



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.11.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S. SRIMATHY

W.P (MD) No.22311 of 2015

G. Ponnupandy

:Petitioner

..VS..

1.The Chief Engineer (Distribution),
TANGEDCO,
Madurai Region,
Madurai - 625 007.

2.The Superintending Engineer,
TANGEDCO,
Dindigul Distribution Circle,
Dindigul.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order of punishment passed by the 2nd respondent proceeding in Ku.No.028881/ 580/NiPi3/Ni.U.2/Ko.O.Na/ 2013-4, dated 30.04.2014 and the consequential impugned order passed by the 1st respondent in his proceedings in 009228/502/D.3/2014-1, dated 23.12.2014, quash both as illegal and consequently directing the respondents to settle all the retirement and other benefits to the petitioner forthwith.

For Petitioner	: Mr. S. Loius
For respondents	: Mr. T. Sakthikumaran
	Standing counsel

O R D E R

The petitioner has filed challenging the final order, dated 30.04.2014 passed by the 2nd respondent and the consequential order, dated 23.12.2014, which was passed by the appellate authority.



2. The brief facts of the case are that the petitioner joined in the respondent Corporation as Temporary Casual Labour on 16.05.1971, was made permanent in the post of helper on 01.01.1977. Thereafter, he was promoted as Assistant Draughtsman in Civil / Construction wing, then as Draughtsman, then as Junior Engineer / Electrical Grade - II on 30.02.1992 and then Junior Engineer / Electrical Grade-I on 17.02.1997. While the petitioner was working as a Junior Engineer Grade - I, Rural Kodaikanal has committed some irregularities. Therefore, the second respondent issued a show cause notice, dated 02.09.1997 wherein the allegations are:

"i) That I had received a sum of Rs.600/- from the Manager of Hill Country Holiday Resorts India Limited, Kodaikanal through one I. Muthusamy, Lineman and that was not paid to the Electricity Board Account and failed to issue receipt for the same. I had retained the amount from 29.04.11997 to 15.07.1997 and thereby committed temporary misappropriation of money.

ii) That I failed to collect money from the disconnected service connection No.A 386, however gave reconnection to the said service connection on 29.04.1997 itself, it is against the Rules and Regulations of the Board.

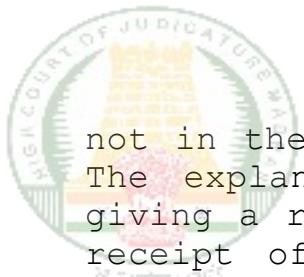
(iii) That I had received a sum of Rs.600/- from the consumer service Connection No.386 on 29.04.1997 and gave receipt for Rs.284/- being the consumption charge for the moonth of 2/97 and 4/97 in Receipt No.MNA 20792, dated 15.05.1997 and I failed to return Rs.316/- to the consumer and had misappropriated the said amount."

3. The second respondent directed him to submit the explanation within 7 days. Since the petitioner was transferred he sought basic documents that was leading to framing charges. The second respondent received a complaint from the Manager of Hill Country Holiday Resorts India Limited, Kodaikanal, wherein in the complaint it is stated that the petitioner demanded money when they did not pay the demand, the petitioner started troubling the consumer. The petitioner submitted his explanation on 27.09.1997 refuting the charges. Thereafter, a charge memo issued on 21.11.1997, and then enquiry Officer was appointed. The petitioner submitted the reply to the charge memo on 05.12.21997 denying all the charges. The departmental witnesses were examined and cross examined and the adequate opportunity was granted to the petitioner. Thereafter, the Enquiry Officer submitted his report



holding the charges were not proved. But, the Enquiry Officer has stated the Manager who preferred the complaint did not appear before the Enquiry Officer to prove his complaint. In spite of several chances the Manager did not appear. Hence, the second respondent issued a show cause notice, dated 05.05.2001 and to submit his reply since the second respondent is differing from the Enquiry Officer's finding with regard to the charges 1 and 2. The second respondent has relied on the preliminary enquiry conducted by the Board prior to the issuance of show cause notice and has relied on the statement of the Manager. The second respondent has stated that the charge No.3 is similar to charge 1 and both are interconnected and held both the charges are proved. For this show cause notice, the petitioner has submitted a reply on 25.07.2001 requesting to drop the charges as there is no material or documents to prove the same. The petitioner has also pointed out the statement of Lineman viz., I Muthusamy completely differs from the preliminary enquiry than that was given before the Enquiry Officer. The second respondent issued a second show cause notice dated 23.12.2013 as the proceedings were withheld in view of the earlier punishments imposed upon the petitioner in respect of another charge. The second show cause notice was issued by clubbing another enquiry proceedings which was withheld by the Department. The petitioner submitted an explanation on 20.01.2014 stating the charges are baseless and in order to wreck vengeance against the petitioner the same was issued. But the second respondent imposed punishment vide order, dated 30.04.2015 thereby imposing stoppage of increment for one year with cumulative effect. Aggrieved over the petitioner preferred an appeal to the first respondent on 30.05.2014. Both the respondents 1 and 2 have not taken into account delinquency happened 13 years before, the first respondent has confirmed the punishment in the appeal. Aggrieved over the present Writ Petition is filed.

