

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	PRONOUNCED ON
16.10.2020	06.11.2020

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.NO.15730 OF 2013

K.S.Mani

.. Petitioner

- Vs -

1. The Board
Tamil Nadu Generation & Distribution
Corporation Ltd., rep. By its
Secretary (A/c)
Secretariat, 144, Anna Salai
Chennai 600 002.

2. The Chairman & Managing Director
Tamil Nadu Generation & Distribution
Corporation Ltd.
Secretariat, 144, Anna Salai
Chennai 600 002.

.. Respondents

Prayer:-

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records of the proceedings of the 2nd respondent vide (Permanent) CMD, TANGEDCO, Proceedings No.29 culminating in his order dated 19.2.2011 as confirmed by the order of the 1st respondent vide (Permanent) (FB) TANGEDCO Proceedings No.29 dated 20.5.20143, quash the same and direct the 2nd respondent to permit the petitioner to retire from service as Executive Engineer with effect from 30.4.06 with all terminal and pensionary benefits.

For Petitioner : Mr.N.Rajan

For Respondents: Mr.Karthik Rajan

ORDER

The removal of the petitioner from the service of the respondents on the basis of the enquiry report is the basis of the present writ petition. It is the case of the petitioner that he joined the service of the respondents as

Assistant Engineer on 20.10.1976 in the then Tamil Nadu Electricity Board, now renamed as Tamil Nadu Generation & Distribution Corporation Ltd. It is the further case of the petitioner that he was promoted as Assistant Executive Engineer and, thereafter, as Executive Engineer and that he has rendered about 30 years of unblemished service in the Corporation.

2. It is further averred by the petitioner that he was placed under suspension w.e.f. 28.4.06 in the wake of initiation of disciplinary proceedings under clause 8 (b) of the Tamil Nadu Electricity Board Employee's Discipline and Appeal Regulations (for short 'the Regulations') and the petitioner was not permitted to retire on superannuation on 30.4.06. The petitioner was served with a charge memo dated 12.5.08 containing three charges; the sum and substance of the charges being that the petitioner had acquired movable and immovable properties in his name and in the name of his family members between 23.12.98 and 29.7.04 to the tune of Rs.10,74,863/-, which is disproportionate to his known source of income and that he failed to intimate the prescribed authority about the acceptance of gift by his son in the form of house sites, in violation of clause 9 (1) the Regulations and that he failed to bring to the notice of the prescribed authority the alleged acquisition of movable and immovable properties during the year 2002, in violation of the provisions under clauses 13 (1) and (2) of the Regulations.

3. It is the further averment of the petitioner that he was issued with a show cause notice calling for explanation to which the petitioner submitted his explanation and also drawn the attention of the respondents to the earlier charge memo issued on the very same subject matter, which was subsequently dropped, accepting the explanation offered by the petitioner. It is the further averment of the petitioner that the properties/assets standing in the name of his wife and son have been included in the asset of the petitioner mechanically, without considering the economic status of his family members during the check period. On the explanation submitted by the petitioner, the respondents, being not satisfied, ordered for enquiry by appointing an enquiry officer. It is the further averment of the petitioner that while no Presenting Officer was appointed, the enquiry officer proceeded with the enquiry by examining the witnesses behind the back of the petitioner and their statements were recorded. It is the further averment of the petitioner that the enquiry officer was biased against the petitioner and the resultant position is the drawal of the report holding that the charges framed against the petitioner stood proved. The petitioner was furnished with a copy of the enquiry report and a show cause notice was issued calling for further explanation to which the petitioner submitted his explanation. However, the disciplinary authority/the 2nd respondent, without considering

the explanation submitted by the petitioner in proper perspective, sought to impose the punishment of removal from service and called upon the petitioner for further representation and on receipt of the representation of the petitioner, the 2nd respondent, being not satisfied, imposed the punishment of removal of the petitioner from service.

4. Aggrieved by the said punishment of removal from service, the petitioner preferred appeal dated 23.3.11 before the 1st respondent, which was rejected vide order dated 28.9.11, without properly appreciating the materials before it. Aggrieved against the said rejection of appeal, the petitioner preferred W.P. No.26572/11 for a direction to the 2nd respondent to permit the petitioner to retire from service and this Court, vide order dated 4.2.13, remanded the matter back to the 1st respondent for fresh consideration of the appeal on merits by passing a speaking order. Pursuant to the said direction, the appeal was considered by the 1st respondent and once again rejected without taking into consideration the tenable grounds raised by the petitioner in his representation. Aggrieved by the said order, the present petition has been filed.

5. Learned counsel appearing for the petitioner, at the very outset, contended that the allegations levelled against the petitioner in the disciplinary proceedings proceed on the footing that the properties have been purchased in his name and in the name of his wife and son without obtaining prior permission and also the monetary transactions entered into by his wife, which have been done without necessary approval/intimation from the respondents, are not in consonance with the Regulations of the Board. It is the submission of the learned counsel for the petitioner that even on an earlier occasion in the year 2005, charge memo was issued on the very same allegations with regard to transaction of purchase of lands in the name of his son to which the petitioner submitted his explanation, which was accepted and the charges were dropped vide proceedings dated 4.10.05. However, curiously, once again the charge memo has been issued on the very same set of allegations.

