IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 8TH DAY OF DECEMBER 2015/17TH AGRAHAYANA, 1937

WP(C).No. 33002 of 2004 (D)

PETITIONER(S):

A.KUNHAN, ASST. ENGINEER (RTD.)
K.S.E.B., NOW RESIDING AT CHUNDAKUNNU
ARINJERUMMEL P.O., PANAMARAM, WAYANAD.

BY ADV. SRI.P.C.SASIDHARAN

RESPONDENT(S):

1. **K.S.E.B.**
   REP. BY ITS SECRETARY, VYDUTHI BHAVAN
   THIRUVANANTHAPURAM.

2. **THE CHAIRMAN, KERALA STATE**
   ELECTRICITY BOARD, THIRUVANANTHAPURAM.

3. **THE CHIEF ENGINEER (HRM),**
   KERALA STATE ELECTRICITY BOARD, THIRUVANANTHAPURAM.

4. **THE DEPUTY CHIEF ENGINEER,**
   TRANSMISSION CIRCLE, NALLALAM, KOZHIKODE.

R,R1 TO 4 BY ADV. SRI.A.SUDHI VASUDEVAN, SC, KSEB
R,R1 TO 4 BY ADV. SRI.C.C.THOMAS, SC, K.S.E.B
R1-R4 BY ADV. SRI.P.SANTHALINGAM (SR.)
R1-R4 BY ADV. SRI.S.SHARAN,SC,K.S.E.BOARD
R1 -R 4 BY ADV. SRI.RAJU JOSEPH (SR.)
R1 -R 4 BY ADV. SRI.K.T.PAULOSE, SC, KSEB
R BY SRI.K.S ANILSC, KSEB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08-12-2015, ALONG WITH WPC. 11972/2005, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 33002 of 2004 (D)

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1	**COPY OF THE MEMO OF CHARGES DTD. 12.1.96**
EXT.P2	**COPY OF THE EXPLANATION SUBMITTED BY THE PETITIONER DTD. 15.2.96**
EXT.P3	**COPY OF THE SHOW CAUSE NOTICE PROPOSING TO IMPOSE THE PUNISHMENT ISSUED BY THE BOARD DT D. 21.6.03**
EXT.P4	**COPY OF THE EXPLANATION DTD. 28.7.03**
EXT.P5	**COPY OF THE ENQUIRY REPORT**
EXT.P6	**COPY FO THE ORDER OF THE 2ND RESPONDENT.**
EXT.P7	**COPY OF THE APPEAL PETITION PREFERRED BY THE PETITIONER.**
EXT.P8	**COPY OF THE ORDER PASSED BY THE BOARD**
EXT.P9	**COPY OF THE LETTER ISSUED BY THE RESPONDENT DTD. 27.12.04**
EXT.P10	**COPY OF THE PROCEEDINGS DTD. 21.7.06**
EXT.P11	**COPY OF THE REVISED LIABILITY CERTIFICATE WAS ALSO ISSUED BY THE RESPONDENT.**
EXT.P12	**COPY OF THE JUDGMENT IN W.P.(C) NO. 7524/07.**

RESPONDENTS EXHIBITS: **NIL**

// TRUE COPY //

P.A TO JUDGE

SB

K. VINOD CHANDRAN, J.

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W.P.(C) Nos.33002 of 2004 - D and
11972 of 2005 - A

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Dated this the 08th day of December, 2015

J U D G M E N T

The identical petitioner, in both the above writ petitions, are concerned with three different disciplinary proceedings; alleging misconducts, which, having been proved in the enquiry, three separate punishments were also imposed. One of which is challenged in W.P.(C) No.33002 of 2004 and the other two in W.P.(C) No.11972 of 2005.

2. W.P.(C) No.33002 of 2004 was a case in which the supervisory lapses in (electricity) pole-casting work was alleged against the petitioner, which according to the Board caused financial loss to the Board. The specific charges were with respect to acting against the interest of the Board, violating the Rules and failing to report to the higher authorities that the

pole-casting work was against the required specification; hence dereliction of duty. The enquiry report is seen produced at Ext.P5. The Enquiry Officer found the petitioner to be not guilty of the offences. The Enquiry Officer found that the test conducted for ascertaining the quantity of cement, in the pole casting ought to have been the test provided in the Indian Standard Specifications. It was also found that the sample was taken from one pole alone, by using hammer and not using a saw. The allegations were with respect to the casting of around 600 poles while sample taken was from one single pole. The selection of the pole was found to be not in accordance with the Indian Standard Specifications for reinforced concrete poles, used in over-head power and telecommunication lines.

