

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

WP.No.21016 of 2002

R.Dhandapani

Petitioner

Vs

1.Tamil Nadu Electricity Board by Chairman
Chennai-2

2.The Chief Engineer (Distribution)
Tamil Nadu Electricity Board,
Vellore Distribution Circle, Vellore 600006 Respondents

Prayer:- This Writ Petition is filed to issue a Writ of Certiorarified Mandamus to call for the records of the 2nd Respondent dated 3.7.2000 in Ref.No.022491/NP.A/U.2/98-6, imposing a punishment of reversion from the post of Wiremen to the post of Helper for a period of five years and of the period of reduction shall operate to postpone Petitioner's future increments and as modified by the order of the 1st Respondent dated 10.4.2001 bearing permanent BP.(Ch)No.53, modifying the punishment to one of reversion as Helper for a period of five years and the period of reduction not to operate to postpone the Petitioner's future increments and to quash the same and consequently to direct the Respondents to restore the Petitioner to the post of wiremen with effect from 3.7.2000 and give all consequential and attendant benefits.

For Petitioner : Mr.Balan Haridass
For Respondents : Mr.M.Fakkir Mohideen

ORDER

This Writ Petition is filed against the order of the 1st Respondent dated 10.4.2001, modifying the order dated 3.7.2000 of the 2nd Respondent dated, in and by which, punishment of reversion from the post of Wiremen to the post of Helper for a period of five years was imposed and it was also ordered that the period of reduction shall operate to postpone Petitioner's future increments and to direct the Respondents to restore the Petitioner to the post of wiremen with effect from 3.7.2000 and give all consequential and attendant benefits.

2. This court heard the learned counsel on either side and also perused the materials placed on record.

3. According to the Petitioner, neither the original authority, viz. the enquiry officer nor the Appellate Authority has taken into consideration the actual evidence in a proper and perspective manner. In the cross examination, the complainant R.Rajeswari, MW.1 herself has given a go-by to the alleged statement and she has categorically stated in the cross examination that neither the Petitioner is responsible or liable nor the complaint is pertaining to him. The other witnesses MW.2 to MW.4 have also categorically stated that the Petitioner is not liable for any of those things. Without taking into consideration the said evidence, both the original authority and the Appellate Authority, passed the impugned orders, without giving any reason and without even discussing the evidence at all and therefore, the impugned orders are not sustainable.

4. The learned counsel for the Petitioner relied on the decision of this court reported in 2015 4 LLN 192 (Mad) (V.Ramasamy Vs. The Secretary, Government of Tamil Nadu, Municipal Administration and Water Supply Department, Chennai) for the preposition that the enquiry officer is bound to scrutinize and assess the evidence adduced by the parties and discuss the same and also to record the reasons and submitted that in the case on hand, no reason has been given by the enquiry officer or the Appellate Authority and hence, the impugned orders are vitiated. The learned counsel also relied on the decision of the Honourable Supreme Court reported in 2009 12 SCC 73 (Union of India and others Vs. Gyan Chand Chattar) for the preposition that when serious charge of corruption is alleged, it has to be proved to the hilt as it brings civil and criminal consequences and submitted that in the case on hand, neither it has been proved beyond any shadow of doubt nor it has been discussed by both the authorities.

5. On the other hand, the learned counsel for the Respondents would mainly contend that the chief examination was conducted on one day and the cross examination was conducted on another day. In the chief examination, the witnesses have categorically deposed about the illegal demand made to a particular person, but subsequently, withdrew the statement and therefore, taking into consideration the cumulative effect of the entire statement, both the authorities passed the impugned orders, which are proper and correct.

6. Originally, the Petitioner joined the service as

Helper in 1992 and he was promoted as Wireman in the year 1997. He was imposed with the impugned punishment in the year 2000. This Writ Petition is pending since 2002. On a careful consideration of the entire evidence, it is seen that MW.1, who made the complaint against the Petitioner, though in the chief examination first deposed about the alleged illegal demand made by the Petitioner, but did not sign the statement and on another day, while deposing, she denied the said statement, stating that she made the same in an unsound state of mind as she was not feeling well on that earlier day and hence, she deposed to remove the said statement and has categorically stated that the Petitioner was not at all involved in the alleged offence and to accept the later statement given on that day. In view of such contradictory statements, definitely her statement ought not to have been taken into consideration. Even assuming for a moment, but not admitting, that the enquiry officer has taken into consideration the evidence in a proper and perspective manner, reasons ought to have been given by both the authorities. But, neither the Enquiry Officer nor the Appellate Authority discussed about the statement of MW.1. Further, the other witnesses have also categorically stated that the Petitioner was not at all involved in the alleged offence.

