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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESEVED ON: 03.02.2022

DELIVERED ON: 16.02.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.Nos.18955 and 24240 of 2011
and W.P.No.29737 of 2012

A.Murugesu Pandey .. Petitioner in all W.Ps.

vs.

1.The Chairman,
Tamil Nadu Electricity Board,
800, Anna Salai,
Chennai-600 002.

2.The Chief Engineer (Distribution),
Tamil Nadu Electricity Board,
Tirunelveli Division,
Tirunelveli-11.

3.The Superintending Engineer,
Tamil Nadu Electricity Board,
Tiruvannamalai,
Tiruvannamalai District.

.. Respondents 1 to 3
in W.P.Nos.18955 & 24240 of 2011
Respondents 2 to 4
in W.P.No.29737 of 2012

4.The Internal Audit Officer,
Tamil Nadu Electricity Board,
O/o. The Chief Engineer,
Villupuram, Villupuram District

.. Respondent No.4
in W.P.No.24240 of 2011

5.The Secretary,
Tamil Nadu Electricity Board,
800, Anna salai, Chennai.

.. Respondent No.1
in W.P.No.29737 of 2012

Prayer in W.P.No.18955 of 2011: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records on the file of the second respondent bearing No.18571/616NEP/C2/2005-29 dated 28.06.2007 and the consequential orders passed by the first



respondent bearing (PER.) B.P.(Ch) No.31 dated 21.05.2010 and (Per.) FB/TANGEDCO Pro.No.10 dated 16.07.2011 and quash the same.

Prayer in W.P.No.24240 of 2011: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records on the file of the respondent bearing Audit Slip No.22 dated 10.06.2009 and the consequential order passed by the third respondent bearing Memo No.Adm.1/A1/F.AEE/2011 dated 17.09.2011 to quash the same and consequently direct the respondents 1 to 4 to pay the annual increment regularly w.e.f. 01.10.2007 inclusive of three increments repayable on 28.06.2010.

Prayer in W.P.No.29737 of 2012: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records on the file of the first respondent bearing (per) CMD TANGEDCO Proceedings No.57 dated 17.03.2012 to quash the same as illegal and invalid and consequently direct the first respondent to include the petitioner's name in the panel or additional panel or supplementary panel in the proper order of ranking as No.1 in the panel of officers suitable for promotion as Executive Engineers / Electrical for the year 2011-2012 in Division III category-3 of Class-I as per the existing seniority and to promote the petitioner with effect from the date of the petitioner's immediate juniors who have already been promoted with all seniority and consequential benefits.

For Petitioner : Mr.R.Viduthalai, Senior Counsel
in all W.Ps. for Mrs.A.V.Bharathi

For Respondents: Mr.P.Subramaniam,
Standing Counsel for TNEB

COMMON ORDER

The issue involved in these writ petitions are intertwined and hence, they are taken up together for hearing and disposed of by this common order.

W.P.No.18955 of 2011

2. The facts of the case, briefly narrated, are as follows:

2.1. The lead case herein in W.P.No.18955 of 2011, wherein the petitioner challenges the order of the Chief Engineer, TNEB, Tirunelveli Division / second respondent herein dated 28.06.2007 and the consequential orders of the Chairman, TNEB / first respondent herein dated 21.05.2010 and 16.07.2011. The petitioner initially joined the service as Tester in TNEB on



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24.07.1979 and promoted as Assistant Engineer on 22.06.2007. While he was working in Tirunelveli on 11.06.2004, he was transferred to Kaiyatar. The petitioner challenged the order of transfer by filing O.S.No.993 of 2004 before the District Munsif Court, Tirunelveli.

2.2. It is averred by the petitioner that in order to substantiate that the order of transfer which was issued against the petitioner without any valid reasons, the then Chief Engineer had created a false complaint with the help of 5 women staffs of TNEB and the said complaint was fabricated for the purpose of filing counter affidavit in O.S.No.993 of 2004 on the file of the District Munsif Court, Tirunelveli and if the said complaint had been actually received as per the TNEB procedure, it would have contained the receiving number with date and seal and there is no seal, no entry has been made in the Register and also not found in the Confidential Register and even during the trial in O.S.No.993 of 2004, one other lady employee of the respondent had deposed that the then Chief Engineer created false complaint with the help of 5 women staffs and further deposed that the petitioner is innocent. On 14.09.2004, charges were framed against the petitioner for Sexual Harassment and Eve Teasing and a charge memo was issued by the second respondent.

