



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.NO.5360 OF 2009

B.Palani

... Petitioner

.Vs.

1. The Chief Engineer/Distribution,
Tamilnadu Electricity Board,
802, Anna Salai, Chennai 600 002.

2. The Superintending Engineer,
Chennai Electricity Distribution Circle/North,
Tamil Nadu Electricity Board, Chennai 600 002.

... Respondents

Prayer:

Writ petition filed under Section 226 of the Constitution of India seeking to issue a writ of Certiorarified Mandamus calling to call for the records relating to the impugned order of the first respondent in Memo No.001546/52/Adm.O/B Sec/B.2/2006 dated 07.05.2007 confirming the order passed by the second respondent in Memo No.651/SE/CEDC/North/Adm.I/A4/DP 476/2006 dated 02.01.2006 and quash the said orders and direct the respondents to reinstate the petitioner in service with all consequential benefits.

For petitioner	: Mr.P.Mohanraj
For respondents	: Mr.P.Subramanian, TNEB

ORDER

This writ petition has been filed to quash the impugned orders passed by the first respondent dated 07.05.2007 and confirmed by the second respondent vide order dated 02.01.2006, and to direct the respondents to reinstate the petitioner in service with all consequential benefits.

2. The case of the petitioner is that in the year 2003, while he was working as Supernumerary Revenue Supervisor, Town, Gummidipoondi, Tamil Nadu Electricity Board, a charge memo dated



05.12.2003 was issued by the second respondent, framing four charges against him for misappropriation of a sum of Rs.11,506/- towards collection of current consumption charges. According to him, no opportunity was granted to him to submit his explanation, but enquiry officer was appointed and he submitted his report. Despite the petitioner made request to the second respondent, copy of the report of the Enquiry Officer was not furnished to him and subsequently, based on the report filed by the enquiry officer, the second respondent passed the impugned order dated 02.01.2006, removing the petitioner from service of the Board.

3. The contention of the petitioner is that, challenging the above said impugned order passed by the second respondent, he filed an appeal before the first respondent and the same was rejected by an order dated 07.05.2007. Further, mercy petition filed by the petitioner before the first respondent was also rejected. Hence the present writ petition has been filed seeking to quash the above said impugned orders passed by the first and second respondents and to direct the respondents to reinstate the petitioner in service with all consequential benefits.

4. The writ petitioner has raised the following grounds to allow the writ petition.

i) The petitioner was denied opportunity by the second respondent to defend his case.

ii) The findings of the enquiry officer are not based on legal and acceptable evidence.

iii) The impugned order passed by the second respondent, based on the enquiry report, is unsustainable in law.

iv) Though the petitioner has raised specific grounds in the appeal that the second respondent had not provided reasonable opportunity to the petitioner; and a copy of the enquiry report was also not furnished to him to submit his detailed explanation, the first respondent has passed the impugned non speaking order.

v) The impugned order passed by the first respondent is totally in violation to the principles of natural justice and is illegal.

5. The respondents filed a counter affidavit stating that four charges have been framed against the petitioner, however, he has not submitted any explanation for the above said charges, despite opportunities have been given to the petitioner. The findings of the Enquiry Officer has been communicated to the petitioner and he was permitted to peruse the report of the enquiry officer for submitting his explanation. Further, the



petitioner was permitted to copy down the minutes of the enquiry, in the presence of Assistant Administrative Officer in the second respondent office, within seven days from the date of communication. But, on receipt of the communication, the petitioner made a representation to the second respondent to furnish a copy of the report of the enquiry officer. Hence, his request was rejected and show-cause notice was issued to submit his reply. Since no reply was received, impugned order has been passed by the second respondent. The appeal and the mercy petition filed by the petitioner was rejected by the first respondent, considering the motive of offence and previous records of the petitioner. Therefore, there is no illegal or violation of rules in the orders passed by the first and second respondents. According to the respondents, the petitioner was involved in number of disciplinary proceedings, including misappropriation of Board's collection and hence, allowing the petitioner in the service of Board is not safe. Therefore, the writ petition is liable to be dismissed.

6. Heard the rival submissions made by the learned counsels on either side and perused the materials on record. The issues involved in the present writ petition are

- i) Whether the second respondent provided reasonable opportunity to the petitioner to defend his case?
- ii) Whether the order passed by the Appellate Authority is in consonance with the Law laid down by this court.
- iii) Whether the impugned orders passed by the respondents are liable to be set aside on the ground of non speaking order?

7. The first and primordial contentions of the petitioner is that he prayed to furnish the report of the Enquiry officer to submit his explanation before the second respondent, but the same was denied. According to this court, the said aspect was not properly considered by the Appellate Authority, the first respondent herein, while rejecting the appeal preferred by the petitioner. When the enquiry report is not furnished, the right of the petitioner will be deprived to submit his explanation for the show cause notice issued by the second respondent. Therefore, the vital ground raised by the petitioner before the Appellate Authority is not considered and without considering facts and perused the records, the first respondent has simply rejected the appeal filed by the petitioner.

8. The second ground of the petitioner is that, the first respondent has passed the impugned order mechanically, without considering the grounds raised by the petitioner and hence there is a violation of principles of natural justice, by not



affording opportunity of hearing to the petitioner.

9. A perusal of the records shows that the first respondent had passed the following order.

" The appeal petition has been carefully examined with connected records. As he has not put forth any valid reasons in appeal petition to mitigate or annul the punishment imposed against him, the Chief Engineer/Distribution/Chennai Region/North has decided to reject the appeal petition of Thiru B.Palani, then Supernumerary Revenue Supervisor at Gummidipoondi/Chennai Electricity Distribution Circle/North.

Accordingly, the appeal petition of Thiru B.Palani, then Supernumerary Revenue Supervisor now removed from Board's service is hereby rejected.

The above said order clearly shows that the Appellate Authority has not considered the grounds raised by the petitioner properly. The contention of the petitioner is that the first respondent has not passed reasoning order and it is a non speaking order. When the petitioner specifically raised grounds before the Appellate Authority that he was not provided any reasonable opportunity to defend his case and he was not furnished the report of the enquiry officer to submit his explanation to the show cause notice, the Appellate Authority has not gone through the grounds and pass appropriate orders. It is to be noted that the petitioner is a senior citizen. Therefore, in view of the above discussion, this court has no hesitation to interfere with the orders passed by the first respondent and is inclined to pass orders.

10. Accordingly, it is ordered as follows.

i) The impugned order passed by the first respondent is quashed.

ii) The first respondent is directed to consider the appeal filed by the writ petitioner on its own merits and in accordance with law and pass reasoned orders, as early as possible within a period of 12 weeks from the date of receipt of the copy of this order.

iii) It is needless to say that the report of the enquiry officer shall be furnished to the petitioner and reasonable opportunity also to be afforded to him, in accordance with the rules.



WEB COPY

11. With the above direction, this writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mst

To

1. The Chief Engineer/Distribution,
Tamilnadu Electricity Board,
802, Anna Salai, Chennai 600 002.
2. The Superintending Engineer,
Chennai Electricity Distribution Circle/North,
Tamil Nadu Electricity Board, Chennai 600 002.

+1cc to Mr.P.Rajendran, Advocate, S.R.No.58455
+1cc to Mr.P.Subramanian, Advocate, S.R.No.58441

W.P.No.5360 of 2009

RLD(CO)
PM/22/11/2021