

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

WRIT PETITION NO. 3895 OF 2009

Hiraman s/o Amruta Rathod
Age : 32 years, occu.: service
R/o Prashant Nagar, Behind
S.T. Bus Stand, Ambajogai,
District Beed.

Petitioner.

Versus

1. Maharashtra State Electricity
Distribution Company Ltd.,
Through : Chief Engineer,
(Latur Zone)
M.S.E.D.C.L. Zonal Office, Latur
Viddut Bhavan, 1st Floor,
OPH Premises, Sale Galli,
Latur.
2. The General Manager (Eastt.)
M.S.E.B. Corporate Office,
Prakashgad, Bandra (East),
Mumbai – 400051.
3. The Director (Finance)
M.S.E.D.C.L. Head Office,
Prakashgad, Bandra (East),
6th Floor, Mumbai – 400051.
4. Executive Director (H.R.)
Prakashgad, Bandra (East),
Mumbai – 400051.
5. Chief General Manager (P) (FA)
Corporate Office, Prakashgad,
Bandra (East), Mumbai.
6. General Manager (Disciplinary
Action Cell), M.S.E.D.C.L. Head
Office, Prakashgad, 4th Floor,
Bandra (East), Mumbai.

Respondents.

Mr. B.S. Kudale, Advocate for the petitioner.
Mr. V.S. Malte, Advocate for respondent No.1.

**CORAM : T.V. NALAWADE &
SUNIL K.KOTWAL,JJ.**

Dated : 17th April, 2018.

JUDGMENT : (PER SUNIL K. KOTWAL,J.)

1. By filing this Writ Petition under Articles 226 and 227 of the Constitution of India, the petitioner has sought quashment of the order dated 07.11.2008 passed by respondent-1 Chief Engineer (LZ) and the order dated 16.05.2009 passed by respondent No.2- General manager (Eastt.), M.S.E.B. Mumbai.

2. Respondent No.1 is the Maharashtra State Electricity Distribution Company Limited (hereinafter referred to as "M.S.E.D.C.L."), having control over the work and establishment of the Board and Competent Authority of the petitioner. Respondent Nos.2 to 6 are the officers of respondent No.1-Company.

3. Undisputed facts in between the parties are that on 07.10.1980 the petitioner was appointed by respondent No.1- Company as a Lower Division Clerk and after serving at various

places, in the month of May 2005 he was promoted as a Junior Manager (F&A) and posted at Ambejogai. Competent Selection Committee (hereinafter referred to as "C.S.C.") of respondent No.1, after considering the service record and other relevant factors, recommended the name of petitioner for promotion as Assistant Manager (F&A) and he was shown at Sr. No.43 in the promotion list dated 16.01.2009. However, the petitioner was not relieved and allowed to join his post of promotion. Prior to this event, a charge-sheet was issued to the petitioner and his reply was called for by the Competent Authority. Accordingly, on 07.08.2008 the petitioner submitted his reply to the charge-sheet. On 07.11.2008, the petitioner was informed that the Competent Authority imposed punishment of "severally warned". On 16.05.2009, respondent No.2 informed the petitioner by issuing Office Order that promotion of the petitioner was cancelled.

4. Learned Counsel for the petitioner submitted that the warning issued to the petitioner cannot be termed as "punishment". In the alternate his contention is that such warning cannot be issued without giving opportunity of hearing to the petitioner.

5. Next limb of the argument of learned Counsel for the

petitioner is that only because warning was issued to the petitioner, his promotion cannot be cancelled by the Authority. He placed reliance on the cases of **“Dhanaykumar Chitriappa Bodale Vs The Managing Director, Maharashtra State Electricity Distribution Company Ltd. and ors”** reported in [2010 (4) ALL MR 337] and **“O.K. Bhardwaj Vs. Union of India”** reported in [1996 STPL (LE) 23063 SC].