2.3. It is averred by the petitioner that in cases involving Sexual Harassment, before initiating disciplinary proceedings, a prima facie finding has to be arrived at as regards the role of the delinquent by constituting a Complaint Committee, headed by a lady is imperative, as laid down by the Hon'ble Supreme Court in the landmark judgment in Vishaka and Others v. State of Rajasthan and Others [(1997) 6 SCC 241] and only based on the Committee Report, further course of action should be taken as regards disciplinary proceedings. In the case on hand, neither the Complaint Committee was constituted nor a report was submitted disclosing a prima facie case against the petitioner. Thus, without following the procedure for enquiring into a complaint of Sexual Harassment, for which procedure was prescribed by the Hon'ble Supreme Court in Vishaka case [(1997) 6 SCC241], B.S.Graval case [(2009) 2 SCC 210] and Medha Kotva Lele case [(2013) 1 SCC 297], as well as the Rules framed by TNEB on sexual harassment dated 08.12.1997 and the amended Rules dated 22.06.1999, the charge memo was issued on 14.09.2004.

2.4. Another charge memo was issued to the petitioner on 18.01.2005. The petitioner submitted his explanation for both the charge memos on 26.04.2005. The petitioner sought for preliminary enquiry report mandated by the rules and also sought for copies of certain documents in his representation dated 03.06.2005. However, enquiry was conducted without furnishing



any documents. Hence, the petitioner filed a writ petition in W.P.No.6322 of 2005, which was disposed of on 20.07.2005 by directing the respondents to furnish copies of documents and complete the enquiry after giving sufficient opportunity to the petitioner. However, no documents were furnished even 6 months thereafter and therefore, he once again made a representation on 21.02.2006 and sought to implement the order of this Court and also asked for personal hearing. Finally, the documents were furnished to the petitioner on 29.03.2006 and the enquiry was closed without hearing on 12.04.2006.

2.5. On 05.05.2006, an order of punishment was passed imposing a punishment of reduction of 3 stages of pay for 3 years with effect from the date of the order affecting future increment. Since no opportunity was given to the petitioner to participate in the enquiry before passing the punishment order, the petitioner challenged the punishment order dated 05.05.2006 in W.P.(MD)No.4264 of 2006. The said writ petition was allowed on 06.03.2007, by setting aside the order dated 05.05.2006 with a direction to furnish a copy of the enquiry report to the petitioner and to give sufficient time to submit his reply and also to provide personal hearing to the petitioner as enumerated in the Service Rules of TNEB. The authority proceeded to pass an order of punishment in disregard to the order passed in W.P.(Md) No.4264 of 2006.

2.6. On 03.04.2007, the petitioner gave a detailed reply denying the charges. As regards the first charge, the petitioner has specifically denied that the letter / complaint dated 7.6.2004 given are the women employees of Tirunelveli division and there are about 15 female employees working at Tirunelveli Division and the alleged letter / complaint dated 07.06.2004 was signed by only 5 employees, that too with malafide intention of an officer, who have forcibly obtained the same from them. The petitioner also stated in the reply that there is no misunderstanding with those 5 employees who have signed the alleged letter / complaint dated 07.06.2004.

2.7. In respect of the charges 2 and 3, it was alleged that in the letter dated 14.06.2004 written by the petitioner, there was a threat that the petitioner will approach the Court challenging the transfer order and that the petitioner have used defamatory language against the Superintending Engineer as well as the complainant. It is averred that the petitioner have not threatened them as alleged in the said letter and that the signature contained in the said letter was forged. The petitioner has given a detailed explanation in the representation dated 03.04.2007 regarding the charges framed against him.



2.8. On receipt of the said explanation, the second respondent on 28.06.2007, had passed an order (impugned herein) confirming the order of punishment of reduction of pay by 3 stages or 3 years and the punishment is to operate so as to affect the future increments, without taking into consideration the petitioner's reply dated 03.04.2007. It is alleged by the petitioner that the said order of the second respondent is a total non-application of mind, without following the procedures established by law and also in violation of the TNEB Service Rules and Disciplinary and Appeal Regulations.