3. It is very pertinent that the Enquiry Officer also found that neither a mahazar was prepared, regarding the sample collected, nor is it disclosed as to how the sample was

packed and sealed, when send for test. The size and weight of the sample was also not revealed and it was not stated as to from which part of the pole, the sampling was done. It was categorically found that due to the said discrepancies at Ext.P1, the test report cannot at all be considered as a conclusive proof; that the cement, sand and coarse for the 600 poles were alike and its proportion is as stated in Ext.P1 test report. The allegation that there was financial loss of Rs.1,10,346/-, caused in collusion with the contractor was also held to be not proved. In such circumstance, the prosecution was found to have not succeeded in proving the allegation of under-use of materials, collusion with the contractor or loss having caused to the Board.

4. The Chief Engineer, Kalpetta, who deposed as a defence witness had stated that, if the pole is cast, with less than 50% of the cement, as alleged in the test report, the pole so cast, cannot withstand transportation, handling and the erection

process. It is an admitted fact that all the 600 poles, which were the subject of investigation, were erected and lines drawn and the same commissioned. The Chief Engineer, Kalpetta also categorically stated that he had not received any complaint regarding the failure of the poles or any of them having developed a defect after they were erected. The manufacturing defect alleged stood negatived and the further defects noticed in sampling, assumes significance, in considering the quality of evidence adduced in proving the charges**.** It is trite that the evidence adduced in a departmental proceeding need not be of the same efficacy as in a civil or criminal court constituted to adjudicate such disputes. But the reliance should not be on extraneous considerations nor shall the finding be perverse.

5. The disciplinary authority by Ext.P3 disagreed with the findings of the Enquiry Officer especially with respect to the discrediting of the test report. It was found that the random

sample test which formed the basis of the test report is a universally accepted practice and that the sample was taken and sent by the Deputy Superintendent of Police of the Vigilance & Anti Corruption Bureau, who is well experienced in such matters. The test was also found to have been conducted by a reputed institution, the Regional Engineering College, Kozhikode. The disciplinary authority proposed a punishment and recovery of loss against which, the petitioner was permitted to raise objections. Here it is to be noticed that the only opportunity offered to the delinquent was to object against the punishment and recovery. Ext.P6 final order was passed by the disciplinary authority. The very same findings were reiterated by the disciplinary authority in Ext.P6 and differing from the findings of the enquiry officer. A punishment of barring of three annual increments with cumulative effect and recovery of Rs.55,173/- as damages was ordered by Ext.P6. An appeal filed, failed to give

any benefit to the petitioner and Ext.P8 confirmed orders at Ext.P6.

6. It is trite that this Court sitting in judicial review would not look into the facts, unless there is clear perversity and extraneous considerations, not at all relevant to the issue, having governed the decision. Herein, the disciplinary authority has differed with the findings of the Enquiry Officer to find the petitioner guilty of the offences alleged and also decided to impose a punishment of barring of three annual increments with cumulative effect and recovery of alleged loss caused to the Board.

7. At the out set, it is to be noticed that the imposition of damages of Rs.55,173/- is without any quantification. The Enquiry Officer, in fact found that the charge of having caused loss to the Board, to the extent of Rs.1,10,346/-, though alleged, was not proved. In such circumstance, the

disciplinary authority without sufficient material or again a hearing on such quantification could not have merely proposed the liability in Ext.P3 show cause notice and mulcted it in Ext.P6. The enquiry report also disclose no evidence as having been led to prove the loss and determine it.

8. A bare reading of Exts.P3 and P6, shows that the final order reiterated the reasons in the so called show-cause notice. Here it is to be specifically noticed that it was not the test conducted by the Regional Engineering College that was discredited by the Enquiry Officer, but the specific manner, in which the sampling was taken. The finding of the Enquiry Officer was that only one sample alone was taken out of the 600 poles, that too with a hammer and not with a saw as prescribed. It is also pertinent that no mahazar was prepared nor was the nature of the sample reduced to writing, before the same was sent for test. The quantum of the sample was not available and it is not

clear how the test was conducted, as to the proportion of the different material in the sample. The experience of the Vigilance Officer should be revealed from the meticulousness which should be the hallmark of the investigation and cannot be merely assumed; as has been done by the disciplinary authority. There was nothing stated in Ext.P3 substantial enough to differ from the findings in the enquiry report, nor was the delinquent put to notice of the reasoning behind such a finding. The disciplinary authorities power to differ from the findings of the Enquiry Officer brooks of no dispute. But the principles of natural justice warrants a hearing before such differing opinion is finalised. In such circumstance, this Court is unable to uphold Exts.P3 and P6 and the same would stand set aside.

