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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2021

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.A.NO.1473 OF 2021
AGAINST
W.P.NO.5609 OF 2007

P.Murugan

... Appellant/Petitioner

.Vs.

1. The Chairman,
Tamil Nadu Electricity Board,
Anna Salai, Chennai - 600 002.
2. The Chief Engineer,
Ennore Thermal Power Station,
Tamil Nadu Electricity Board,
Ennore, Chennai - 600 057.
3. The Superintending Engineer,
Purchase/Administration,
Ennore Thermal Power Station,
Tamil Nadu Electricity Board,
Ennore, Chennai - 600 057.
4. The Stores Controller,
Ennore Thermal Power Station,
Tamil Nadu Electricity Board,
Ennore, Chennai - 600 057.
5. The 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,
Ambattur, Chennai.

... Respondents/Respondents

PRAYER:-

Writ Appeals filed under Clause 15 of Letters Patent against
the order dated 19.02.2021 made in W.P.No.5609 of 2007.



Prayer in W.P.No.5609 of 2007:-

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 2nd 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.

For Appellant : Ms.N.K.Kanthimathi

For Respondents : Mr.P.Subramanian

J U D G M E N T

PUSHPA SATHYANARAYANA, J.

This intra-court appeal is directed against the order of the learned single Judge dated 19.02.2021 made in W.P.No.5609 of 2007, by which the learned single Judge declined the relief sought for by the appellant herein/writ petitioner and dismissed the writ petition.

2. The appellant herein/writ petitioner was a Stores Supervisor with the respondents/Electricity Board, who was subjected to disciplinary action for missing of M.S.Scraps from the yard. After enquiry, a punishment was imposed, against which, a writ petition was filed. Disciplinary action was initiated against the appellant/writ petitioner for shortage of M.S. Scraps to the tune of 25.607 MTs, based on which a Memo was issued on 05.01.2004 calling for explanation. Thereafter, the appellant was placed under suspension from 17.02.2004, which was later revoked on 08.04.2004. Again, on 24.04.2004, charges were framed against the appellant and after enquiry, it was found that the charges were proved. On 24.08.2004, the appellant was issued with a show-cause notice as to why punishment of stoppage of increments and also recovery be made to compensate the loss up to 40% of the value of the material amounting to Rs.1,07,053/-. Thereafter, on 07.01.2005, the appellant was imposed with the punishment of stoppage of annual increment for a period of one year with cumulative effect and recovery of a sum of Rs.1,07,053/- was imposed.

3. Against the said order, the appellant has preferred a writ petition in W.P. No.2743 of 2005. As the appellant had already filed an appeal against the said order before the



appellate authority, who is the second respondent herein, this court had disposed of the writ petition, with a direction to the second respondent herein to consider the appeal independently. Accordingly, the second respondent, on 31.01.2007 had passed an order dismissing the appeal and confirmed the findings of the third respondent.

4. Aggrieved by the order of the second respondent dated 31.01.2007, the appellant herein/writ petitioner has filed one more writ petition again in W.P. No.5609 of 2007. The learned single Judge, upon hearing both the parties and after elaborate discussions, dismissed the writ petition on 19.02.2021. The relevant portion of the said order is extracted hereunder:

" 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. "



Aggrieved by the same, the appellant has preferred this intra-court appeal.

5. Heard both sides and perused the materials available in the form of typed set of papers.

6. From the above facts, it is evident that the conventional grounds of not affording a reasonable opportunity, not adhering to the principles of natural justice etc. are not available to the appellant.

7. The learned counsel appearing for the appellant, however, would urge that, clauses 367 to 389 of the Tamil Nadu Electricity Board Manual Vol.1, (in short Manual), does not speak about sharing of responsibility and loss with the Stores custodian. In other words, it was argued that sharing of responsibility with the Stores custodian, M Section is not contemplated in the above referred clauses and the appellant cannot be held liable for the same. The learned counsel further pointed out that the contractors to whom the supplies should have been made, have not made any complaint about the non-availability of the scraps, as quantified in the Sale order or the Release order, either to the Stores Supervisor or to the Store custodian or even to the appellant.

8. Yet another point raised by the learned counsel was that equal amount of shortage of M.S.Scraps was already retrieved from the same yard, because of which the appellant cannot be attributed and punished for recovery of the value of M.S. Scraps.