2.9. As against the order of the second respondent, the petitioner preferred an appeal dated 12.07.2007 before the first respondent. The said appeal was not taken up by the first respondent within three months as provided in Circular Memo No.016832/DP.II/1/93-1 (Administrative Branch) dated 24.06.1993. The said appeal was rejected by the first respondent after 3 years on 30.05.2010, without giving an opportunity to the petitioner and confirmed the order of the second respondent. Against the order of the first respondent, the petitioner filed a Revision Petition before the first respondent on 30.05.2010. Pending the revision before the first respondent, the third respondent has passed an order by way of Memo No.SET/Adm-1/A-1/F.Audit/2010 dated 26.08.2010 revising the punishment on the ground that as per the audit report, the pay has been reduced for three stages from 28.6.2007 with cumulative effect and punishment completes on 28.6.2010. It is alleged by the petitioner that the said order has been passed without application of mind, without following procedures and as per the Audit Remarks and when the higher authority has imposed one punishment, the third respondent, who is a subordinate, cannot implement an order which totally lacks jurisdiction.

2.10. Aggrieved by the order of the third respondent dated 26.08.2010, the petitioner filed W.P.No.22038 of 2010 and initially an order of interim stay was granted on 11.11.2010 and subsequently, it was disposed of on 01.04.2011 with a direction to the first respondent to dispose of the revision petition dated 30.05.2010 within a period of three months strictly in accordance with law. Based on the said order, the petitioner submitted a representation to consider his case and grant an opportunity of personal hearing. In spite of the said representation, the first respondent rejected the Revision Petition dated 30.05.2010 by a non-speaking order on 16.07.2011. Challenging the aforesaid orders dated 28.06.2007 (punishment order passed by the second respondent), 21.05.2010 (rejection of Appeal passed by the first respondent) and 16.07.2011 (rejection of Revision Petition by the first respondent), the present writ petition in W.P.No.18955 of 2011 has been filed.



W.P.No.24240 of 2011

2.11. The third respondent, who initially revised the punishment order, based on the very same Audit Slip 22 dated 10.06.2009, has passed a similar modified order dated 17.09.2011 for recovery of already paid increments and has ordered to withhold increments without appreciating the final order passed by the second respondent/disciplinary authority dated 28.06.2007 and the appellate authority /first respondent dated 16.07.2011, when these orders are very much under challenge. The grievance of the petitioner is that the order of punishment issued against the petitioner only states reduction of pay by three stages for three years and there is no whisper about whether it is with cumulative effect or without cumulative effect and however, the fourth respondent had interpreted the order as though it is with cumulative effect and passed the order dated 17.09.2011 withholding totally six increments by taking it as cumulative effect. Aggrieved by the orders passed by the respondents 4 and 3 dated 10.06.2009 and 17.09.2011, W.P.No.24240 of 2011 has been filed.

2.12. In this writ petition, an interim order was granted on 02.11.2011 in WMP.No.2 of 2011 and it was made absolute on 07.08.2012 and alleging non-compliance of the said order, Cont.P.No.3159 of 2014 was filed and it was closed on 03.02.2022, by recording the submission of the both sides that since arguments were advanced in the main writ petitions, the contempt petition may not be prosecuted.

W.P.No.29737 of 2012

2.13. In this writ petition, the petitioner challenges the promotion panel from the category of Assistant Executive Engineer in which the petitioner was working to the next cadre of Executive Engineer on the ground that even after completion of the punishment period, the petitioner was not considered for promotion and it would also amount to double jeopardy. The petitioner seeking promotion as Executive Engineer by including his name in the Additional Panel or Supplementary Panel for the years 2011 and 2012 in Division III in category 3 of Class I as per the existing seniority and promote the petitioner with effect from the relevant date on which his juniors were promoted, as the punishment period was over, has filed the said writ petition.

