

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9446 OF 2013

Shankar Tikaram Kharat,
Age: 59 years, Occupation : Nil-Retired
Deputy Executive Engineer in M.S.E.TC. Ltd.,
R/o 'Parijat' 1-1-432, Paras Nagar,
Behind Kabde Hospital, Nanded .. Petitioner

Versus

1. Maharashtra State Electricity
Transmission Company Limited and
Through its Managing Director,
Plot No. 6-19, 7th Floor, 'Prakashganga',
Bandra Kurla Complex, Bandra (East),
Mumbai 400 051.
2. The Chief Engineer and
The Competent Authority,
MS.E.T.C. Ltd.,
Old Power House Campus,
Dr. Ambedkar Marg, Mill Corner,
Aurangabad .. Respondents

Shri. A. S. Deshpande, Advocate for Petitioner.

Shri. S. V. Adwant, Advocate for Respondent Nos. 1 and 2.

Shri. M. K. Goyanka, Advocate for Respondent Nos. 2 and 3.

**CORAM : S.V. GANGAPURWALA AND
S. M. GAVHANE, JJ.**

DATED : 12th September, 2018

ORAL JUDGMENT : (PER S. V. GANGAPURWALA, J.)

. Rule. Rule returnable forthwith. With the consent of parties taken up for final hearing.

2. The petitioner at the relevant time was serving as a Deputy Executive Engineer with the respondent. On or about 07.12.2012 charge sheet was served upon the petitioner for five charges. The petitioner came to be suspended on 20.11.2012. The suspension was revoked on 13.12.2012. On or about 24.06.2013 enquiry officer was appointed by the respondent. The first date of hearing took place on 07.07.2013. The petitioner filed his statement of defence on 27.08.2013. On 30th August, 2013 the enquiry officer submitted report to the disciplinary authority exonerating the petitioner of all the charges, On 30th August, 2013 the disciplinary authority issued show cause notice to the petitioner as to why

the punishment of recovery of Rs. 2,00,000/- (Rupees Two Lakh) should not be imposed upon him and that suspension period should not be termed as a punishment. According to the petitioner, the said show cause notice is received to him on 31.08.2013 at 10.50 hours. Immediately the petitioner communicated the disciplinary authority that he has not been served with the copy of enquiry report. Thereafter, on 31st August, 2013 punishment is imposed upon the petitioner of recovery an amount of Rs. 2,00,000/- (Rupees Two Lakh) and the suspension period should be treated as a punishment period. The petitioner in the meantime filed an appeal against the said punishment. The petitioner is communicated that the appeal is rendered infructuous as the petitioner stood retired. The petitioner has filed the instant writ petition against the order imposing punishment upon him.

3. The aforesaid factual matrix does not appear to be debated and disputed.

4. Mr. Deshpande, the learned counsel for the petitioner contends that the enquiry officer in his report clearly exonerated the petitioner. None of the charges were proved against the petitioner. No evidence was recorded before the enquiry officer. It is the case of no evidence. According to the

learned counsel, when it is a case of no evidence the enquiry is bad in law and punishment can not be sustained. The order of the disciplinary authority is also based on no evidence. The learned counsel relies on the judgment of the Apex Court in a case of **Roop Singh Negi Vs. Punjab National Bank and others**, reported in **AIR 2008 SC (Supp) 921** and another judgment in a case of **Ministry of Finance and another Vs. S. B. Ramesh**, reported in **AIR 1998 Supreme Court 853**. The learned advocate further contends that the disciplinary authority did not agree with the enquiry officer. In such case, the procedure under Regulation 88 (x) is required to be followed. The matter is required to be referred to the Chief Investigation Officer. The Chief Investigation Officer has to make an investigation and analyze the reasons intimated by the disciplinary authority and inform the disciplinary authority, either agreeing or disagreeing with his decision. No such procedure has been followed. On that count also the punishment imposed is bad in law. The petitioner at no material point of time is involved in any illegal or irregular act as has been charged against the petitioner.

5. The learned counsel further contends that till the date the punishment was imposed upon the petitioner the enquiry report was not

served. The enquiry report was served after retirement of the petitioner on 04.09.2013.

