IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2021

C O R A M

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No.5609 of 2007 &
M.P.No.1 of 2007

P.Murugan ... Petitioner

Vs.

1.The Chairman,
Tamil Nadu Electricity Board,
Anna Salai, Chennai - 2,

2.The Chief Engineer,
Ennore Thermal Power Station,
Tamil Nadu Electricity Board,
Ennore, Chennai - 57.

3.The Superintending Engineer,
Purchase / Administration,
Ennore Thermal Power Station,
Tamil Nadu Electricity Board,
Ennore, Chennai- 57.

4.Stores Controller,
Ennore Thermal Power Station,
Tamil Nadu Electricity Board,
Ennore, Chennai - 57.

5.Stores Officer (Verification),
(Office of the Chief Financial Controller,)
Tamil Nadu Electricity Board, Chennai - 2)
Now working at
Chennai Electricity Distribution Circle - West,
Tamil Nadu Electricity Board,
Aambattur, Chennai. ... Respondents

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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of the second respondent connected with Memo. No.R.519/13/CE/ETPS/Adm.I/A4/F.Doc/07, dated 31.01.2007 and quash the same and to direct the respondents herein to desist from initiating any further proceedings on the basis of Memo No.R.519/13/CE/ETPS/Adm.I/A4/F.Doc/07, dated 31.01.2007.

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For Petitioner : Mrs.W.K.Kanthimathi
For Mr.R.Natarajan

For Respondents: Mr.Karthik Rajan
Standing Counsel

O R D E R

The petitioner has filed this Writ Petition, to quash the order dated 31.01.2007 and for a direction to the respondents to desist from initiating any further proceedings on the basis of Memo No.R.519/13/CE/ETPS/Adm.I/A4/F.Doc/07, dated 31.01.2007.

2. The petitioner is a Stores Supervisor working with the respondents. He was subjected to disciplinary action for missing of M.S.Scraps and another property of the Board. There was an enquiry and in the enquiry, it is established that there is missing of materials and based on the enquiry, the annual increments payable to the petitioner have stopped and recovery proceedings are also initiated by the third respondent, dated 07.01.2005. Challenging the said order, the petitioner had filed a Writ Petition in W.P.No.2743 of 2005, and this Court, by an order dated 28.11.2006, disposed the Writ Petition, by observing that as per the Standing Orders of the Board, the petitioner has got an alternative remedy of preferring an Appeal, and as the petitioner has also preferred an Appeal on 22.01.2005, directed the Appellate Authority, to dispose of the Appeal, within one month from the date of receipt of a copy of that order. Thereafter, the Appellate Authority, the second respondent herein, after enquiry, confirmed the finding of the third respondent, and dismissed the Appeal filed by the petitioner. Challenging the order of the second respondent, the petitioner is before this Court.

3.1. The learned counsel for the petitioner would submit that while the petitioner was working as Stores Supervisor on 10.07.2003, orders were passed by the Board to supply 300 metric tone of M.S.Scraps and another order of supply of 316 metric tones of M.S.Scraps to one Sree Sakthi Vinayaga Traders and Sree Sakthi Steel Corporation, Chennai and before passing the orders, the above stated lots of M.S.Sraps were inspected by the Tender Committee, Disposal Committee, Survey Committee and the Chief Stores Officer in the Central Stores and the fourth respondent.

3.2. It is further submitted till 05.12.2003, M.S.Scraps to the tune of 208.450 metric tones were delivered to Sree Sakthi Vinayagar Traders, Chennai and the balance of 91.55 metric tones of M.S.Scraps has to be given from Central Stores, Ennore, Thermal Power Station. The deadline for clearing the same has

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been fixed as 09.12.2003 and the Contractor has not taken the same till the deadline. Secondly, Sree Sakthi Steel Corporation, another contractor from Chennai was allotted 261.570 metric tones and balance of 54.430 metric tones of scraps were not cleared within 06.12.2003, which was the deadline for them to clear the same. Thus, the two above stated contracts were not prepared to clear 145.980 metric tone of scraps from the Central Stores, Ennore Thermal Power Station and they were only keen on taking the high quality new stock received in the stores which were not at all tendered. However, the fourth respondent, in connivance with the above contractors, issued a Memo, dated 06.12.2003, for which, the petitioner gave an explanation on 08.12.2003, stating that the stock is available in Open Yard Nos.1, 2 and 3 as per the ledger quantity.