6. It is the further submission of the learned counsel for the petitioner that this is a case of no evidence as the property details on which reliance has been placed and also the bank receipts pertaining to the monetary transactions have not been transacted by the petitioner, but only by his family members and, therefore, their individual transactions cannot form the basis of allegations against the petitioner by including those transactions in his assets during the check period. It is the further submission of the learned counsel for the petitioner that the family members of the petitioner were

affluent members and that they had their own source of income, which is evident from the very many deposits made in the name of his wife from the income derived from the landed properties belonging to the family. It is the further submission of the learned counsel for the petitioner that the immovable properties, which have been alleged to have been acquired by the son of the petitioner, were, in effect, gifted by the mother of the petitioner to his wife and son, which were bequeathed to her by the petitioner's father, which were family properties of the petitioner's father.

7. Learned counsel for the petitioner further drew the attention of this Court to the provisions contained in the Regulations, more especially clause 13 (1) (a) and submitted that though the said clause prescribes that notice should be given to the prescribed authority for purchase of any immovable property by lease, mortgage, purchase, sale, gift, exchange or otherwise either in his own name or in the name of any member of his family, however, an exception is carved out in the Explanation appended thereto, which stipulates that no notice need be given to the prescribed authority for the above acts, performed by any member of the family, provided such immovable property is not acquired from the resources of the employee concerned. It is the vehement contention of the learned counsel for the petitioner that from inception, it is the case of the petitioner that the properties acquired in the name of his wife and son, were gifted by his mother through the income earned by her from and out of the landed properties, which were bequeathed to her by his father and the other immovable properties purchased by his wife were from and out of her own sources of income and there being no amount contributed by the petitioner for performing the said acts, the stand of the respondents that such transactions ought to have been brought to the notice of the respondents is wholly without any legal basis.

8. Equally, it is the submission of the learned counsel for the petitioner that the transactions relating to deposits in the bank accounts were made by his wife and son from out of the receipts, which were received from and out of the ancestral landed properties, which were given to his wife and son and there being no involvement of the funds of the petitioner, the requirement of notice/intimation to the respondents does not arise.

9. It is the further submission of the learned counsel for the petitioner that even a bare perusal of the impugned charge memo would reveal that properties were shown to have been purchased by the petitioner in his name and in the name of his family members, though the entire documents relied on by the respondents reveal that none of the properties stand in his

name. All the properties having stood in the name of his family members either as gifts or purchased from and out of the funds available to them through his mother or from their own source of income, the charge memo, implicating the petitioner as if the properties have been acquired by him in his name and in the name of his family members, disproportionate to the known sources of his income, reveal total non-application of mind on the part of the authority and the conclusion and the subsequent punishment imposed on the petitioner by the disciplinary authority, as confirmed by the appellate authority reveals that the conclusion arrived at by the authorities based on the above materials are manifestly improper and wholly impermissible and unsustainable and, therefore, the impugned orders deserve to be set aside. In support of the above contentions, learned counsel appearing for the petitioner relied on the decision of the Hon'ble Supreme Court in *Roop Singh Negi - Vs - Punjab National Bank & Ors.* (2009 (2) SCC 570).

10. Per contra, learned standing counsel appearing for the respondents submitted that the earlier round of litigation ended in disposal of the same by this Court directing the 1st respondent to consider the appeal in the light of the procedure contemplated under clause 15, as the order passed was bereft of reasons. In pursuance to the said direction, the 1st respondent passed the impugned order, after complying with the procedure contemplated under clause 15 of the Regulations. It is the further submission of the learned counsel for the respondents that the act of the petitioner in not informing the purchase of immovable properties and also entering into monetary transaction over and above the threshold limit permitted by the Regulations, by the wife of the petitioner, is in clear contravention of clause 13 (1) (a) of the Regulations. Similarly, the gift of lands from the hands of the mother of the petitioner to the son of the petitioner has also not been intimated as per the requirement found in clause 13 (1) (a) of the Regulations.

11. It is the further submission of the learned counsel for the respondents that except for the materials placed at the time of enquiry by the respondents relating to the assets acquired by his family members, the petitioner has not placed any iota of material whatsoever to disprove the said stand of the respondent. Further, the petitioner has also not established the source through which the members of his family have purchased the said assets. It is the vehement submission of the learned counsel for the respondents that the petitioner ought to have placed materials to show that the assets acquired by his family members were purchased out of the money which was within their personal capacity and from their own sources of income and not from the source of the petitioner. However, no material has been placed by the petitioner to show that the members of the

petitioner's family were possessed of personal capacity/own source of income, which in turn, enabled them to purchase the assets in their name.

12. It is the further submission of the learned counsel for the respondents that sale deeds and settlement deeds have been executed in favour of the petitioner's wife and son by the brother's wife and mother of the petitioner. However, the factum of such sale/settlement deeds have not been informed to the competent authority, as is mandated under clause 13 (1) (a). The execution of the sale/settlement deeds have been spoken to by P.W.1, the Sub-Registrar (Retd.) of Vadacheri.

13. It is the further submission of the learned counsel for the respondents that though it is the contention of the petitioner that his wife had received various sums of money from his brother, being the amount received towards rental income relating to the ancestral properties, however, no evidence has been placed by the petitioner to prove the fact that rental income received by the brother of the petitioner, which was, in turn, handed over to the wife of the petitioner. Similarly, the receipt of a sum of Rs.1,50,000/- said to be the loan given by the petitioner's wife to a third-party, which was repaid by the said individual has not been established through any credible evidence and mere oral statement that the amounts were received as payment towards the loan given by the petitioner's wife to a third-party would not be sufficient to draw a presumption that the petitioner's wife had the personal capacity to shell out money as loan, which is not from the source of the petitioner.