9. W.P.(C) No.11972 of 2005, is with respect to two disciplinary proceedings initiated against the petitioner by memo of charges at Exts.P1 and P4. Ext.P1 was with respect to a

diversion of electric line from the sanctioned estimate and for denying service connection to a complainant, thus causing loss of Rs.20,000/- to the Board. Ext.P4 was with respect to an alleged harassment of a handicapped consumer, who was denied electric connection and the additional charge of having demanded and accepted bribe to the tune of Rs.40,000/- from another handicapped person. Both the charge sheets alleged tarnishing of the image of the Board before the public and dereliction of duty. Enquiry was proceeded against in both the aforesaid charges alleged.

10. The petitioner is said to have not been served with an enquiry report nor was his objections taken. The petitioner was merely issued with a show cause notice at Exts.P2 and P5, which does not disclose that the enquiry report was supplied to the petitioner. The petitioner's objections were taken and final orders were passed at Exts.P3 and P6. By the time,

Exts.P3 and P6 were passed, the petitioner had retired having been superannuated on 30.06.2004. The orders passed at Exts.P3 and P6 were on 11.03.2005 and 16.03.2005 respectively. Both the said orders suffer for the fundamental defect of the enquiry report having not been supplied to the petitioner.

11. In the first enquiry, the petitioner was imposed with a punishment of barring of one increment with cumulative effect and recovery of an amount of Rs.10,000/- being half the total loss of Rs.20,000/-. With respect to the second enquiry, the petitioner was imposed with a punishment of barring of last one increment with cumulative effect along with a recovery of Rs.6,000/- as loss. The Board has also not produced the enquiry report nor have they refuted the contention of the petitioner that no supply of enquiry report was made. It is also to be noticed that the liability with respect to damages, cannot be easily inferred and it has to be quantified with proper notice to the

petitioner.

12. The enquiry report having not been produced, it is not decipherable as to whether the quantification of loss, was in fact made. Further, the fundamental defect noticed by this Court as to the non-supply of the enquiry report stands against the Board and the orders passed at Exts.P3 and P6 are to be set aside for that reason, following the decision of the Hon'ble Supreme Court reported in **Managing Director, ECIL** v. **B.Karunakar [(1993) 4 SCC 727].** Normally, when this Court finds a defect with respect to the enquiry proceeding on the ground of violation of principles of natural justice, the matter has to be remanded back to be resumed from the stage at which such defect occurred. However, herein the petitioner had retired in the year 2004 and there would be no purpose served in making such a remand and it would also be beyond the period as stipulated in Rule 3(b) of Part III K.S.R. W.P.(C) No.11972 of

2005 is also to be allowed.

13. The learned Counsel for the petitioner raises a further contention that when the writ petitions were pending, the petitioner was issued with a liability certificate at Ext.P11, wherein the liability with respect to the three enquiries ie: the monetary value of the punishment along with like liability with respect to another punishment, which was also set aside by Ext.P12 judgment, were sought to be mulcted on the petitioner. The said liabilities would not now survive, is the contention.

14. On going through Ext.P11, it is indicated that Item No.1, 2 and 3 are with respect to the enquiry proceedings, which were the subject matter of the instant writ petitions; the damages mulcted on the petitioner as also the monetary value of the punishment imposed. Item No.4 is with respect to a conveyance advance and item No.5 is said to have been set aside by Ext.P12 judgment. However, that is a matter, which has to be looked

into by the respondents. The petitioner shall produce a certified copy of this judgment along with a certified copy of the judgment at Ext.P12 before the respondent Board and the respondent Board shall look into the same and issue revised liability certificate within a period of two months from the date of receipt of a certified copy of this judgment and shall also pay the entire pension benefits due to the petitioner within a period of four months from that date.

In the result, both the writ petitions would stand allowed. No costs.

Sd/-
K. VINOD CHANDRAN,
JUDGE

SB/09/12/2015

// true copy //

P.A to Judge.