3.3. The learned counsel would further submit that the fifth respondent conducted a stock verification, which was completed on 03.01.2004, and gave a report to the effect shortage of M.S.Misc Scraps is found to the tune of Rs.25.607 metric tones and based on which, the petitioner was called for by the third respondent vide Memo, dated 05.01.2004, the petitioner had also submitted his explanation. However, the petitioner was placed under suspension with effect from 17.02.2004, and subsequently, the same was revoked and the petitioner was allowed to join duty on 08.04.2004. Thereafter, vide Memo, dated 24.02.2004, charges were framed against the petitioner and thereafter a farce of an enquiry was conducted and finding was given to that effect that the charge has been proved. Further, on 24.08.2004, the petitioner was asked to show cause, as to why, he should not be imposed with punishment of stoppage of increments and which the petitioner should not be made to compensation loss upto 40% of the value of materials amounting to Rs.1,07,053/- occurred due to the shortage of stock. Thereafter, by an order dated 07.01.2005, the third respondent imposed the punishment of stoppage of his next annual increment for a period of one year with cumulative effect, and also ordered for recovery of a sum of Rs.1,07,053/-. Against which, the petitioner filed a Writ Petition in W.P.No.2743 of 2005, which was also disposed of, by giving direction to the Appellate Authority to consider the issue raised by the petitioner and dispose the same in accordance with law, however, the Appellate Authority has not considered the issue raised by the petitioner, and simply dismissed the Appeal, and hence, the learned counsel prays for setting aside the order of the second respondent, dated 31.01.2007.

4. Per contra, the learned Standing Counsel appearing for the respondents would submit that after releasing 208.450 M.Tonnes and 261.570 M.Tonnes to Sri Sakthi vinayaga Traders, Chennai and Sakthi Steel Corporation, Chennai, respectively, the

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above two successful tenderers made representations, dated 10.12.2003 and 06.12.2003, respectively stating that sufficient quantity of balance materials were not available at the specific yard or identified in the allotted yards where Lot Nos.1 and 2 were shown as "for auction. Hence, they requested to refund the amount of Rs.14,66,140/- for the unreleased quantity or to issue balance materials. Thereafter, explanation was called for from the petitioner, and as the explanation submitted by him was not satisfied, a charge memo was issued to him. Thereafter, an enquiry was conducted and the Enquiry Officer has held that the charge has been duly proved. Thereafter, after affording sufficient opportunity to the petitioner, the impugned order was passed by the third respondent, which was also confirmed by the second respondent, in the Appeal preferred by the petitioner, therefore, no interference is required.

5. Heard the learned counsel on either side and perused the materials available on record.

6. In the case on hand, the impugned charge memo came to be issued to the petitioner on 28.02.2004, and he acknowledged the same on 28.02.2004 and submitted his explanation on 19.03.2004 along with the questionnaire format duly filled up and signed by him. Since the explanation submitted by the petitioner was neither convincing nor acceptable and in order to extend one more opportunity to the petitioner to defend himself from the charge framed against him, an oral enquiry was ordered on 09.06.2004, by appointing an Enquiry Officer. The Enquiry Officer conducted the enquiry on 09.06.2004 and submitted his report together with his findings by his letter dated 18.06.2004, wherein, the Enquiry Officer has held that the charge has been duly proved.