14. It is the submission of the learned counsel for the respondents that though initially a charge memo was issued to the petitioner regarding the gift of land by the mother of the petitioner to his son, which transaction has not been intimated to the respondents, however, on the explanation submitted by the petitioner, the same was closed. It is the submission of the learned counsel for the respondents that the the explanation tendered by the petitioner for the earlier charge memo, is that his son was of unsound mind and, therefore, had been receiving sympathy and affection from the members of the family in the form of gifts and monetary benefits. However, the respondents, after in-depth scrutiny of the said explanation, had decided to reopen the said charge, as the said explanation was not found tenable and acceptable. Learned counsel appearing for the respondents submitted that the explanation tendered by the petitioner was that his son was not having sufficient mental growth, which was sympathized by the relatives of the petitioner. However, the respondents thought it fit not to accept the said explanation at a later point of time, which culminated in the present charge memo, for the reason as to how

the petitioner's son could enter into transactions by executing deeds and receiving gifts, when he is said to be of unsound mind. It is the further submission of the learned counsel for the respondents that when it is the consistent stand of the petitioner that his son is of unsound mind, then it is incumbent upon the petitioner to show as to how he entered into various transactions in purchasing the properties and also the source of funds of his son to purchase those properties. However, no documents worth mentioning have been placed by the petitioner to disprove the stand of the respondents.

15. It is the further submission of the learned counsel for the respondents that though the petitioner was afforded adequate opportunity to cross examine the various witnesses, however, the petitioner had not utilised the said opportunity and cross examined the said witnesses. Further, the list of documents relied on by the respondents to prove the delinquency against the petitioner were also given to the petitioner, but controverting the same, the petitioner has not placed any tenable or acceptable material to show that his wife was possessed of sufficient personal financial capacity and source of income to enter into various transactions relating to purchase of immovable properties and also entering into monetary transactions and that the gift of immovable properties received from his son were within the contours of the Regulations of the respondents.

16. It is the further submission of the learned counsel for the respondents that the stand of the petitioner that no Presenting Officer was appointed to present the case of the respondents and the Enquiry Officer himself acted as the Presenting Officer and took up the case of the respondents and, therefore, the said enquiry is liable to be interfered with cannot be put to test for the simple reason that there is no provision in the Regulations for appointment of a Presenting Officer to present the case of the respondents. The enquiry officer has conducted the enquiry as per the rules and the petitioner has not pointed out any rules that have been infringed by the Enquiry Officer and that reasonable opportunity was afforded to the petitioner all through the proceedings to put forth his case, which the petitioner has miserably failed to capitalise to disprove the case of the respondents and, therefore, the stand of the petitioner on the above aspect does not merit acceptance.

17. It is the further submission of the learned counsel that pursuant to the complaint before the Vigilance & Anti Corruption Department, investigation was mooted out resulting in the recommending of departmental action against the petitioner

pursuant to which departmental action was initiated against the petitioner.

18. It is the further submission of the learned counsel for the respondents that on behalf of the petitioner, two witnesses, viz., his brother and his friend, were examined, however, except their oral evidence, no documentary evidence, evidencing the personal financial capacity of the petitioner's wife and son have been placed before the Enquiry Officer to disprove the case of the respondents. It is the pointed submission of the learned counsel for the respondents that insofar as corruption cases are concerned, the initial burden lies on the prosecution to lay the charge against the petitioner and place materials in support of their case and thereafter, the burden shifts to the shoulder of the petitioner/delinquent to rebut the presumption by adducing materials to disprove the prosecution case. In spite of the respondents providing the petitioner with the materials, which were relied on by them to show the valuation of assets at the hands of his family members, viz., his wife and son, during the check period, however, no positive evidence to the contra has been tabled by the petitioner to rebut the presumption.

19. It is the further submission of the learned counsel that u/s 106 of the Evidence Act, the burden to prove certain information which is within the knowledge of the delinquent, lies on the delinquent and it is for him to establish the manner in which the properties were purchased, as the knowledge as to the said purchase of the properties and other transactions are known only to the petitioner. However, the petitioner merely submitting orally that the properties were purchased out of the income of his wife and son, has not put forth any other documentary materials to counter the case of the respondents relating to the purchase transactions and other monetary transactions. It is the further submission of the learned counsel for the respondents that though in corruption cases, it is not incumbent on the prosecuting agency to prove its case beyond reasonable doubt, even be it disciplinary proceedings, however, in the absence of any rebuttable by the petitioner, the case of the respondents stood proved beyond reasonable doubt resulting in the enquiry officer holding the charges proved against the petitioner and in proper appreciation of the same, the disciplinary authority, as well as the appellate authority, viz., the 2nd and 1st respondents, have applied their mind independently to the materials placed before them and imposed the punishment of removal from service, which does not warrant any interference at the hands of this Court.

20. In support of the above contentions, learned counsel for the respondents relied on the following decisions :-

- i) Principal Secy. Govt. of A.P. - Vs - M. Adinarayana (2004 (12) SCC 579);
- ii) B.C. Chaturvedi - Vs - Union of India (1995 (6) SCC 749); and
- iii) Biecco Lawrie Ltd. - Vs - State of W.B. (2009 (10) SCC 32)

21. This Court bestowed its attention to the multifarious contentions advanced by the learned counsel on either side and also perused the materials available on record, to which this Court's attention was drawn and also paid its undivided attentions to the decisions to which the attention of this Court was drawn.

22. Before embarking upon discussing the merits and demerits of the case before this Court, the procedural aspect, on which certain fallacies have been raised by the petitioner needs to be looked into, which, however, have been disputed by the respondents saying that there is no violation or infraction of procedure in conducting the enquiry.

23. Two of the procedural infirmities pointed out by the petitioner are -

- i) that no Presenting Officer has been appointed; and
- ii) that the Enquiry Officer acted as Presenting Officer and precluded the petitioner from putting forth his case.

