order passed by the disciplinary authority, Ext.P11 order passed by the appellate authority is also one issued in total non-application of mind and the said order does not even contain any reasons whatsoever for rejecting the contentions raised by the petitioner in Ext.P9 statutory appeal. Though in Ext.P11 order it has been stated that the appellate authority has examined the matter in detail, the manner in which the said authority dealt with the specific contentions raised by the petitioner in Ext.P9 appeal is not discernible from Ext.P11 order. The appellate authority after hearing the petitioner, passed Ext.P12 order. But the reasons stated therein are not the reasons stated by the disciplinary authority to impose the punishment on the petitioner.

14. In **Commissioner of Police, Bombay v. Gordhandas Bhanji (AIR 1952 SC 16)** the Apex court has held that, public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public

effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself. Following the principle laid down in Gordhandas Bhanji's case (*supra*), the Apex Court has reiterated in **Mohinder Singh Gill v. Chief Election Commissioner (1978 (1) SCC 405)** that, when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, gets validated by additional grounds later brought out.

15. In **Breen v. Amalgamated Engineering Union (1971 (1) All. E.R. 1148)** Lord Denning, M.R. Observed that, the giving of reasons is one of the fundamentals of good administration. In **Alexander Machinery (Dudley) Ltd. v. Crabtree (1974 ICR 120)** it was observed that, failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at.

16. Following the principle laid down in the decisions referred to above, the Apex Court in **Chairman and Managing Director, United Commercial Bank and others Vs. P.C.Kakkar (2003) 4 SCC 364** held that, reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the 'inscrutable face of the sphinx', it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The 'inscrutable face of a sphinx' is ordinarily incongruous with a judicial or quasi-judicial performance.

17. The object underlying the rules of natural justice is to prevent miscarriage of justice and secure fair play in action. The recording of reasons by an administrative or quasi-judicial authority serves a salutary purpose, namely, it excludes chances of arbitrariness and ensures a degree of fairness in the process of

decisions making. It would apply equally to all decisions made by such authority and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. At the same time, it is not the requirement that, the reasons should be as elaborate as in the decision of a court of law. What is necessary is that, the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. Hence, it is an essential requirement of the rule of law that, some reasons, at least in brief, must be disclosed in the order passed by an administrative or quasi-judicial authority.

18. If Ext.P8 order passed by the disciplinary authority is viewed in the light of the principle laid down in the aforesaid judgments, the conclusion is irresistible that it is one passed in total non-application of mind. In such circumstances, the appellate authority, instead of justifying the said order by stating some other reasons, ought to have remanded the matter to the disciplinary authority for reconsideration. When Ext.P8 order is one passed in total non-application of mind, the same cannot be sustained in the light of the reasonings given by the appellate

authority in Ext.P12.

19. In the result, Exts.P8, P11 and P12 orders are set aside and the 3rd respondent, who is the disciplinary authority is directed to consider Ext.P7 reply submitted by the petitioner afresh and take appropriate decision, with notice to the petitioner and after affording him an opportunity of being heard. Needless to say that, any order passed by the 3rd respondent should be a reasoned order, after considering the specific contentions raised by the petitioner in Ext.P7 on the legality of the disciplinary proceedings initiated against him and also on the various findings in Ext.P5 enquiry report. A decision in this regard shall be taken within a period of three months from the date of receipt of a certified copy of this judgment.

20. All contentions raised by the petitioner in this Original Petition are left open.

The Original Petition is disposed of as above.

Sd/-
ANIL K.NARENDRA,
JUDGE

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