4. The respondents have filed a counter stating that the charges are grave and the allegations of misappropriation of money cannot be entertained. In the preliminary enquiry, the Manager of the Hill Country Holiday Resort, Kodaikanal has given a statement that he has paid a sum of Rs.600/- towards current consumption charges on 29.04.1997 through the Board witness viz., I Muthusamy, Wireman in the presence of the petitioner. The receipt for token of receiving money has been given only for Rs.284/- on 15.05.1997 that too only after his insistence on various occasions and the balance amount was not returned. In the domestic enquiry, the said Muthusamy has distinctly admitted that an amount of Rs. 600/- was given by the Manager and the said Money was handed over to the petitioner on the same day. Besides, service connection No.386 has given only for Hill Country Holiday Resorts, Kodaikanal and

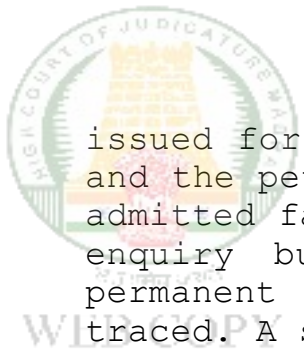


not in the name of Natarajan as per the findings of the enquiry. The explanation of the petitioner is not convincing and after giving a reasonable opportunity, the enquiry was concluded. After receipt of the enquiry report and the findings of the Enquiry Officer along with other connected records, the disciplinary authority gone through the connected records carefully, disagreed with the Enquiry Officer's report and came to the conclusion that the charges 1 and 2 are proved. Again an opportunity was granted to submit the explanations since the appointing authority disagrees with the enquiry report. Since the petitioner was already dismissed from service on 27.08.2001 in pursuance of another set of disciplinary proceedings then the present disciplinary proceedings was put on hold until the disposal of W.P (MD).No.854 of 2002. This Court while disposing the said Writ Petition has held that the petitioner has already attained superannuation on 31.12.2008, the third respondent shall conduct fresh enquiry after giving an adequate opportunity to the petitioner. Thereafter, the petitioner was reinstated into service and fresh enquiry was ordered. The petitioner was permitted to retire on 31.08.2018 without prejudice to the disciplinary proceedings. The disciplinary proceedings was conducted under Rule 9(2)(a) of the Tamil Nadu Pension Rules. Thereafter, the punishment of stoppage of increment for one year with cumulative effect was imposed.

5. Heard Mr. S. Louis, learned counsel appearing for the petitioner and Mr. T. Sakthikumaran, learned counsel appearing for the respondents and perused the materials available on record.

6. The petitioner states that the Enquiry Officer has granted several opportunities to the Manager of Hill Country Holiday Resorts India Limited, Kodaikanal. In spite of several opportunities the Manager did not appear before the Enquiry Officer to prove the complaint. Therefore, the Enquiry Officer has come to the conclusion that the Manager did not appear and that it cannot be said the charges are proved. The Enquiry Officer has taken the wireman's deposition also wherein the Wireman has differed from the original statement and therefore, the Enquiry Officer has held charges were not proved.

7. The appointing authority has deviated from the report of the Enquiry Officer. The reason given is that in the preliminary enquiry there was a prima facie case against the petitioner. It is evident from the counter also in paragraph 17 of the counter it has been stated that the Manager of the Hill Holiday Resort, who attended preliminary enquiry has deposed that the amount of Rs.600/- was paid for current consumption charges to the aide Muthusamy in the presence of the petitioner and receipt



issued for Rs.284/- alone and that too after the lapse of 16 days and the petitioner has also refunded the balance amount. It is an admitted fact that the Manager did not participate in the domestic enquiry but the reason given as the Manager was not having permanent residential address and is whereabouts could not be traced. A specific stand of the respondents is that

"it is not necessary that every person who was examined in the preliminary enquiry should be examined at a regular enquiry though it is incumbent on the Enquiry Officer to examine at the regular Enquiry any particular witness previously examined, whom the officer charges are specifically asked should be examined. But the enquiry summons sent to the said complainant on various occasions was returned by the postal authorities stating that the whereabouts of the addressee is not known."

8. This Court holds that the reason adduced by the respondents is not acceptable. The enquiry report states charges are not proved, but the respondents relies on the preliminary enquiry report, which indicate the attitude of the respondents and this court holds that the enquiry is an empty formality and the respondents have preconceived notion. Therefore, the respondents plea are rejected. As far as the evidence of said Muthusamy is concerned, the respondents simply states that the Manager has handed over Rs.600/- to the said Muthusamy and it was not handed over to the petitioner directly, interestingly no action was taken against the said Muthusamy.

9. For all these reasons, the impugned order passed by the respondents is set aside and the Writ Petition is allowed and the punishment of stoppage of increment of one year with cumulative effect is set aside and the respondents are directed to settle the terminal benefits, if the petitioner is otherwise eligible, within a period of six weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

trp



To

1.The Chief Engineer (Distribution),
TANGEDCO,
Madurai Region,
Madurai - 625 007.

2.The Superintending Engineer,
TANGEDCO,
Dindigul Distribution Circle,
Dindigul.

W.P (MD) No.22311 of 2015
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