24. Insofar as the procedural infirmity relating to non-appointment of Presenting Officer is concerned, it is the contention of the respondent that the Regulation does not contemplate appointment of Presenting Officer and, therefore, as such, it is not a procedural infraction necessitating interference by this Court. With regard to the above contention it is to be pointed out that there is no regulation necessitating appointment of a Presenting Officer to put forth the case of the respondents and the contention of the respondents in this regard deserves to be accepted. Further, the petitioner is not able to point out any regulation which contemplates such a procedure and in the absence of the same, the said contention deserves to be negated.

25. Insofar as the other procedural infirmity relating to the Enquiry Officer acting as Presenting Officer and precluding the petitioner from putting forth his case, it is to be pointed out that it is the categorical submission of the respondents that in spite of grant of opportunity to the petitioner to cross examine the witnesses, however, the petitioner has not taken a step forward to cross examine the witnesses. Further, the

documents sought for by the petitioner during the enquiry have already been provided to the petitioner and, therefore, it is not necessary for the respondents to provide the documents once over to the petitioner. It has been the case of the petitioner, which is reflected in the affidavit as well, that the enquiry officer has not properly conducted the enquiry and he was biased against the petitioner resulting in the drawal of a favourable report for the respondents. Though such a stand is taken by the petitioner, it is to be pointed out that the petitioner has raised the improper conduct of enquiry only at this point of time and all through the enquiry, the petitioner was keeping silent and had not taken any steps to see that the enquiry was conducted in a proper manner. Even in the earlier round of litigation, the grievance of the petitioner was only with regard to the independent application of mind by the 1st respondent while concurring with the punishment imposed and no procedural infraction was canvassed. Such being the case, coming before this Court at the eleventh hour and claiming procedural infraction would not augur well with this Court to set at naught the departmental proceedings, which has seen the colour of the day long back. Therefore, the contentions relating to procedural infraction in the conduct of the enquiry proceedings deserves to be rejected.

26. It is the stand of the petitioner that he was not allowed to cross examine the witnesses, who were examined on behalf of the department. The petitioner has submitted that statements were obtained from the witnesses, which were produced during the time of enquiry and the witnesses were not present for examination. However, the respondents controvert the said stand by submitting that inspite of giving opportunity to the petitioner to cross examine, the petitioner desisted from cross examining the witnesses examined during the enquiry. It transpires from the materials on record that P.W.1, a retired Sub-Registrar was examined to speak about the sale deeds executed in favour of the wife and son of the petitioner. P.W.1 is a person belonging to some other department under the Government and is not an employee of the respondent. That being the position, unless mala fide is attributed to P.W.1 by the petitioner, it is not open to the petitioner to contend that based on written statement of the witnesses, the enquiry officer had conducted the enquiry. P.W.1 being a retired person of some other arm of the governmental agency, definitely the submission of the petitioner cannot be accepted unless tangible and acceptable material is placed in the form of documentary evidence to show that the witnesses were not interrogated during the enquiry. Further, no other material point has been placed by the respondent in support of such a contention. Further, as already stated, such a stand has not been taken or agitated before the competent forum by filing necessary petitions at the

earliest point of time. In such a scenario, at this distant point of time, submitting that he was precluded and denied opportunity to cross examine the witnesses examined on behalf of the respondents, does not deserve acceptance at the hands of this Court. The petitioner having not utilised the opportunity available to him to cross examine the witnesses cannot put the ball in the court of the respondents and claim that the ball has not been hit back to him by providing him an opportunity to cross examine the witnesses, which act of the petitioner is nothing but a clear indication of the devious mind of the petitioner to thwart the enquiry proceedings.

27. Barring the above ancillary contentions, the pivotal contention raised by the learned counsel for the petitioner is that there is total non-application of mind on the part of the respondents in framing the charges and that the explanation appended to clause 13 (1) (a) of the Regulations enures to the benefit of the petitioner, whereby, the petitioner is not required to inform the respondents about the receipt of amounts by his wife and also the receipt of immovable properties by his son.

28. For better appreciation of the case, it is but relevant to quote clause 13 (1) (a) of the Regulations and the explanation appended thereto, which have a bearing on deciding the contention raised herein, which is quoted hereunder :-

"13. Movable, Immovable & Valuable Property :

(1) (a) No employee shall, except after notice to the prescribed authority, in Form-I, Schedule III, acquire or dispose of any immovable property by lease, mortgage, purchase, sale, gift, exchange or otherwise either in his own name or in the name of any member of his family:

Such a notice will be necessary even where any immovable property is acquired by any member of the family of the employee out of the resources of the employee.

Provided that the previous sanction of the prescribed authority shall be obtained if any such transaction is with a person having official dealings with the Board employee.

Provided further that the previous sanction of the prescribed authority is not necessary for the acquisition of immovable property in respect of house site assigned by the Board to the employee of the Board.

Explanation : An employee is not required to give notice to the prescribed authority or seek prior permission from the prescribed authority

for acquisition or disposal of immovable properties by the member of his family under clause (a) if the immovable property in question is not acquired from the resources of the employee concerned."