6. In reply, learned Counsel for respondent No.1 has drawn our attention to Regulation-86 and Regulation-87 of M.S.E.D.C.L. Employees Service Regulations, 2005 and contended that as per Regulation-86, offences are classified in two categories i.e. (1) minor lapses and (2) act of misconduct. He pointed out that Regulation-87 deals with the procedure for dealing with the minor lapses summarily without necessity of following the procedure prescribed in Service Regulation-88 and only a warning or reprimand can be issued under Regulation-87. He submitted that regular inquiry is to be conducted only in the case of misconduct for which necessary procedure is separately prescribed. Therefore, according to the learned Counsel for respondent No.1, except obtaining reply to the charge-sheet, no more opportunity of hearing needs to be given to the petitioner, before issuing warning.

7. Next contention of the learned Counsel for respondent No.1 is that under Classification and Recruitment Regulations 2005, particularly under Regulation-29 (b) thereof, a procedure is to be followed in respect of the employees against whom disciplinary action is pending and sealed cover procedure is prescribed under Regulation-29 (b) (vi), which provides that if the employee is found guilty and penalty is imposed on the employee as a result of disciplinary proceeding, the findings of the sealed cover shall not be acted upon and his case for promotion may be considered by next C.S.C.

8. For the sake of convenience the relevant portion of Regulation-87 of the M.S.E.D.C.L. Employees Service Regulations, 2005 is reproduced as under :-

“87 : Procedure for dealing with minor lapses :

(a) Cases of minor lapses may be summarily dealt with without the necessity of following, the procedure prescribed in Service Regulation No.88 and a warning or reprimand may be issued; but in more serious cases, the Competent Authority may impose a fine not exceeding 1/3rd of the gross salary of the employee, provided that where a fine is being imposed, the employee's explanation in writing shall normally be obtained. Any reprimand or fine imposed by the Competent Authority shall be entered into the personal record of the employee”.

9. Regulation-86 of the M.S.E.D.C.L. Employees Service Regulations, 2005 makes it clear that as per Service Rules, the

offences are classified in two categories : (1) minor lapses and (2) acts of misconduct. Minor lapses are those mentioned in Schedule 'A' which may result in a punishment upto the limit prescribed in (1) of the Statement below Regulation 91 and Regulation 91 deals with punishment for minor lapses and act of misconduct. Under this Regulation, for minor lapses, punishment of warning and reprimand is provided which is not appealable under Service Regulations.

10. In the case at hand, after issuance of charge-sheet to the petitioner, his reply was obtained by the Competent Authority and after considering his reply, instead of proceeding under Regulation-88 of the M.S.E.D.C.L. Employee Service Regulations, 2005 which deals with act of misconduct, the case of the petitioner was considered in the category of minor lapses for which procedure is prescribed under Regulation-87 of the M.S.E.D.C.L. Employee Service Regulations, 2005. Regulation-87 does not prescribe that any opportunity of hearing is to be given to the employee before issuing a warning or reprimanding. A bare glance at Regulation-91 of the M.S.E.D.C.L. Employee Service Regulations, 2005 makes it clear that issuance of warning to the petitioner by Disciplinary Authority is nothing but a punishment for minor lapses under Regulation 91 (1) of the M.S.E.D.C.L. Employee Service Regulations, 2005. Therefore, when already reply submitted by the

petitioner was considered by the Competent Disciplinary Authority, no additional hearing needs to be given as per Service Rules applicable to the petitioner. The ratio of **Dhanaykumar Chitriappa Bodale Vs The Managing Director, M.S.E.D.C.L.** (cited supra) is distinguishable on facts for the simple reason in that case penalty of recovery of loss of Rs. 2,66,121/- sustained by the Company was directed from the Gratuity payment of encashment of leave salary payable to that petitioner. This Court held that the penalty, which was imposed, would not fall in the first category in Regulation 91 i.e. penalty for minor lapses. Under those peculiar circumstances, this Court held that opportunity of hearing was to be given to that petitioner. So also in the case of **O.K. Bhardwaj Vs Union of India** (cited supra), the Apex Court did not consider the procedure while imposing punishment for minor lapses under M.S.E.D.C.L. Employee Service Regulations, 2005. Thus, this case is also distinguishable on facts.