6. Mr. Adwant, the learned counsel for the respondents submits that the petitioner is guilty of the charges leveled against him. The disciplinary authority after having satisfied and disagreeing with the enquiry report has taken a conscious decision and imposed punishment of recovery of Rs. 2,00,000/- (Rupees Two Lakh) and that suspension period should be treated as such. The learned counsel submits that it is the petitioner who took a long time to file his defence statement. Though the charge sheet was served upon the petitioner on 07.12.2012. It is only on 27.08.2013 the defence statement was submitted by the petitioner. The petitioner was due to retire on 31st August, 2013 and in view of that the enquiry was required to be concluded. The petitioner can not take advantage of his own wrong. On one hand delayed the enquiry by non submission of defence statement and on the other hand is making hue and cry of the opportunity not being granted. The disciplinary authority issued show cause notice to the petitioner, reply was solicited and thereupon the decision has been taken by the disciplinary authority. The same can not be faulted with. The learned advocate further submits that the enquiry officer granted latitude to the petitioner.

7. The learned advocate further refers to Regulation 109 of the MSETCL Employees' Service Regulations, 2012 and submits that, notwithstanding anything contained in the foregoing Regulations, the Board may issue an order from time to time imposing any limitation or restriction, permitting relaxation or granting exemption or prescribing procedure generally or in any particular case relating to the conditions of service under the Company and such an order shall have, so far as the specific case is concerned, the same force as if it were a part of these Service Regulations. The learned counsel in alternate submits that if the enquiry is sought to be set aside on technical grounds or on ground an opportunity ought to be given, then the respondents be allowed to conduct fresh enquiry or proceed further from the stage after service of enquiry report. According to the learned counsel, the petitioner does not deserve equity. The petition be dismissed.

8. We have considered the submission canvassed by the learned counsel for the respective parties.

9. As discussed supra the factual matrix and the dates narrated are not much debated.

10. Before we proceed to deal with the contentions of the respective learned counsel, it will be necessary to refer to the relevant Regulations of the MSETCL Employees' Service Regulations, 2012

MSETCL Employees Service Regulations, 2012.

1.

2.

88. Procedure For Dealing With Acts Of Misconduct.

(a)

(b)

(s) Findings Of The Enquiry Officer: After completing the enquiry and giving the employee a further opportunity of making a written or oral statement, if the employee desires, the Enquiry Officer shall record his findings.

(t) Show Cause Notice: After the enquiry is completed, Disciplinary Authority shall serve a notice on the employee communicating to him its findings and asking him to show cause **(Format-15)** within a specified time as to why the contemplated punishment, amongst the punishments specified in regulation 91 (a)(2) should not be inflicted on him. The employee may be supplied with a copy of the findings of the Disciplinary Authority

or of those of the Enquiry Officer, as the case may be, or he may be given an opportunity to take a copy of such findings.

(x) In case the Disciplinary Authority differs with the recommendations of the Chief Investigation Officer regarding imposing the major punishment/penalty at the stage of awarding final order of punishment, the case shall be referred to the Chief Investigation Officer by the Disciplinary Authority giving reasons as to why he is differing with the recommendations of the Chief Investigation Officer. The Chief Investigation Officer will analyze the reasons intimated by the Disciplinary Authority and inform the Disciplinary Authority, either agreeing or disagreeing with his decision. If there is no accord between the Chief Investigation Officer and the Disciplinary Authority, the matter shall be referred to the next higher authority for decision by Disciplinary Authority concerned. If the difference of opinion still persists between the next higher Authority and the Chief Investigation Officer, the Chairman & Managing Director shall decide the case and his decision shall be final.

109. Notwithstanding anything contained in foregoing Regulations, the Board may issue an order from time to time imposing any limitation or restriction permitting relaxation or

granting exemption or prescribing procedure generally or in any particular case relating to the conditions of service under the Company and such an order shall have, so far as the specific case is concerned, the same force as if it were a part of these Service Regulations.

11. It appears that as per the MSETCL Employees' Service Regulations, 2012 the lapses alleged against the petitioner amounted to acts of misconduct as distinguished from minor lapses. Reference can be had to Regulation 91.

91. Punishments For Minor Lapse And Acts Of Misconduct:

(a) The following punishments are prescribed for Minor Lapses and Acts of Misconduct.

Sr.No.	Nature of Offence	Punishment	Appealable or Non-Appealable
1)	Minor Lapses	a) Warning	Non appealable
		b) Reprimand	Non appealable
		c) Fine up to 1/3rd of the Gross Salary of the employee	Appealable
		d) Recovery from Gross Salary	Appealable

		and/or Encashment Leave at the time of retirement, to make up wholly or partly the pecuniary loss caused to be Company due to Negligence or Breach of Orders (amounts up to Rs. 10,000/-)	
2)	Acts of Misconduct	e) Withholding of Increment without cumulative effect	Appealable
		a) As in (d) above but for loss in excess of Rs. 10,000/- according to the gravity of the offence and the loss incurred by the Company.	Appealable
		b) Withholding of Increment with cumulative effect	Appealable
		c) Stoppage of Promotion	Appealable
		d) Suspension	Appealable
		e) Reversion to a lower post	Appealable
		f) Removal from service	Appealable
		g) Dismissal	Appealable

(b) In ordering withholding of an increment, the Disciplinary Authority shall state the period for which it is withheld.

