



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.02.2020

CORAM:

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P. (MD) No.9793 of 2018

and

W.M.P (MD) No.8987 of 2018

V.Venkatesh

... Petitioner

vs.

1. The Superintending Engineer,
TANGEDCO,
Tuticorin Electricity Distribution Circle,
Tuticorin.
2. The Executive Engineer (Distribution),
TANGEDCO,
Kovilpatti-628 502,
Tuticorin District.

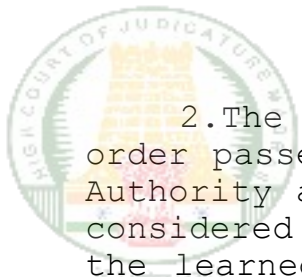
... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorari, to call for the records of the second respondent கு.ஆ.எண் .06775/உநஅ/நிழ/உத.3/ கோம.பொ/17 dated 21.09.2017 as confirmed by the appeal by the first respondent in his proceedings கு.ஆ.எண் .32587/902/நஅ/நிழ3/உத.1/ கோ.மே.ந /18 Dated 06.04.2018 and quash the same.

For Petitioner : Mr.V.Vijayshankar
For Respondents : Mr.T.Sakthikumaran
Standing Counsel

O R D E R

Based on the set of charges levelled against the petitioner on 18.02.2017, an enquiry came to be conducted and the Enquiry Officer had held that charges have been proved. A show cause notice was issued pursuant to the Enquiry Officer report on 26.07.2017 and the petitioner herein had tendered his explanation on 08.08.2017. The second respondent herein, who is the Disciplinary Authority, had passed the impugned order dated 21.09.2017, imposing the punishment of stoppage of increment for a period of one year without cumulative effect. As against the punishment, the petitioner herein had filed an appeal on 14.10.2017, before the first respondent herein, which was also came to be rejected on 06.04.2018, confirming the punishment imposed by the second respondent. The writ petition is directed as against these orders.



2.The learned counsel for the petitioner would submit that the order passed by the Disciplinary Authority as well as the Appellate Authority are non speaking orders and both the Authorities have not considered the objections raised by the petitioner. According to the learned counsel for the petitioner, the explanation submitted by the petitioner pursuant to the Enquiry Officer's report has not been dealt with by the second respondent and when this was brought to the notice of the first respondent in the appeal, the same was again ignored. As such, the orders are liable to be quashed.

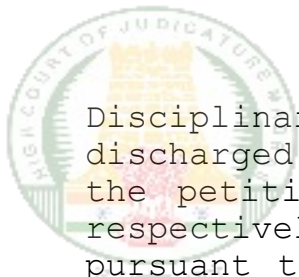
3.The learned Standing Counsel appearing for the respondents referred to the orders passed by the Authorities and by drawing attention of this Court to the Enquiry Officer's report, he would submit that all the objections put forth by the petitioner during the course of enquiry, have been duly considered and therefore, both the authorities, having found that the charges against the petitioner has been proved beyond reasonable doubt, have come to the conclusion that there was no ground to interfere and thereby, the punishment came to be imposed by the second respondent and confirmed by the first respondent in appeal. As such, he would submit that there is no infirmity in the orders of punishment.

4.I have given a careful consideration to the submissions made by the respective counsels.

5.Insofar as the order of the Disciplinary Authority dated 21.09.2017 is concerned, a copy of which is produced before this Court, it is seen that the Authority had referred to the charges levelled against the petitioner and thereafter, the Enquiry Officer Report, as well as the objection given by the petitioner pursuant to the Enquiry Officer's report. Thereafter, while rendering his findings, apart from a mere statement that both the charges have been proved beyond reasonable doubt, there is absolutely no other findings as to how the Disciplinary Authority had come to the conclusion that the Enquiry Officer report could be sustained, as well as to why he was not in agreement with the objections raised by the petitioner, pursuant to the Enquiry Officer's report.