29. Before proceeding to analyze the legal issue relating to the contention advanced by the learned counsel for the petitioner, it would be just and necessary to quote the disproportionate asset, alleged to have been acquired by the delinquent during the check period from 23.12.1998 to 29.7.04, which is as hereunder :-

i)	Assets that stood at his credit as on 23.12.1998	Rs.4,05,965.00
ii)	Assets that stood at his credit as on 29.7.2004	Rs.19,93,980.10
iii)	Total income during the period from 23.12.1998 to 29.7.2004	Rs.10,93,592.80
iv)	Expenditure during the period between 23.12.1998 to 29.7.2004	Rs.5,80,441.00
v)	Assets acquired during the period between 23.12.1998 to 29.7.2004	Rs.15,88,014.80
vi)	Savings between the period from 23.12.1998 to 29.7.2004	Rs.5,13,151.80
vii)	Possession of disproportionate assets	Rs.10,74,863.00

30. From the above, the quantification of disproportionate assets at the hands of the delinquent and his family members has been valued at Rs.10,74,863/-. The charges imputed against the petitioner are that he has acquired the movable and immovable properties in his name and in the name of the family members, viz., his wife and son, without adherence to Clause 13 (1) (a) of the Regulations, which attracts disciplinary action.

31. As stated above, the one of the arm of contention of the learned counsel for the petitioner is that none of the items mentioned given in the statement as to the disproportionate assets at the hands of the petitioner stands in his name and, therefore, implication of the petitioner in the charge as if the movable/immovable properties stand in his name for which intimation has not been given by the petitioner is bad and, therefore, the charge itself clearly reveals non-application of mind on the part of the disciplinary authority, which requires to be interfered with.

32. Though such a contention is raised on behalf of the petitioner, however, it is to be pointed out that the petitioner, insofar as this phase of argument is concerned, is clutching the last straw with which to absolve himself. True it is that the charge has been couched in such a fashion that it imputes that the properties are also standing in the name of the petitioner. However, it is to be pointed out that mere framing of charge with a minor discrepancy, as noted above, would not render the charge liable to be struck down. The respondents have not proceeded against the petitioner for whims and fancies, but they have proceeded against the petitioner with regard to the assets alleged to have been accumulated by him in the name of his wife and son without adhering to the procedure contemplated in the Regulations and, thereby, the said accumulation of wealth is nothing but disproportionate wealth at the hands of the petitioner in contravention of the Regulations. Mere framing of charge, which has a trivial error, but is not inherently and blatantly erroneous, does not call for interference, as such discrepancies, if allowed to be held in favour of persons, against whom proceedings are initiated for accumulation of disproportionate assets, then the same will not only send a wrong message to the perpetrators of such crime, but would effectively render the whole scheme of trying to weed out the bad elements from the system an empty formality, with no vision of foresight, thereby, defeating in hindsight the Regulations framed for the above purpose. The Regulations framed by the respondents are for the benefit of the public at large, putting the employees in strict adherence to the Regulations and any failure or their part should be viewed keeping in mind the object behind the enacting of the said Regulations.

33. The Hon'ble Supreme Court, in *B.C. Chaturvedi v. Union of India*, (1995 (6) SCC 749), while dealing with an issue with regard to discrepancy in the framing of charge and the power of the Court relating to judicial review of the order passed by the disciplinary authority, held as under :

"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are

based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappraise the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappraise the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In *Union of India v. H.C. Goel* [(1964) 4 SCR 718 : AIR 1964 SC 364 : (1964) 1 LLJ 38] this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."

34. The above view has been reiterated by the Hon'ble Supreme Court in *Principal Secy. Govt. of A.P. v. M. Adinarayana*, (2004 (12) SCC 579), wherein, it has been held as under :-

"23. We have read this charge in the light of allegations in support thereof. In the instant case, it is not disputed that the respondent has neither supplied any prior information on the Government nor did he send any prior intimation to the Government. By not doing this, he has contravened the provisions of Rule 9. The Tribunal has also categorically held that the respondent has not applied for prior information before he purchased the items from the competent authority nor he intimated to the competent authority forthwith soon after the purchase of the several items. Therefore, in our view, the charged officer has violated Rule 9 of the Conduct Rules and thus is guilty of misconduct within Rule 2-H (sic) of the Andhra Pradesh Disciplinary Amendment Act, 1993. In view of the abovesaid finding we hold that respondent is guilty of both the charges framed against him within Rule 2 (b) of the Conduct Rules of 1961 framed under the Amendment Act, 1993.

* * * * *

26. In our opinion, judicial review cannot extend to the examination of the correctness of the charges as it is not an appeal but only a review of the manner in which the decision was made. We have, therefore, no hesitation in setting aside the order of the Andhra Pradesh Administrative Tribunal and the judgment of the Division Bench of the High Court for reasons stated (supra). The order passed by the Government removing the respondent from service is in order and, therefore, the appeal filed by the appellant State stands allowed. Further, there will be no order as to costs."

35. Therefore, it is implicitly clear that this Court, in exercise of its power of judicial review cannot extend the examination of the correctness of the charges, but only limit itself to the manner in which the decision has been arrived at by the authorities. This Court is to test only the correctness of the decision arrived at by the authorities on the basis of the evidence before it and not proceed with the case as if it is an appeal against the impugned order.

36. Now coming to the second arm of the pivotal submission of the learned counsel for the petitioner, it is the vociferous submission of the learned counsel for the petitioner that the Explanation appended to Clause 13 (1) (a) of the Regulations does not impose upon the employee to divulge/intimate the

details of the acquisition of movable and immovable properties in the names of his relatives, provided that the said properties were purchased from and out of their own sources of income and that the source for the said purchase was not through the petitioner. In the case on hand, the wife and son of the petitioner having acquired the properties, viz., movable and immovable properties either as gift or purchase from out of their own source of income, it is not incumbent upon the petitioner to divulge the details and the said Explanation bars the respondents from initiating any action under clause 13 (1) (a).

37. In the backdrop of the above contention put forth by the petitioner, this Court turns back to clause 13 (1) (a) of the Regulations to find out whether the petitioner could derive such a benefit from the explanation appended to the said clause so as to wriggle out of the rigour of the charges framed against him.