3. In W.P.No.18955 of 2011, the second respondent has filed a detailed counter affidavit denying the averments made in the writ petition and stated that the petitioner has not cooperated for the enquiry and requested extension of time purposely and requested personal hearing and the second respondent has sent a summon to the petitioner for personal hearing on 03.10.2005, but he did not turn up for personal hearing. There are 15 employees



working at the Regional Office, where the complaint was from five women staff only, because these five women employees were accommodated in front of the chamber of the petitioner. The complaint committee has been constituted and the chair person of the Committee is one of the main complainant, since the second respondent has enquired the matter and taken action as per guidelines dated 10.09.2001. The enquiry was finalized ex-parte on 29.03.2006 and the enquiry officer submitted his findings to the second respondent/disciplinary authority on 13.04.2006 and after careful examination of the enquiry findings with connected records and the previous records of the petitioner, the second respondent awarded punishment, vide order dated 05.05.2006 reducing his pay into 3 stages for 3 years in the present basic pay with effect from the date of the order. The punishment imposed on the petitioner is one of the major punishment as per the TNEB Employees Discipline and Appeal Regulations. In the appeal before the first respondent, since there is no reason to reconsider the punishment, the appeal was rejected, vide order dated 21.05.2010. The reasons for the delay in disposing of the appeal petition was due to administrative reason.

4. It is further stated in the said counter affidavit that the punishment imposed by the disciplinary authority was reduction of pay by 3 stages for 3 years in the present basic pay with effect from the date of order and the punishment is intended to affect his future increment, but the punishment was not fully implemented against the petitioner for 3 years due to oversight and increments were sanctioned to him mistakenly. As such, audit objection was raised and ordered to recover the excess amount paid to him vide memo dated 26.08.2010 by the third respondent. If the punishment had been implemented against the petitioner immediately, the punishment would have completed on 28.06.2010, whereas the said punishment was not implemented. As such, the recovery notice issued by the third respondent was to recover the increments mistakenly sanctioned to him and the order of the second respondent was not modified by the third respondent as put forth by the petitioner.

5. The third respondent has filed a counter affidavit in W.P.No.24240 of 2011, wherein it has been stated that the order of punishment dated 28.06.2007 was issued with cumulative effect only and while imposing from the actual date of order, the increment has to be down by three stages and by virtue of the cumulative effect ordered, the petitioner will not be entitled to any increment for the next three years, which is the impact of the order of punishment. However, the petitioner has projected the case differently as if six increments was reduced contrary to the order of punishment, which is false and therefore, there is no illegality or irregularity in the impugned orders and prayed for dismissal of this writ petition.



6. Mr.R.Viduthalai, learned Senior Counsel for the petitioner made the following contentions:

(i) There is no complaint with regard to the charges levelled against the petitioner by any of the employees, atleast with regard to charges 2 and 3. There is only charge which is relatable to the so called concocted complaint dated 07.06.2004.

(ii) None of the affected employees were examined in the enquiry and their depositions were recorded.

(iii) Though the petitioner requested for relevant documents and sought for personal enquiry, he was set exparte and the punishment order was passed exparte.

(iv) The law is well settled that even if the order is passed exparte, the charges have to be proved by adducing necessary evidence to prove the charges on the part of the management. In an ex-parte enquiry, there has to be evidences and the charges have to be proved. However, the enquiry officer proceeds on the footing that the petitioner having not appeared, the petitioner is presumed to have been guilty.

(v) Assuming that sexual harassment has taken place, then the proceedings must take place as per Vishaka Guidelines and as such, complaints must go before a Committee which must have a woman member and only on the report given by the Committee, punishment has to be implemented. Since the said procedure has not been followed, the enquiry is bad in law for non-constitution of the Complaint Committee and for the service regulations of TNEB.

(vi) It is also well settled legal position that in exceptional circumstances, a fresh enquiry has to be conducted, but in the case on hand, such an option is not available to the Management, as the alleged misconduct relates to the year 2004 and the petitioner had retired from service in the year 2016 and 18 years have lapsed since then.

(vii) The alleged incident alleged to have occurred in the year 2004 and the respondent / TNEB took 3 years to dispose of the appeal in the year 2010 and on this ground also, the petitioner is entitled to the relief, without remitting the matter for fresh inquiry.