9. Clause 367 of the Manual deals with general administration of Stores. Clause 369 reads as follows:

369. For this purpose, the Divisional Engineers are generally held responsible for the stores situated in their area and they are enjoined to acquaint themselves with the stores on hand and their requirements. The Stores Superintendent or Assistant Engineer/Stores is responsible to review the balances of all stores in the system every month and bring to notice of the Divisional Engineers any stores falling short with a view to ascertain their requirements. The Superintending Engineer shall be posted with the information on the requirements of the respective divisions and the availability of stores and the action taken for the balance every month by the Stores Superintendent or Assistant Engineer, Stores. It



should be seen that no works are held up and supply delayed due to any consumer for want of stores. This requires careful forecast on the part of the Officer concerned.

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10. A reading of the above clause, would go to show that the Superintending Engineer, shall be posted with the information about the availability of Stores and the action taken for the balance, every month by the Stores Superintendent or the Assistant Engineer concerned. The appellant, who is the Stores Supervisor, therefore, has a bounden duty to update the Superintending Engineer about the balance stock, every month. It is not the case of the appellant that he was updating information to his higher officer.

11. Further, clauses 373 to 376 deals with custody of stores. Clause 373, reads thus:

373. Large stores requiring whole-time work are held in the custody of the Storekeepers appointed for the purpose. In other cases, they are in the custody of the Supervisors or Junior Engineers, as the case may be.

12. The above clause specifically fixes the responsibility of having custody of the Stores with the Store Supervisor or Junior Engineer. Therefore, the argument of the appellant that the Stores Supervisor cannot be held liable for the loss caused, is unacceptable.

13. The first order passed by the third respondent dated 07.01.2005, has directed stoppage of annual increment for a period of one year with cumulative effect inclusive of the period spent on leave and 40% of the value of the materials be recovered in 29 installments at the rate of Rs.3,570/- per month and the 30th installment at the rate of Rs.3,523/- (totaling to Rs.1,07,053/-) commencing the recovery from January 2005 onwards.

14. On appeal by the appellant herein, the second respondent had passed an order on 31.01.2007. In the above said order, considering the fact that the appellant had reached the age of superannuation on 31.05.2007, ordered to recover the amount in four installments at the rate of Rs.3,570/- per month commencing from February, 2007 and the balance to be recovered from his DCRG to be paid on his superannuation on 31.05.2007.

15. The learned counsel appearing for the Board, furnished a copy of the proceedings dated 19.07.2005 in which, one R.Chinnadurai, Stores Custodian I Grade, Ennore Thermal Power



Station was placed under suspension and after due enquiry, 60% of the value of the materials found shortage, be recovered from him in equal installments commencing from January, 2005. The writ petition in W.P. No.7507/2005 preferred by the said Chinnadurai, who was also punished for the same act as that of the appellant, was dismissed on 07.03.2005.

16. It is also well settled that the scope of High Court to interfere with the findings of the Enquiry Officer in writ jurisdiction under Article 226 of the Constitution of India is very limited. This court, cannot sit in appeal over the findings of the authority assuming the role of the appellate authority. The interference by High Court in those matters, is possible only when there is a substantial evidence to show that on the available material, the findings recorded by the enquiring authorities could not have been reached by any ordinary prudent man or the findings were perverse.

17. In this case, at every stage, the appellant was given an opportunity and after a detailed enquiry, the punishment was imposed proportionately considering his designation. Therefore, when the findings of the disciplinary authority is immuned from interference within the limited scope of power of judicial review available to this court, the reasonings given by the learned single Judge is correct, which does not warrant any interference in this writ appeal.

18. In view of the above, the writ appeal is dismissed. However, there is no order as to costs.

Sd/-

Assistant Registrar(CS IX)

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Sub Assistant Registrar

Asr

To

1. The Chairman,
Tamil Nadu Electricity Board,
Anna Salai, Chennai - 600 002.
2. The Chief Engineer,
Ennore Thermal Power Station,
Tamil Nadu Electricity Board,
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Now working at Chennai Electricity
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Ambattur, Chennai.

+1cc to Mr.P.Subramanian, Advocate, S.R.No.44444

W.A.NO.1473 OF 2021

BR(CO)
PBS/28/09/2021