(c) Recoveries of Fines and Losses in case of employees governed by

the Factories Act, shall be limited to the extent permissible under the Payments of Wages Act.

(d) Reversion as a measure of punishment shall be for a specified period, on the expiry of which the delinquent employee shall be restored to his former position against the vacancy available on completion of punishment period, without the case being placed before Competent Selection Committee again. Stoppage of promotion as a measure of punishment shall be with respect to specified period, on the expiry of which the delinquent employee shall become eligible for consideration for promotion.

(e) The act of grave misconduct like theft of energy, conniving/abatement in theft of energy, obtaining or attempting to obtain illegal gratification, misappropriation of Company's property or money or stores, theft, fraud, falsification of account, tampering with official documents, gross irregularity or negligence in discharging of official duties with a dishonest motive, act of disloyalty, sabotage etc. (The list is illustrative and not exhaustive and is intended to serve as guide) shall necessarily merit action of imposing one of the major penalties as prescribed for the acts of misconduct and the Disciplinary Authority shall not have any discretion to convert the act of misconduct into minor lapse and impose the punishment prescribed for the minor

lapses.

(f) Wherever it is found that a permanent employee, who was not qualified or eligible in terms of the recruitment rules etc., for initial recruitment in service or had furnished false information or produced a false certificate in order to secure appointment, departmental action under regulation 88 may be taken and if the charges are proved, the employee shall be removed or dismissed from service. In no circumstances shall any other penalty be imposed.

12. The enquiry officer in his enquiry report very categorically and specifically observed that the charges against the petitioner are not proved and exonerated the petitioner.

13. The disciplinary authority was of the opinion that punishment is to be imposed upon him. The disciplinary authority did not agree with the report of the enquiry officer and the finding of the enquiry officer. In such an eventuality, it was incumbent upon the disciplinary authority to adhere to Regulation 88 (x). The punishment imposed was in the nature of a major penalty as distinguished from minor penalty. The disciplinary authority was required to refer the matter to the Chief Investigation Officer by giving reasons as to why he has deferred from the

recommendation made by the enquiry officer. The said process has not been adhered to. On this count itself, the order of disciplinary authority stands vitiated.

14. There appears to be another facet to the matter. According to the petitioner, the enquiry report was submitted on 30th August, 2013 to the disciplinary authority. The disciplinary authority on the same day issued show cause notice to the petitioner without a copy of the enquiry report. The petitioner represented that he has not received the copy of the enquiry report and subsequently without service of the copy of the enquiry report the punishment was imposed upon the petitioner seeking recovery of Rs. 2,00,000/- (Rupees Two Lakh) and suspension period to be treated as a punishment period. On the ground of not giving copy of the enquiry report to the petitioner, the enquiry also stands vitiated. Moreover, in the order passed by the disciplinary authority or the show cause notice issued to the petitioner for imposing the proposed punishment, the disciplinary authority has not given any reasons as to why he differs from the findings of the enquiry officer and the basis upon which he has concluded about the guilt of the petitioner. The show cause notice and the order of imposing penalty is silent about it. The same are bereft of any reasons. On this count also the impugned order does not

sustain.

15. The alternate contention of the respondent that the respondents be allowed to conduct the enquiry from the stage of service of enquiry report, could have been accepted if the service rules provided for the enquiry after the retirement of an employee. No regulation is pointed out to suggest that after the employee has retired, the respondent can continue with the enquiry. The Apex Court in the case of **Bhagirathi Jena Vs. Board of Directors, O.S.F.C. and others** reported in **(1999) 3 Supreme Court Cases 666** has held that, upon retirement of an employee the departmental enquiry pending before retirement would come to an end and can not be proceeded with in absence of provision relating thereto.

16. Considering all the aforesaid aspects of the matter, the alternate prayer made by the learned counsel for the respondents cannot be acceded to. In the result, the writ petition is allowed. Rule is made absolute in terms of prayer clause 'B'. No costs.

[S. M. GAVHANE, J.]

[S. V. GANGAPURWALA, J.]

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