7. Reason is the heart beat of every conclusion and without the same, it becomes lifeless, as has been laid down by the Honourable Supreme Court in 2008-16-VST181-SC (SAIL Vs. Sales Tax Officer, Rourkela) and 2003 (11) SCC 519) Raj Kishore Jha v. State of Bihar.

8. In 2009 12 SCC 73 (Union of India and others Vs. Gyan Chand Chattar), it has been held as follows:-

"21. Such a serious charge of corruption requires to be proved to the hilt as it brings civil and criminal consequences upon the employee concerned. He would be liable to be prosecuted and would also be liable to suffer severest penalty awardable in such cases. Therefore, such a grave charge of quasi criminal nature was required to be proved beyond any shadow of doubt and to the hilt. It cannot be proved on mere probabilities."

9. In 2015 4 LLN 192 (Mad) (V.Ramasamy Vs. State) cited supra, it has been held as follows:-

"45. Similarly, PW.5, K.Chandrasekaran, in his evidence, has not given any specific date and month of the alleged incident, which took place in the year 1988. From the perusal of the

evidence, recorded and enclosed in the typed set of papers, except the statement of PW.1, other witnesses have not given any legally acceptable evidence to prove that money was parted with. As stated supra, one of the witnesses, PW.2, has given a statement that water pipe line service connection was given, as per the seniority. PW.9, has not lodged any complaint against the petitioner. His statement has been recorded on 22.03.1996 in the departmental enquiry. Though the petitioner has submitted a written submission to the enquiry officer, in his report, the enquiry officer has recorded as follows:-

"Arguments of prosecution side and the counter arguments of the defence side have been examined carefully prosecution witnesses 1, 5, 8 and 9, in their statements have clearly speak about the demand and acceptance of illegal gratification by the delinquent officer. Though the prosecution witness 2 turned hostile during the cross examination by the prosecution he had admitted that the delinquent officer had demanded Rs.300/-. Hence, this charge is held proved."

46. The enquiry officer is bound to scrutinise and assess the evidence adduced by the parties and discuss the same and also record the reasons, as to why, explanation offered by the delinquent, is not acceptable. He has only recorded that Pws.1, 5, 8 and 9 have clearly spoken about the demand and acceptance, which in the opinion of this Court, does not amount to proper consideration of the explanation offered. Though prosecution witness, PW.2, has turned hostile, during cross-examination, for the purpose of holding Charge No.2, as proved, the enquiry officer has not accepted his evidence. Such an approach is incorrect. The enquiry officer cannot go beyond the evidence tendered by a witness. He must record reasons, as to why he is not accepting the evidence.

47. It is well settled that the disciplinary authority is bound to consider the evidence on record, explanation offered in the defence, and arrive at a proper conclusion. While agreeing

with the findings, the Disciplinary Authority has observed that the delinquent was not able to disprove the case. When the petitioner has submitted a detailed explanation, as to how, charges have been framed against him, belatedly, for the alleged incidents, which occurred in the year 1988-90 and when the alleged demand and payment has been disputed and when the witnesses have not given any specific dates and month and when the petitioner has alleged motive and given instances, regarding the earlier disputes, it is the duty of the Disciplinary Authority to consider the same, in proper perspective, instead of making a generalised statement, "Interferences, cannot disprove direct and unambiguous statements of witnesses.