6.In this background, when the petitioner had filed an appeal before the first respondent on 14.10.2017, two specific grounds were raised by the petitioner that the enquiry was held in a precipitated manner without giving opportunity to the petitioner and that the enquiry was concluded in a hasty manner. The first respondent, in a similar fashion, as that of the Disciplinary Authority had handled the Enquiry Officer's report, had once again narrated the facts of the case and in the paragraphs where the findings are rendered, the only statement made is that the petitioner has not raised any fresh ground to interfere with the punishment imposed by the second respondent.

<https://hcservices.ecourts.gov.in/hcservices> in appreciation with the manner in which the

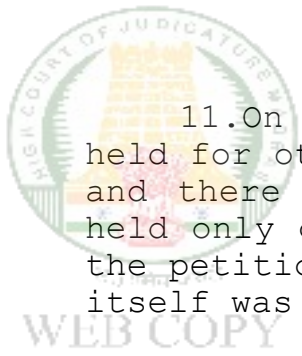


Disciplinary Authority as well as the Appellate Authority had discharged their statutory powers in considering the objections of the petitioner, as well as the grounds raised by the petitioner, respectively. The very purpose of issuing a show cause notice pursuant to the Enquiry Officer's Report is to give an opportunity to the delinquent to put forth his objection with regard to the mode in which the enquiry was conducted as well as on the very sanctity of the findings of the Enquiry Officer. When such is the purpose, the Disciplinary Authority, who chose to issue a show cause notice calling for the objection, is required to render his findings with regard to the objections raised by the petitioner, pursuant to the show cause notice. If and only when such a findings are given, it can be construed that the disciplinary authority had applied his mind with regard to the objections raised by the petitioner and thereby, had imposed the punishment.

8.In the instant case, the Enquiry Officer had chosen to file his report on 26.07.2017, based on which, the second respondent had issued a show cause notice on 26.02.2017 enclosing the Enquiry Officer's report, calling for the petitioner's objection. The petitioner herein had also given his objections on 08.08.2017. A perusal of the objection, reveals that the petitioner had questioned the findings of the Enquiry Officer. However, without reference to the same, the disciplinary authority had come to the conclusion that there was no reason to interfere with the findings of the Enquiry Officer.

9.Incidentally, in the objection raised by the petitioner to the Enquiry Officer's report, a specific statement was made to the effect that the petitioner herein had given a written request to the Enquiry Officer on 12.04.2017, seeking permission to examine the witnesses on his part, for which, the Enquiry Officer had noted on 17.04.2017 that in case, such examination is required, the same shall be done. The petitioner also claims that two other representations were made with the similar requests in the grounds of appeal filed by the petitioner before the first respondent. A specific ground was also raised that the enquiry was conducted in a hasty manner and according to the petitioner, the proceedings, was held on 23.06.2017 alone and concluded on the same day.

10.The learned Standing Counsel for the respondents would refer to the narration in the recital of the Enquiry Officer's report and submit that the enquiry was held on various dates and therefore, such a plea is incorrect. In the recital portion of the enquiry, a reference has been made to the summons sent on various dates i.e., 20.04.2017, 19.05.2017, 30.05.2017 and 19.06.2017. However, the same recitals also mention that the enquiry could not be conducted on these days owing to "various reasons". It is also not the opinion of the Enquiry Officer that the enquiry was adjourned or protracted at the instance of the petitioner.

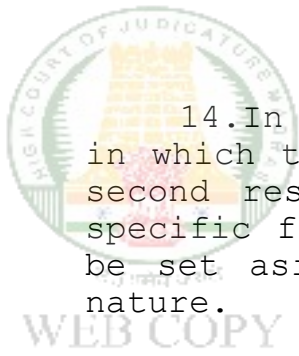


11. On the other hand, it indicates as if the enquiry was not held for other reasons on the days for which the summons were issued and there is also an indication that the enquiry was effectively held only on 23.06.2017. While that being so, the ground raised by the petitioner before the first appellate authority that the enquiry itself was conducted in a hasty manner, gains significance.