38. Clause 13 (1) (a) of the Regulations stipulates that no employee shall, except after notice to the prescribed authority, in Form-I, Schedule III, acquire or dispose of any immovable property by lease, mortgage, purchase, sale, gift, exchange or otherwise either in his own name or in the name of any member of his family. In effect, the above clause mandates an employee to inform his dealing with any movable or immovable property, by any means, as stated above, either in his name or in the name of his family members to the prescribed authority in the prescribed form. There is no ambiguity in the said clause, as it does not speak about the source of funds, but only speaks of the dealing with the movable or immovable property by the employee or any of his relatives. However, as submitted by the learned counsel for the petitioner, who takes umbrage under the Explanation, it provides that where the acquisition or disposal of the immovable properties is by the member of the family of the employee, not from the sources of the employee, but from their own sources, the same be not required to be brought to the notice or prior permission obtained by the employee from the prescribed authority.

39. The wholesome contention of the learned counsel for the petitioner, as stated above, is that the acquisition of the movable and immovable properties in the names of the relatives of the employee, being from the own sources of income of the said relatives, viz., herein the wife and son, Explanation to Clause 13 (1) (a) of the Regulation stands attracted and the employee is not required to give notice or seek prior permission of the prescribed authority relating to such dealing, as the same having not been acquired/disposed out of the sources of the employee.

40. In the case on hand, the immovable properties have been acquired in the name of the wife and son of the petitioner is not in dispute. However, the main thrust of the petitioner's contention is that, it is not from the source/funds of the employee, but from the source of the relatives, viz., the wife and son of the petitioner. In support of the above stand, it is the stand of the petitioner that the wife of the petitioner, in whose name some of the properties have been acquired, was having her own source of income with which she had purchased the properties in her name. The source, according to the petitioner, is from the rental income derived from the ancestral properties of the petitioner, which was given to his wife by his brother, as it related to the share of the petitioner. It is to be pointed out that even according to the petitioner, the amounts received by the wife of the petitioner related to rental income from the ancestral properties of the petitioner. Merely because the rental income were given to the wife of the petitioner would in no way make the said amount to be the income at the hands of the wife of the petitioner. Income earned by an individual is the money that is earned out of the actions carried out by the individual. In the present case, the wife of the petitioner has not carried out any actions, which had in turn yielded income to her to call it her income and that the said income, earned by the petitioner's wife was used as the source in acquiring the properties. If such a stand, as the one taken by the petitioner, is accepted by this Court, then any amount received by the wife/relative of a delinquent, by any means, would be termed to be an income at the hands of the said individual, thereby, defeating the very purpose of enactment of the Regulation herein and various other penal laws, enacted for the purpose of maintaining the purity and sanctity of the office/post held by the delinquent.

41. Further, even assuming without admitting that the said amount could be said to have been received by the wife of the petitioner, however, it is to be pointed out that it has been received by his wife only as agent of the petitioner and not in an individual capacity, where it could be termed to be income at the hands of the wife of the petitioner. Further, it is not the case of the petitioner that his wife was gainfully employed elsewhere and was receiving any income of her own, except for the alleged amounts given by the petitioner's brother towards the alleged rental income due to the share of the petitioner. Therefore, even if such alleged rental income is derived from the ancestral properties of the petitioner, the same could not be said to be income at the hands of the petitioner's wife so as to give it a colour of her income earned by her. In fact, the stand of the petitioner is that his wife, who was a partner along with D.W.2, has relinquished her right in the partnership for which she was paid her share in the partnership. That being

the case, the gainful employment of the petitioner's wife having not been proved, the source of income of the wife to purchase the properties has not been established by the petitioner.

42. Be that as it may. This Court, looking back into the transactions relating to the gift received by the petitioner's son are concerned, it is to be pointed out that the Explanation appended to clause 13 (1) (a) does not take within its ambit any gift relating to acquisition of any immovable property by the relative of the employee. The Explanation appended to clause 13 (1) (a) of the Regulation limits itself only to the acquisition or disposal of immovable properties by the member of the family, which is not acquired out of the resources of the employee concerned.

43. A perusal of the statement of acquisitions, either by purchase or gift relating to the son of the petitioner reveals very many receipts in the form of gifts as also purchases made in the name of the petitioner's son. It is not in dispute, in fact, it has been the consistent stand of the petitioner that his son is mentally unsound, which was the main reason that many gifts were lavished on him by the members of his family, more particularly his mother. It further transpires from the records that the gifts were showered on the petitioner's son by executing gift deeds. Similarly, many properties have also been purchased in the name of the petitioner's son. In fact, the previous charge memo given to the petitioner relating to similar charges resulted in the petitioner giving an explanation that his son is mentally unsound and, therefore, the gifts were given to him. However, this Court is at a loss to understand as to how a person, who is of unsound mind, could be a party to a transactions relating to receipt of gifts by execution of gift deeds. Even otherwise, this Court is also at a loss to understand as to how a person of unsound mind could be earning income from his own source unless amounts were deposited in his name, which yields interest. In such a scenario, if the petitioner's son has been receiving interest on investments made in his name, it is for the petitioner to explain as to the source from which the investments were made in the name of the petitioner's son.

44. As stated above, it is the implicit stand of the petitioner that his wife is having the requisite source of income to purchase the alleged properties. Equally, it is the stand of the petitioner that the enquiry officer has not thought it fit to examine his wife as a witness to speak about her source of income and there is no explanation for not examining her and the said infirmity strikes at the substratum of the case of the respondents. It is also the further stand of the petitioner that not only his wife, but his mother, who had

bequeathed properties to his son were well off and that the amounts received by his wife and son from his mother and brother, were the returns from the family properties of the petitioner and the above facts have not been properly considered while arriving at the asset quantification at the hands of the petitioner.