11. In the circumstances, we are fully satisfied that in view of the Service Regulations applicable to the petitioner, sufficient opportunity was given to the petitioner to submit his reply before imposing punishment for minor lapses. We find that there was absolutely no violation of the principle of natural justice while imposing punishment for minor lapses. Therefore, the order dated

07.11.2008 issuing warning to the petitioner for minor lapses cannot be termed as illegal, which can be quashed by invoking extraordinary jurisdiction of this Court.

12. Regarding cancellation of the order of promotion of the petitioner, it must be noted that though name of the petitioner was considered in the list of the candidates selected for promotion, he was not allowed to join the post of promotion. The reason for this is given under Regulation 29 (b) of the Classification and Recruitment Regulations, 2005, which is applicable to the petitioner. The relevant portion of Regulation 29 (b) is reproduced as under :-

“29 (b) (iv) Sealed cover procedure

At the time of consideration of the cases of employees for promotion, details of such employees in the consideration of zone for promotion falling under the following categories should invariably be brought to the notice of the Departmental Promotion Committee (Competent Selection Committee).

(a) ...

(b) Employees in respect of whom charge-sheet has been issued and disciplinary proceedings are pending.

(c) ...

(d) ...

(vi) *Action after completion of the Disciplinary Action / Vigilance Investigation / Criminal prosecution in respect of sealed cover cases. If the proceedings of the committee for promotion contain findings in sealed cover, on conclusion of the disciplinary case / vigilance investigation/ criminal prosecution, the sealed cover or covers shall be opened. In case the employee is completely exonerated, the due date of his promotion will be determined with reference to the findings of the*

CSC kept in sealed cover/ covers and with reference to the date of promotion of his next junior on the basis of such findings. The employee shall be promoted even if it requires to revert the junior - most officiating person. Such promotion would be with reference to the date of promotion of his junior and his pay shall also be fixed at a stage which he would have reached had he been actually promoted according to his rank in the select list but no arrears of salary and allowances shall be paid on this account.

If a penalty is imposed on the employee as a result of the disciplinary proceedings or if he is found guilty in the criminal prosecution against him, the findings of the sealed cover / covers shall not be acted upon. His case for promotion may be considered by the next CSC in the normal course, having regard to the penalty imposed on him.

13. Thus, it is evident that at the relevant time of process of promotion as the charge-sheet was issued to the petitioner, the case of the petitioner was kept in "sealed cover", though name of the petitioner was in the list of candidates selected for promotion. As per Regulation 29 (b) (vi) of Classification and Recruitment Regulations 2005, as the penalty was imposed on the petitioner employee as a result of disciplinary proceeding, the finding of sealed cover was not acted upon. Therefore, whatever action that was taken by the respondents i.e. removing name of the petitioner from the list of the candidates selected for promotion, is in accordance with Regulation 29 (b) (vi) of the Classification and Recruitment Regulations 2005.

14. Therefore, even the order dated 16.05.2009 issued by

respondent No.2 i.e. cancelling the name of petitioner from list of the candidates selected for promotion, being in accordance with Service Regulations applicable to the petitioner, cannot be termed as illegal order, which calls for interference by this Court.

15. In the circumstances, we are satisfied that none of the relief claimed by the petitioner can be awarded. This petition being devoid of merit, deserves to be dismissed.

16. Hence, the following order.

ORDER

1. Writ Petition No.3895 of 2009 is dismissed.
2. Rule is discharged.

**(SUNIL K. KOTWAL)
JUDGE**

**(T.V. NALAWADE)
JUDGE**

vdd/