7. On receipt of the report together with the findings of the Enquiry Officer, the third respondent issued a show cause notice in Memo, dated 24.08.2004, calling upon the petitioner to show cause as to why his next annual increment should not be stopped for a period of one year and as to why 40% of the material, i.e., Rs.2,67,633 found shortage be recovered in 29 installments at Rs.3,750/- per month and 30th installement at Rs.3,523/-, totalling Rs.1,07,053/-. The petitioner had acknowledged the receipt of the show cause notice on 01.09.2004 and submitted his representation, dated 13.09.2004 and requested to furnish copies of documents for 8th items to enable him to submit his reply to the show cause notice. In memo, dated 17.09.2004, copies of documents in respect of 7 items were furnished to the petitioner. As far as the remaining 8th item, he was directed to copy of the statement of the Board's side witnesses from the enquiry proceedings, which is available in the file, during office hours on 05.10.2004. The petitioner was

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further directed to submit his explanation within a period of 15 days from the date of receipt of the aforesaid documents. He was also further informed that failure to submit his explanation within the specified time would result in taking further action against the petitioner.

8. Further, in the representation of the petitioner, dated 24.09.2004, he has acknowledged the Memo, on 08.10.2004. In the representation, the petitioner had requested to furnish copies of some more documents and prayed for 30 days time for consulting legal experts and Trade Union representatives to submit his explanation to the Show Cause Notice. The respondent-Board, by a Memo, dated 27.10.2004, observed that the request of the petitioner to furnish some more documents and extension of time to submit his explanation to the Show Cause Notice cannot be accepted and he appears to be a delaying tactics and therefore, the petitioner was directed to submit his explanation within 15 days from the date of receipt of the Memo, by giving one more opportunity to the petitioner to defend himself from the charges and acknowledged the receipt of the Memo on 22.11.2004 and he came to Office of the third respondent on 22.12.2004 for copying the statement furnished by the Board's side witnesses. The petitioner was also permitted to copy the same and thereafter, again the petitioner submitted another representation on 04.12.2004, requesting to furnish copies of some more documents and prayed for 30 days time and therefore, considering the above circumstances, the third respondent by an order dated 07.01.2005, imposed the punishment of stoppage of his next annual increment for a period of one year with cumulative effect and recovery of 40% of the value.

9. It is to be noted that challenging the said Charge Memo, dated 24.08.2004, the petitioner had initially approached this Court by filing W.P.No.38558 of 2004 and since the charges have been proved against the petitioner, the third respondent, by an order dated 07.01.2005, imposed the punishment of stoppage of his next annual increment for a period of one year with cumulative effect and ordered recovery of 40% of the value of the materials and therefore, W.P.No.38558 of 2004 had become infrucutous. As against the order passed by Disciplinary Authority/third respondent, the petitioner had filed a petition in W.P.No.2743 of 2005 before this Court and simultaneously filed an Appeal before the Appellate Authority/second respondent herein, and this Court by an order dated 28.11.2006, as the petitioner had already preferred an Appeal on 22.01.2005, directed the Appellate Authority / second respondent has to apply its independent view and after verifying the facts and circumstances and surrounding facts, and dispose of the Appeal. The second respondent, by an order dated 31.01.2007, after considering the materials on record, dismissed the Appeal, by

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confirming the findings of the third respondent.

10. From the above, it could be seen that the allegations which have been levelled against the petitioner have been enquired by the Enquiry Officer and after affording reasonable opportunity to the petitioner, the Enquiry Officer, after adhering to the principles of natural justice issued second show cause notice, which has been replied by the petitioner. Considering the reply as well as materials available on record, impugned punishment has been imposed, which has been confirmed in Appeal. Therefore, from the initiation of Departmental Proceedings till its culmination, there has been no procedural irregularity.

11. It is well settled legal position that the power of judicial review is not directed against the decision but is confined to the decision making process. The Court does not sit in judgment on merits of the decision. It is not open to the High Court to re-appreciate and reappraise the evidence led before the Inquiry Officer and examine the finding recorded by the Inquiry Officer as a Court of Appeal and reach its own conclusions.

12. In view of the above, the impugned order of punishment passed by the Disciplinary Authority/third respondent dated 07.01.2005, and the order passed by the Appellate Authority/second respondent, 31.01.2007, confirming the order passed by the Disciplinary Authority, do not warrant any interference by this Court.

13. Accordingly, the Writ Petition fails and the same is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To

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Tamil Nadu Electricity Board,
Anna Salai, Chennai - 2,

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+1 cc to M/s.R.Natarajan, Advocate Sr.No. 9799

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