45. This Court has already held that the amounts received by the wife from the brother and mother of the petitioner were only the rental incomes, which were due to the share of the petitioner from the ancestral properties of the petitioner and that cannot be put as income earned by the wife of the petitioner to equate it as source of income earned by the petitioner's wife. It is the stand of the petitioner that his wife had been a partner in a firm of which D.W.2 was another partner and that on her coming out of the partnership firm, she had received amounts, which were utilised for purchasing the properties. Further, the amounts, which were taken by third parties as loan from the petitioner's wife were repaid which was also utilised for the purchase of the properties in the name of the wife of the petitioner as all those amounts were the result of the income earned by the petitioner's wife and, therefore, in view of the Explanation appended to clause 13 (1) (a) of the Regulation, the petitioner was not required to inform the respondents of such acquisition by his wife.

46. Though such a stand is taken by the petitioner, however, it is the stand of the respondents, as is revealed through the enquiry report that no documentary materials have been placed by the petitioner to prove the source of income for the purchase of the movable and immovable properties by the petitioner's wife and son. Mere assertion on the part of the petitioner cannot partake the character of proof to come to the conclusion that the wife and son of the petitioner had individual income from their own sources to purchase the properties in their names. The transactions between the wife of the petitioner and his brother with regard to receipt of amounts that is a direct off-shoot from the family properties should be proved by materials and accepting any oral statement as to the same without there being documentary proof would not only be too large an ask at the hands of this Court, but would be against the requirement of evidence, which is a necessity to prove the innocence of the petitioner, more so in a case involving disciplinary action under the corruption laws. Further, as already held, the rental income derived from the ancestral properties of the petitioner, the share of which has been given to the wife of the petitioner, would not make the said amount as income at the hands of the petitioner's wife.

47. In this regard, Section 106 of the Indian Evidence Act is being pressed into service by the learned standing counsel for the respondents, who vehemently contended that the burden lies on the petitioner to prove the fact, which is especially within his knowledge. It is the stand of the respondents that the source of income of the petitioner's wife and son being within the exclusive knowledge of the petitioner, the petitioner was required to prove the same through requisite documentary evidence relating to the transactions, in which monetary aspect is involved.

48. It is the consistent stand of the petitioner that his wife and son were having independent sources of income from which the properties have been purchased by them. Merely making an assertion that they were having income of their own would not suffice to prove the case of the petitioner as to the independent source of income of his wife and son. The petitioner is bound to place documentary proof regarding receipt of income, as the said receipts relating to their income was exclusively within the knowledge of the petitioner.

49. Further, it is also evident from the records that though the petitioner has examined D.W.1 and D.W.2, viz., his brother and friend to prove about the payments made to his wife, however, even thereto, the evidence is merely oral and there are no documents placed to prove that the petitioner's wife was the recipient of amounts from D.W.s 1 and 2 towards receipt of rental income from the ancestral properties of the petitioner as also the return of the loan availed by D.W.2. Mere oral evidence cannot partake the place of documentary evidence, when in certain phases of the matter, the documentary evidence would have more weightage than the oral evidence. Particularly in cases of this nature, where the source of income is an issue, documentary evidence takes precedence over oral evidence and oral evidence, if at all, is only supplementary. Therefore, in the absence of any tangible and credible documentary evidence supporting the stand of the petitioner, the conclusion arrived at by the enquiry officer cannot be found fault with.

50. In Adhinarayana's case (supra), the Hon'ble Supreme Court, in similar back drop of rules. while interpreting similar pari materia provision to Clause 13 (1) (a) in the Andhra Pradesh Disciplinary Amendment Act, held as under :-

"23. We have read this charge in the light of allegations in support thereof. In the instant case, it is not disputed that the respondent has neither supplied any prior information on the Government nor did he send any prior intimation to the Government. By not doing this, he has

contravened the provisions of Rule 9. The Tribunal has also categorically held that the respondent has not applied for prior information before he purchased the items from the competent authority nor he intimated to the competent authority forthwith soon after the purchase of the several items. Therefore, in our view, the charged officer has violated Rule 9 of the Conduct Rules and thus is guilty of misconduct within Rule 2-H (sic) of the Andhra Pradesh Disciplinary Amendment Act, 1993. In view of the abovesaid finding we hold that respondent is guilty of both the charges framed against him within Rule 2(b) of the Conduct Rules of 1961 framed under the Amendment Act, 1993.

51. In the case on hand, while Clause 13 (1) (a) of the Regulations unequivocally mandates that intimation/notice should be given to the prescribed authority by the employee relating to any acquisition or disposition of immovable property in his own name or in the name of the member of his family, the Explanation appended to clause 13 (1) (a) prescribes that such notice is not required to be given only when the said acquisition or disposition of the property by the member of his family is not acquired from the resources of the employee concerned. However, in the case on hand, the source of income of the wife and son of the petitioner having not been established in a manner known to law, the stand of the petitioner that the properties were purchased by his wife and son from their own source of income is incapable of acceptance.

52. Further, the decision of the Hon'ble Supreme Court in Roop Singh Negi's case (supra) relied on by the learned counsel for the petitioner is of no help to the petitioner, as the facts in issue in the said decision are different and further the evidence placed in the enquiry by the respondents unerringly point to the petitioner's delinquency, which the petitioner ought to have absolved himself through rebuttal by placing documentary materials, with regard to the facts, which were within his exclusive knowledge, which the petitioner has miserably failed to establish.