69. It is also well settled that the appellate authority, while agreeing with the views expressed by the disciplinary authority need not write a detailed order, like that of a judgment. Nevertheless, the appellate authority has to independently consider the evidence on record and the defence putforth by the charged official and pass a reasoned order. Exercise of the power of the appellate authority under rule 23 of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, is as follows:-

"23. (1) In the case of an appeal against an order imposing any penalty specified in rule 8 or 9, the appellate authority shall consider--

(a) whether the facts on which the order was based have been established;

(b) whether the facts established afford sufficient ground for taking action; and

(c) whether the penalty is excessive, adequate or inadequate and pass orders--

(i) confirming, enhancing, reducing, or setting aside the penalty; or

(ii) remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the

circumstances of the case ;

Provided that --

(i) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (iv), (v) (c), (vi), (vii) and (viii) of rule 8 and an inquiry under sub-rule (b) of rule 17 has not already been held in the case, the appellate authority shall, subject to the provisions of sub-rule (c) of rule 17, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of sub-rule (b) of rule 17 and thereafter, on a consideration of the proceedings of such inquiry make such orders as it may deem fit;

(ii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (iv), (v) (c), (vi), (vii) and (viii) of rule 8 and an inquiry under sub-rule (b) of rule 17 has already been held in the case, the appellate authority shall , after giving the appellant a reasonable opportunity of making representation against the penalty proposed on the basis of the evidence adduced during the enquiry, make such orders as it may deem fit ; and

(iii) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be in accordance with the provisions of sub-rule (a) of rule 17 of making representation against such enhanced penalty.

(2) Any error or defect in the procedure followed in imposing a penalty may be disregarded by the appellate authority if such authority considers, for reasons to be recorded in writing, that error or defect was not material and has neither cause injustice to the person concerned nor affected the decision of the case.

70. In this context, it is useful to refer to few decisions of this Court as well as the

Hon'ble Supreme Court, as to how the word "consider" employed in the discipline and appeal rules, have to be considered and applied for disposal of an appeal. While explaining the word "consider" employed in Rule 27(2) of the Central Civil Services (Classification and Appeal) Rules, 1965, the Hon'ble Supreme Court in R.P.Bhatt v. Union of India reported in AIR 1986 SC 1040, at Paragraphs 4 and 5, observed that,

"The word 'consider' in R.27(2) implies 'due application of mind'. It is clear upon the terms of Rule 27(2) that the appellate authority is required to consider (1) Whether the procedure laid down in the Rules has been complied with; and if not, whether such non-compliance has resulted in violation of any provisions of the Constitution or in failure of justice; (2) Whether the findings of the disciplinary authority are warranted by the evidence on record; and (3) Whether the penalty imposed is adequate; and thereafter pass orders confirming, enhancing etc, the penalty, or may remit back the case to the authority which imposed the same. R.27(2) casts a duty on the appellate authority to consider the relevant factors set forth in clauses (a), (b) and (c) thereof. There is no indication in the impugned order that the Director General was satisfied as to whether the procedure laid down in the Rules had been complied with and if not, whether such noncompliance had resulted in violation of any of the provisions of the Constitution or in failure of justice. We regret to find that the Director General has also not given any findings on the crucial question as to whether the findings of the disciplinary authority were unwarranted by the evidence on record. It seems that he only applied his mind to the requirement of clause (2) of R.27(2), viz., whether the penalty imposed was adequate or justified in the facts and circumstances of the present case. There being non-compliance with the requirements of R.27(2) of the Rules, the impugned order passed by the Director General is liable to be set aside."

10. In the light of the discrepancies and

contradictions in the evidence and in the absence of any discussion or explanation having been given by both the authorities for imposing the impugned punishment and in the light of the prepositions laid down in the decisions cited supra that the alleged offence should be proved beyond any shadow of reasonable doubt, which the authorities failed to do so, the impugned orders can be said to be non speaking orders, which shows non application of mind on the part of the Respondents and accordingly, they are liable to be set aside.

11. In the result, this Writ Petition is allowed, setting aside the impugned orders. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

Srcm

To:

1.Tamil Nadu Electricity Board by Chairman
Chennai-2

2.The Chief Engineer (Distribution)
Tamil Nadu Electricity Board,
Vellore Distribution Circle, Vellore 600006

+1 CC to M/s. Balan Haridass, Advocate Sr.No.43929

WP.No.21016 of 2002

RP (CO)
MD : 14/09/2016

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