12. In this background, when there are sufficient materials to show that the enquiry could have been conducted on only one day and when a specific ground has been raised by the petitioner before the disciplinary authority that the enquiry was done in hasty manner, which aspect has also not been considered by the Disciplinary Authority, I am of the view that the enquiry itself could be vitiated. Nevertheless, it would not be appropriate to have the charges itself quashed on this ground, but on the other hand, if the respondents are granted liberty to conduct the enquiry afresh, after giving due opportunity to the petitioner, the ends of justice could be secured. It is needless to mention that such a liberty does not mandate the respondents to compulsorily conduct the enquiry afresh and they are also at liberty to drop the proceedings, if they choose to do so.

13. The Hon'ble Apex Court in the case of **Bhagat Raja Vs. Union of India** reported in **AIR 1967 SC 1906** had held that even when the statute does not expressly lay down the requirement of giving reasons, the quasi-judicial Tribunal is bound to give reasons in short. Likewise in the case of **Brij Nandan Kansal Vs. State of U.P** and another reported in **AIR 1988 SC 908**, the Hon'ble Apex Court had held that the authority while proposing to take an adverse decision, must record reasons and communicate the same to the affected persons. Following the said decision, the Division Bench of this Court in the case of **Secretary to Government Vs. G.Nagendran** reported in **(2016) 6 MLJ 420**, was of the view that the non disclosure of the reason for rejection would amount to material irregularity. The relevant portion of the order reads thus:-

23. Coming to the facts of the present case, we could see that the impugned order of the first respondent does not disclose any reason nor an application of mind as to the contentions/points raised on behalf of the writ petitioner. Except narrating the orders of various authorities and recommendations of second respondent and the Tamil Nadu Public Service Commission, there is no independent discussion or independent consideration of the case, at least with regard to the quantum of punishment. Hence, we are of the view that the impugned order suffers from material irregularities in the sense that it does not indicate any independent application of mind nor disclose any independent reason by referring to the facts admitted and the facts established.



14. In view of the aforesaid reasons, touching upon the manner in which the enquiry was conducted and the orders of the first and second respondent, though running several pages, but without any specific finding, this is a fit case, where the orders required to be set aside, on the ground that the orders are non speaking in nature.

15. For all the reasons stated above, the impugned order of the second respondent in கு.ஆ.எண்.06775/உநிஅ/நிபி/உத.3/ கோ.ம.பொ/17 dated 21.09.2017 and the order of the first respondent in கு.ஆ.எண்.32587/902/நிஅ/நிபி3/உத.1/ கோ.மே.மு/18 dated 06.04.2018 are set aside. In view of the findings of this Court with regard to the manner in which enquiry was conducted, the report of the Enquiry Officer which came to be forwarded on 26.07.2017, is set aside. Consequently, the respondents are at liberty to initiate a fresh enquiry, in case they choose to do so, based on the charges levelled against the petitioner on 18.02.2017, which shall include the permission to examine the petitioner's witnesses and file a report after following the principles of natural justice. This Writ Petition is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

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/ /2020

Sub Assistant Registrar (CS)

To:-

1. The Superintending Engineer,
TANGEDCO,
Tuticorin Electricity Distribution Circle,
Tuticorin.
2. The Executive Engineer (Distribution),
TANGEDCO,
Kovilpatti-628 502,
Tuticorin District.

+2 CC to M/s.A.THIRUMURTHY, Advocate (SR-7132[F] dated 19/02/2020)
+2 CC to M/s.V.VIJAYSHANKAR, Advocate (SR-7207[F] dated 19/02/2020)

CP

TE : 12/03/2020 : 5P/7C

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W.M.P (MD) No.8987 of 2018
19.02.2020