53. From the above facts, which are equally placed by either side before this Court, the immovable properties acquired by the wife and son of the petitioner are not from their own source of income, but resources, to which the petitioner is privy of and which have been derived from his ancestral property. Therefore, as already held, for all purposes, the explanation appended to Clause 13 (1) (a) would not stand attracted to the case of the petitioner and the insistent

harping of the petitioner on the said explanation would in no way divert the attention of this Court from the main clause, which is a mandatory prescription, which requires to be complied with by an employee in letter and spirit. Equally, the gift of immovable properties in the name of the son of the petitioner also would not fall within the ambit of explanation appended to clause 13 (1) (a) of the Regulation.

54. As already stated, the petitioner has not placed any documentary evidence to show the source of income of his son and wife. Once the petitioner has failed to prove that the source of funds for the purchase of the said properties in the names of his wife and son were from their income, then the necessary corollary that follows is that the source of funds is that of the petitioner. Once the source is from the petitioner, it was incumbent on the petitioner to adhere to clause 13 (1) (a) to inform of such acquisition/disposition to the prescribed authority and obtain the requisite permission. The failure on the part of the petitioner to adhere to clause 13 (1) (a) definitely puts him on the back foot and the charges framed for violation of the said clause definitely clothes the disciplinary authority with power to order for an enquiry and pass appropriate orders on the enquiry report.

55. It has been the consistent view of the Courts that it is always within the domain of the appointing authority to decide on the punishment to be imposed on the delinquent, which should be proportionate to the act of the delinquent. Only when the punishment is disproportionate and shocking to the conscience, should the courts interfere in the same in exercise of powers under Art. 226 of the Constitution. In Prem Nath Bali - Vs - High Court of Delhi (2015 (16) SCC 415), the Hon'ble Supreme Court held as under :-

"20. It is a settled principle of law that once the charges levelled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and then imposed the punishment as provided in the Rules.

21. Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major) then the courts are slow

to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment. Such power is exercised when the court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court or when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was originally awarded to the delinquent employee by the appointing authority as per the Rules or may substitute the punishment by itself instead of remitting to the appointing authority."

(Emphasis Supplied)

56. A careful perusal of the entire records right from the conduct of the enquiry to the passing of the order of punishment of removal from service leading to the appeal and rejection thereof, clearly reveals proper and independent application of mind on the part of the concerned authorities, who dealt with the files and the gravity of the offence committed by the petitioner, as is proved in the enquiry, is so very grave, that the disciplinary authority has thought it fit to impose the punishment of removal from service, which has been approved by the appellate authority. This Court, sitting in judicial review, is not required to go through the entire materials as if the matter is in appeal before this Court, but only to arrive at a subjective finding as to whether the enquiry has been conducted in a fair and proper manner and whereupon, the disciplinary authority has independently applied his mind while imposing the punishment. This Court is in consensus with the order passed by the disciplinary authority, as approved by the appellate authority and is of the view that the same does not require any interference at the hands of this Court.

57. For the reasons aforesaid, this writ petition is devoid of merits and, accordingly, the same is dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

GLN

To

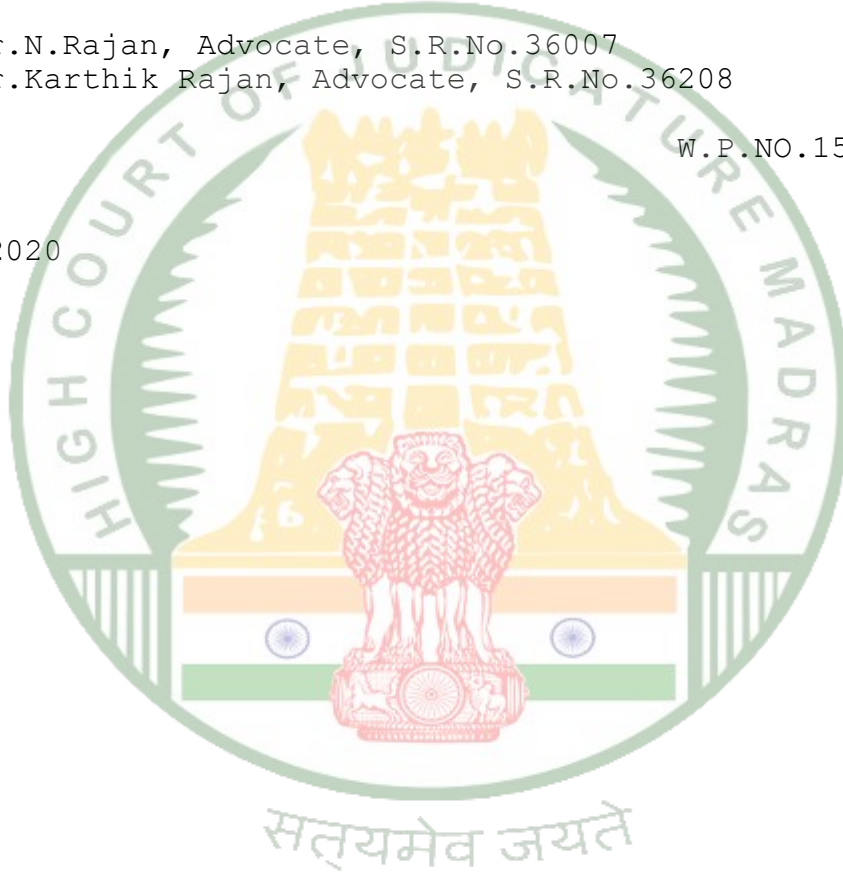
1. The Board
Tamil Nadu Generation & Distribution
Corporation Ltd., rep. By its
Secretary (A/c), Secretariat, 144, Anna Salai
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2. The Chairman & Managing Director
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