

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 311 OF 2010**

Mr. Jaypal M. Bidaralli,
major of age, Indian national,
currently serving as Junior
Engineer (Elect.), Department of
Electricity, Government of Goa,
and resident of House No.11175,
Udel Pontemol, Curchorem, Goa.

... Petitioner

Versus.

- 1 The State of Goa, through its
Secretary (Power), having
office at the Secretariat,
Porvorim, Bardez, Goa.
- 2 Department of Electricity,
through its Chief Electrical
Engineer, having his office at
Vidhyut Bhawan, Panaji, Goa.
- 3 Mr. Y. B. Tawade, Inquiry
Officer & Chief Officer,
Margao Municipal Council,
C/o Office of the Margao
Municipal Council, Margao,
Goa.
- 4 Chief Electrical Engineer, &
Disciplinary Authority,
Electricity Department,
Government of Goa having his
office at Vidhut Bhavan,
Panaji, Goa.

.... Respondents

Mr. Ryan Menezes with Mr. Nigel Fernandes, Advocates for the Petitioner.

Mr. Manish Salkar, Government Advocate for the Respondents.

**Coram : M. S. SONAK &
NUTAN D. SARDESSAI, JJ.**

Date : 4th September 2019.

Oral Judgment: (Per M. S. Sonak, J.)

Heard Mr. Ryan Menezes, learned Counsel for the Petitioner, Mr. Manish Salkar, learned Government Advocate for the Respondents.

2. The challenge in this Petition is to the Order dated 17.08.2009 by the Respondents which imposes a penalty of withholding of one increment of pay of the Petitioner for a period of three years. The Order very clearly states that this penalty will not have the effect of postponing his future increments of pay.

3. Mr. Ryan Menezes, learned Counsel for the Petitioner submits that though witnesses were examined in the course of the disciplinary proceedings, no opportunity of cross-examination was granted to the Petitioner. He submits that the charge of accepting illegal gratification has not been proved even from the statements of the said witnesses. He submits that monies were accepted by the Petitioner

only in order to facilitate the parties, who were quite old, and had difficulties in depositing the amounts in the Government Treasury. He submits that the complaints are stereotype and at the instigation of the Sarpanch of the concerned Village Panchayat.

4. Mr. Menezes submits that persons seeking electricity connection on account of distance and age were not in a position to deposit the amounts in Government Treasury, themselves. He submits that the Petitioner has given a detailed statement and even examined witnesses in support of his defence. He submits that all this was not considered by the Inquiry Officer and the Disciplinary Authority. He submits that these are good grounds to set aside the impugned order.

5. Mr. Manish Salkar, learned Government Advocate points out that the Petitioner, in his reply admitted to taking money and therefore, there was no question of any prejudice assuming that cross-examination was required to be allowed. He submits that minor penalty has been ultimately imposed and inquiry, is quite consistent with the principle of natural justice and fair play. On this ground he submits that this Petition be dismissed.

6. The Charge Memorandum spells out quite a serious charge. In his reply to the Charge Memorandum the Petitioner, expressly

admitted taking monies in cash from persons who had applied for electricity connection. Since, the primary allegation of accepting monies in cash was admitted by the Petitioner, the grievance that no opportunity for cross-examination was granted holds no water. Besides, there is nothing on record to indicate the Petitioner had sought for any permission to cross-examine. The Petitioner did not even file any appeal against the penalty order, making a grievance that no opportunity for cross-examination was afforded to him. In any case, since the Petitioner admitted the primary fact of taking monies in cash from such persons, the grievance that no opportunity for cross-examination was given, fades in significance. In such matters, particularly where minor penalty is imposed, it is not sufficient for the Petitioner to merely allege some technical breach of the principles of natural justice, but the Petitioner must prove and establish some prejudice.

7. The defence of the Petitioner is that the Petitioner deposited this amount in the treasury and thereafter even furnished receipts to these persons. It was for the Petitioner to produce cogent evidence in support of such defence. Thus, the Petitioner has failed. Rather it is the case of the Petitioner that even the receipts were in respect of only a portion of the amount and not the entire amount which he admittedly received from the persons seeking electricity connection. The further explanation of the Petitioner is that additional amount

was for the purpose of making purchases to provide the electricity connection. The Petitioner who is the Junior Engineer with the Electricity Department, in the first place, is not supposed to accept such cash payment from persons seeking electricity connection. Secondly, it is not for the Petitioner to accept some portion of the amount “officially” and the balance “unofficially” as has been stated by the Petitioner himself to his response to the Charge Memorandum. This means that the primary allegation against the Petitioner has been proved by the Petitioner in his response to the Charge Memorandum.

8. There is no merit in the Petitioner's contention that his defences were not properly considered by the Inquiry Officer and the Disciplinary Authority. The material on record indicates that the persons from whom the Petitioner accepted monies in cash were not old persons unable to deposit the amounts in the government treasury. In any case, these are no justifications for accepting monies in cash. There is no evidence that proper receipts were issued by the Petitioner or receipts were issued for the entire amounts received by the Petitioner. In fact, the Petitioner himself admitted that for only part of the amounts, receipts were issued. All this is clearly a conduct unbecoming of a government servant. The Petitioner's detailed statements and the deposition of the witnesses he has examined has also been taken into consideration. In fact, the

Inquiry Officer had proposed penalty of withholding of two increments but the Disciplinary Authority has imposed only a penalty of withholding one increment.

9. Inferences which the Petitioner seeks to draw or desires that the disciplinary authority should have drawn, are clearly not inferences which flow from the natural course of ends of justice in the matter of this nature. The charge against the Petitioner clearly stands proved. The inquiry was quite consistent with the principles of natural justice.

10. The scope of jurisdiction in such matters is quite limited. This is not a case where the finding reached by the Inquiry Officer is based on no evidence. In exercise of this jurisdiction we cannot go into the issue of submission of evidence though in the present case we are satisfied that there is ample evidence to sustain the charge. The charge of failure of natural justice has not at all been made out.

11. According to us, the penalty imposed, is, in fact, disproportionate in the sense that the Petitioner, has been let off by imposing only minor penalty of withholding a single increment. In a matter of this nature, we feel that a serious view should have been taken by the Respondent. However, at this point of time we do not propose to seek any explanation from the Respondent as to the

leniency shown, in this matter. For the aforesaid reasons, we see no merit in this Petition and the same is hereby dismissed.

12. There shall be no order as to costs.

NUTAN D. SARDESSAI, J.

M. S. SONAK, J.

msr.