

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.03.2020  
Pronounced on : 02.06.2020

Coram

The Hon'ble Mr. Justice V.PARTHIBAN

W.P.No.22835 of 2019  
and  
W.M.P.Nos.22429 & 22431 of 2019

R.Sridhar

...Petitioner

Vs.

1. The Chief Engineer (Personnel),  
Tamil Nadu Electricity Board,  
Tamil Nadu Electricity Generation and Distribution Circle,  
TANGEDGO, No.144, Anna Salai,  
Chennai - 600 002.
2. The Chief Engineer/Distribution,  
Chennai Region (North),  
Tamil Nadu Electricity Board,  
Tamil Nadu Electricity Generation and Distribution Circle,  
TANGEDGO, No.144, Anna Salai,  
Chennai - 600 002.
3. The Superintending Engineer,  
Chennai Electricity Distribution Circle (North),  
Tamil Nadu Electricity Board,  
Tamil Nadu Electricity Generation and Distribution Circle,  
TANGEDGO, No.144, Anna Salai,  
Chennai - 600 002.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order Ku.No.Me.Po./Se.Mi.Pa.Va./North/Ni.A/Ni.Pi.I/Vu.4/Ko.O.Na/No.796 / 2017, dated 05.03.2018 passed by the third respondent and the order in Memo.No.017557/945/Adm/B.Sec/B.2/18 dated 23.04.2019 passed by the second respondent and quash the same and consequently direct the respondents to promote the petitioner as Asst. Executive Engineer with all consequential benefits, monetary and other benefits.

|                 |    |                    |
|-----------------|----|--------------------|
| For Petitioner  | .. | Mr.M.M.Gnanasekar  |
| For Respondents | .. | Mr.P.R.Dilip Kumar |
|                 |    | Standing Counsel   |

## ORDER

The case of the petitioner is that while he was working as Assistant Engineer (O & M), Vadaperumbakkam, was directed to look after the functions of Kannadasan Nagar Extension as additional charge for a brief period between 06.11.2015 and 23.03.2016. On being directed, the petitioner took additional charge of the said Section. But according to him, the earlier incumbent, who was also additional in charge did not properly hand over his duties with proper paper work. But despite the same, he had completed the period as additional in-charge of the said section as per the directions of his Superiors.

2.While so, a memo was issued on 01.09.2017 against the petitioner charging him that during his period when he was additional incharge of Kannadasan Nagar Section, there was a shortage of cable which was missing from the place, where the petitioner was put as additional charge. Therefore, he was responsible for the loss caused to the Board. The petitioner in response to the charge memo has given a detailed explanation on 25.10.2017 stating that one D.Navaneethamurthy, Assistant Engineer, who was In-charge of Kannadasan Nagar Extension earlier has not handed over the charge to him despite his specific request and he was not aware of the location of the cable which was stolen at the later point of time. According to the petitioner he was there only for a short duration from 06.11.2015 to 23.03.2016 and after he left one Mr.R.Ganesan, took charge of the extension. The petitioner further submitted that the purchase was not made during his time in respect of the cable in question nor was it stored in any place during his time. Therefore, he requested that the charges dropped against him.

3.However, not satisfied with the explanation, the third respondent vide order dated 05.03.2018 imposed a penalty of stoppage of increment at the rate of 3% of basic pay + Grade pay in the revised scale for a period of three years with cumulative effect. As against the order of the disciplinary authority/the third respondent herein, the petitioner preferred an appeal on 08.01.2019.

4.In the appeal, the petitioner requested for thorough enquiry by cancelling punishment imposed on him. The Appellate Authority/second respondent has disposed of the appeal on 23.04.2019 by modifying the punishment as stoppage of next annual increment at the rate of 3% of basic pay + Grade pay in the revised scale for a period of one year without cumulative

effect. The orders of punishment are put to challenge in this writ petition.

5.Mr.M.Gnanasekar, learned counsel for the petitioner would submit that the petitioner admittedly was put In-charge in addition to his regular work only for a brief period from 06.11.2015 to 23.03.2016. Admittedly, the cable, which was found missing or stolen, was not purchased during the time of the petitioner taking charge in the said Section nor was it kept in any place at that time to the knowledge of the petitioner. The explanation of the petitioner that the earlier incumbent one Mr.Navaneethamurthy, had not properly handed over the charge to him and no proper paper work was signed between the two incumbents and hence, the petitioner could not be faulted with for missing of the cable belonging to the Board. The learned counsel would submit that though the punishment originally imposed by the Disciplinary Authority was drastically modified by the appellate authority yet comparing the action taken against Mr.Navaneethamurthy, who was primarily responsible for the missing of the cable, the punishment as it imposed by the Appellate Authority is liable to be interfered with.

6.The learned counsel would submit that as far as Mr.Navaneethamurthy is concerned, who was also issued with a memo like the petitioner was let off with the warning which was not a punishment at all. The counsel would refer to the proceedings dated 02.01.2018 to substantiate his contention that where the third respondent has merely directed the said Mr.Navaneethamurthy to be careful in future by recording a warning. According to the learned counsel, in respect of similar allegations against both the petitioner and the said Mr.Navaneethamurthy there cannot be any disparity in imposing penalty and on this short ground alone, the punishment imposed on the petitioner is liable to be interfered with.

7.On notice Mr.P.R.Dilip Kumar, learned Standing Counsel has entered appearance for the respondents and a detailed counter has been filed on behalf of the third respondent.

