

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.1661 OF 2009

Amarbahadur s/o Batukbahadur Sinh,
Age : 52 years, Occu. Service,
R/o at present posted as Deputy
Executive Engineer,
M.S.E.D. Company Ltd., Amalner,
District Jalgaon

PETITIONER

VERSUS

1. The Maharashtra State Electricity
Distribution Company Ltd.,
through its Managing Director,
M.S.E.D. Company Ltd.,
Prakashgadh, 4th Floor, Bandra,
Mumbai-51
2. The Director of Operation,
M.S.E.D. Company Ltd.,
Prakashgadh, 4th Floor, Bandra,
Mumbai-51
3. The Executive Director-III,
M.S.E.D. Company Ltd.,
Prakashgadh, 4th Floor, Bandra,
Mumbai-51
4. The Chief Engineer,
M.S.E.D. Company Ltd.,
Amaravati Zone, Akola,
District Akola

RESPONDENTS

Mr. R.R. Sancheti, Advocate holding for
Mr. R.R. Mantri, Advocate for the petitioner
Mr. A.S. Bajaj, Advocate for respondent No.4

**CORAM : SUNIL P. DESHMUKH AND
SANGITRAO S. PATIL, JJ.
DATE : 5th December, 2017**

ORAL JUDGMENT (PER : SUNIL P. DESHMUKH, J.) :

Petitioner is before this Court, questioning propriety and legality of order dated 20th October, 2016, passed by the disciplinary authority, order dated 23rd March, 2007, passed by the first appellate authority and order dated 21st August, 2008, passed in second appeal.

2. Petitioner had joined as an Assistant Engineer at Daryapur on 16th November, 2002. During his tenure, a permanently disconnected electric supply had been reconnected without following proper procedure and petitioner having been negligent, overlooked such unauthorised connection resulting in financial loss to the Electricity Distribution Company. Upon noticing aforesaid, after elementary investigation, regular enquiry had been initiated against petitioner charging him of having caused revenue loss as well as covering up ground level lapses by his subordinates.

3. To the show cause notice issued seeking explanation, petitioner had submitted response, contending therein that charges levelled are vague. During course of examination in departmental enquiry,

petitioner had swooped on opportunity to submit his response to charges levelled against him.

4. Upon taking that into account material on record, the enquiry officer found that petitioner had been guilty of dereliction of duty and purportedly recommended punishment against petitioner. He had submitted a report of three charges having been proved against petitioner about negligence, causing loss and not controlling his subordinates.

5. Pursuant to the report of enquiry and relevant record, the disciplinary authority, under its order dated 20th October, 2016 imposed punishment of reversion to a lower post and recovery of Rs.10,000/-.

6. In the appeal therefrom, after considering entire record, enquiry report as well as memorandum of appeal by petitioner, the first Appellate Authority, vide order dated 23rd March, 2007 had reduced the penalty imposed by the disciplinary authority and substituted the same by withholding of increment of petitioner for two years with cumulative effect and maintaining the order of recovery of Rs.10,000/-.

7. Against aforesaid decision of first Appellate Authority second appeal had been preferred by petitioner before respondent No.2. Under order dated 21st August, 2008, respondent No.2 dismissed appeal, maintaining the decision rendered by the first Appellate Authority and thus, petitioner is before this Court.

8. Learned counsel for petitioner submits that petitioner had been unaware of reconnection of a permanently pre-disconnected supply and had not noticed unauthorised act of his subordinate and as such, allegations as have been made would not be imputable to him. He submits that upon bringing to his notice aforesaid unauthorised act of his subordinate, pursuant to directions, he had sought explanation from the subordinate. However, that had not been coming forth. Learned counsel submits that petitioner has done all that he could do under his powers and that he was not empowered to take action against subordinates. He purportedly refers to a few documents annexed to petition and submits, from the same it can be seen that whatever action he could take appears to have been taken, thus, the penalty imposed against petitioner is harsh and highly disproportionate considering nature of

allegations made against him.

9. He further submits that petitioner did not get opportunity of hearing during course of first appeal or for that matter, in second appeal. He further submits that imputations in respect of charge of negligence would not be maintainable and as such, writ petition be allowed and impugned orders of penalty passed by authorities against petitioner be set aside.

10. Resisting aforesaid, Mr. Bajaj, learned counsel for respondent No.4 at the outset submits that all requisite procedure pursuant to the relevant rules had been duly followed. He submits that as a matter of fact, while, during course of enquiry, petitioner desired to submit reply to the charges levelled, such an opportunity had been made available to petitioner which had been availed of by him. After taking into account the material and evidence on record, enquiry officer had found majority of charges levelled to have been proved against petitioner.

11. The disciplinary authority accordingly, after taking into account the evidence and material on record, had imposed penalty of reversion to a lower post and

recovery of Rs.10,000/- against petitioner. This power has been exercised pursuant to the rules and, in fact, a very mild penalty had been imposed looking at the gravity of negligence on part of petitioner. He submits that first appellate authority had shown leniency and reduced the penalty, setting aside the order of reversion of petitioner to lower post and substituting the same by withholding increment for a period of two years with cumulative effect.

12. He submits that the enquiry report has vividly noted that petitioner was grossly negligent in his duties. All the pleas taken by petitioner and excuses given were not plausible nor were substantiated by any material. He submits that as a superior officer, petitioner had been responsible for controlling activities of his subordinates. It cannot be said that action of re-connection had escaped from notice of petitioner. Yet, looking at circumstances, the authorities have taken lenient view and awarded penalty in accordance with the rules and the same would not have material effect on petitioner's career. He further submits that so far as opportunity of hearing during the period of appeals is concerned, no provision of hearing

was ever contemplated by the rules. He submits that it is not in all cases that hearing is necessary.

13. In support of his submissions, Mr. Bajaj places reliance on following decisions :

- (i) ***State Bank of Patiala Vs. Mahendra Kumar Singhal***
1994 Supp (2) SCC 463
- (ii) ***Ganesh Santa Ram Sirur Vs. State Bank of India and another***
(2005) 1 SCC 13
- (iii) ***Oriental bank of Commerce and another Vs. R.K. Uppal***
(2011) 8 SCC 695

14. Heard learned counsel as aforesaid. The enquiry report, particularly the findings recorded by enquiry officer, to a large extent, reflect that all the material and evidence has been taken into account. It appears petitioner ought to have noticed reconnection from the record as disconnected supply had been reconnected after quite a long time after petitioner had assumed charge. Supply to said customer had not been appearing for quite a long time before assumption of charge by him and even for quite a long time thereafter.

As such, such a supply subsequent to his assumption of charge should have been noticed by him. Even papers on which reliance is placed during the course of hearing do not relate to the action of reconnection by the subordinate. There is no nexus of those documents to the alleged misconduct of the subordinate. The disciplinary authority as well as the two appellate authorities have taken decisions within their powers according to the rules.

13. In the circumstances, it does not appear to be a case wherein exercise of discretion would be called for in favour of petitioner. Petitioner has not been in a position to point out that hearing during course of appeal is *sine-qua-non* and that rules in any way provide for such an opportunity. The penalty of withholding of increment for a period of two years with cumulative effect and recovery of Rs.10,000/- against petitioner, as per Regulation 91 of the Maharashtra State Electricity Distribution Company Ltd. Employees Service Regulations, 2005, in the circumstances would not be said to be disproportionate.

14. Considering reasons given in the orders

impugned, we do not find that any case is made out for interference with in the impugned orders.

15. The writ petition, as such, is dismissed. No costs. Rule stands discharged.

[SANGITRAO S. PATIL]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE

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