8.The learned counsel appearing for the third respondent/Board would submit that once additional charge is issued to the petitioner, due care and diligence must be shown while discharging his official duties. The petitioner cannot escape by saying that he is not responsible for the theft, because, there was no proper handing over of the charge by the

earlier incumbent. When the property belonging to the Board was

found stolen whoever was in charge of the division was responsible and there cannot be any excuses and the petitioner could not seek to absolve himself of the charge against him. However, in regard to Mr.Navaneethamurthy, as to why he was let off with the warning, there appears to be no plausible explanation either in the counter affidavit or by the counsel who appeared for the board.

9.This Court during the course of the hearing, gone through the proceedings dated 02.01.2018 produced by the respondent, which proceeding relating to the said Mr.Navaneethamurthy. The third respondent herein has recorded that Mr.Navaneethamoorthy while purchasing the cable had kept the cable in the place which did not come under the purview or control of the board and also did not properly hand over the charge on 06.11.2015 to the petitioner. In fact, the proceedings further would record that Mr.Navaneethamurthy has equal responsibility for the cables being stolen. After recording so, the third respondent has merely concluded that the Mr.Navaneethamurthy to be warned not to repeat such conduct in future.

10.From the above proceedings, it could be seen that there is some force in the explanation given by the petitioner that there was no proper handing over of charge to him by the said Mr.Navaneethamurthy. The missing of the cable was noticed only when FIR was lodged by the subsequent incumbent one Mr.R.Ganesan after termination of additional charge of the petitioner herein in Kannadasan Nagar Extension. Therefore, the learned counsel for the petitioner is right in contending that the punishment imposed on the petitioner suffers from grave disparity in comparison to a mere warning issued to the said Mr.Navaneethamurthy, which is not even one of the statutory penalties contemplated under the Rules.

11.In fact, the Hon'ble Supreme Court has held in number of cases and including this Court that in matters of imposition of penalty there cannot be any discrimination when the allegations are same, the punishment cannot differ. In this case, both the officers namely the petitioner and Mr.Navaneethamurthy have been alleged for the same act of misconduct, but the said Mr.Navaneethamurthy was merely issued with a warning but as against the penalty imposed on the petitioner viz., one increment cut for a period of one year without cumulative effect. In fact, the proceedings dated 02.01.2018 of the third

respondent records about the direct responsibility of Mr.Navaneethamurthy in regard to the subject matter of charge. Therefore, the authority cannot have two different scales of

administering the punishment in the face of same allegations, as such discrimination cannot stand the test of judicial scrutiny.

12.For the above said reasons, this Court is of the view that the impugned order is liable to be interfered with and therefore, the same is set aside. The third respondent is directed to issue the same warning memo to the petitioner herein as well as in the case of said Mr.Navaneethamurthy as communicated in the proceedings dated 02.01.2018.

13.The third respondent is directed to pass appropriate orders as indicated above within a period of four weeks from the date of receipt of a copy of this order.

14.With the above directions, this writ petition stands allowed to the extent indicated above. No costs. Consequently, the connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar

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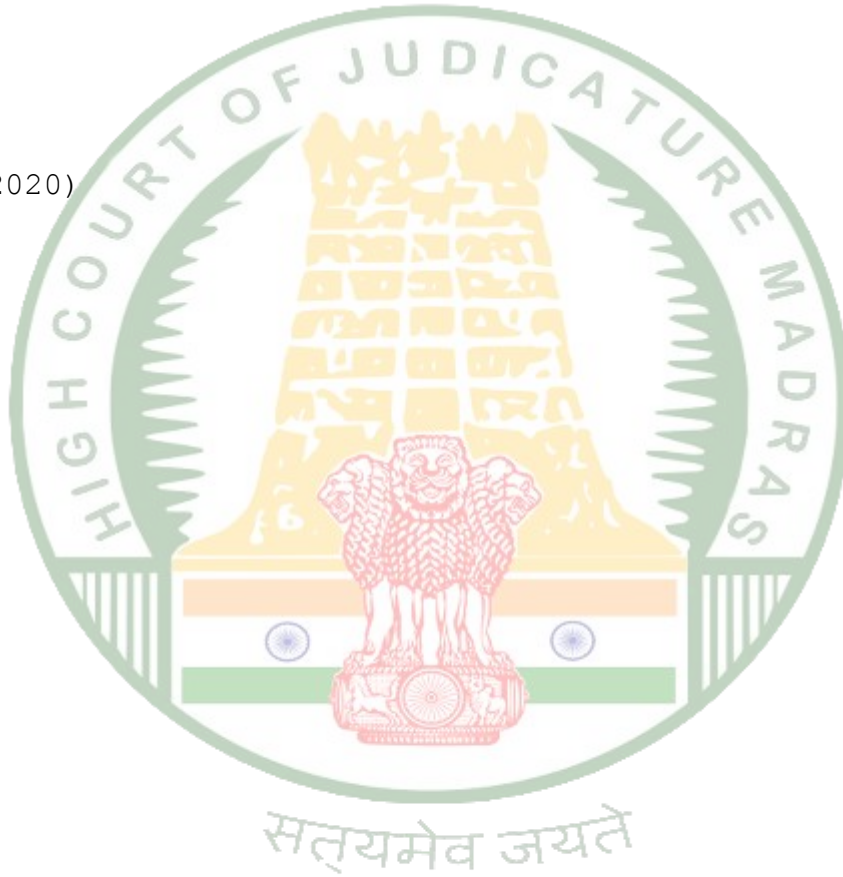
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Pre-delivery order in  
W.P.No.22835 of 2019  
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KS (CO)  
GS (07/08/2020)



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