The learned counsel for the petitioner, in support of his contentions, have placed reliance on the following decisions:

(1) Vishaka and others v. State of Rajasthan and Others [(1997) 6 SCC 141] ;

(2) Medha Kotwal Lele and Others v. Union of India and



Others [(2013) 1 SCC 297]; and

(3) Nisha Priya Bhatia v. Union of India [(2020) 13 SCC 56]

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7. Mr. P. Subramanian, learned Standing Counsel for TNEB / respondents has drawn the attention of this Court to the counter affidavit of the second respondent and would submit that a Complaint Committee has been constituted and the Chairperson of the Committee is one of the main complainant and the second respondent had enquired the matter and taken action as per the guidelines prevailed in (per) BP (Ch) No.238 (Sectt.Br.) dated 10.09.2001 and the second respondent had adopted the procedure as per the rules and hence the enquiry was finalized on 29.03.2006 as exparte and the enquiry officer submitted his findings to the second respondent on 13.04.2006 and after careful perusal of the enquiry findings with connected records and the previous service records of the petitioner, the second respondent accepted the enquiry findings and awarded punishment vide Memo No.18571/616/NIPI/C2/2005-27/dated 05.05.2006 as reducing his pay into 3 stages for 3 years in the present basic pay with effect from the order. The petitioner's contention that the punishment imposed on him does not provide whether it is with / without cumulative effect is not correct. It is very clear that the major punishment of pay reduced by three stages with immediate effect means with cumulative effect and the punishment is intended to affect his future increment. As far as the appeal and revision petitions are concerned, the first respondent did not find any valid reason to reconsider the punishment order and , rightly rejected the appeal and revision petition filed by the petitioner and therefore, learned Standing Counsel prays for dismissal of these writ petitions.

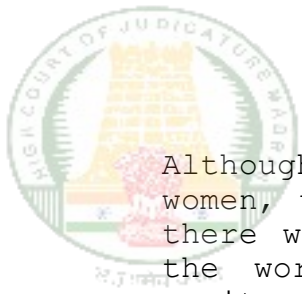
8. The following points arises for consideration in these writ petitions:

(i) Whether the guidelines and norms prescribed in Vishaka Case (cited supra) has been scrupulously followed before passing the impugned order of punishment?

(iii) Whether the impugned order of punishment passed by the disciplinary authority and the rejection of appeal and revision by the appellate authority are sustainable in law?

Question No.1

9. Certain values of life, with which we Indians were always proud to associate ourselves, are fast on the decline. Respect for religion and love for humanity seem to be things of the past. Disrespect for women has also been on the increase.



Although several legislation saw the light of the day to protect women, the country was lagging behind in one area. Noticing that there was no law to protect women from harassment and abuse at the workplace, attempts were made to restore some sense of sanity in this behalf. This resulted in the path breaking judgment being delivered by the Supreme Court in Vishaka v. State of Rajasthan, reported in (1997) 6 SCC 241. Inter alia, it was held therein that working women, in workplaces, have the right to gender equality, to work with dignity and to a working environment that is safe and protected from sexual harassment or abuse. In the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at workplaces, the Court laid down guidelines and norms for due observance at all workplaces or other institutions, until enactment of a legislation for the purpose.

10. Acting in compliance with the directions contained in Vishaka case (supra), certain employers did introduce amendments in the conduct, discipline and appeal rules to deal with instances of sexual harassment and abuse of women at workplace, if at all, with iron hands. The Central Civil Services (Classification, Control and Appeal) Rules, 1971 [hereafter the CCS (CCA) Rules] and the Railway Servants (Discipline and Appeal) Rules, 1968 immediately come to mind, where amendments were introduced to deal with allegations of sexual harassment of women at workplaces. More than a decade and a half after Vishaka (supra), saw the advent of a special law on the subject of sexual harassment. The Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereafter the 2013 Act) came into force from April 23, 2013.

11. Despite the law with stringent provisions therein being put in place, the same has not deterred egotist men from exposing themselves to be hauled up and proceeded against thereunder. There have been quite a few instances of men indulging in sexual harassment of women at workplace being dealt with under the 2013 Act and suffering punishment. At the same time, as is peculiar to our country, it does not take much time to misuse a beneficent piece of legislation, brought to protect a class, for personal gains or to wreak vengeance. It has been experienced that false accusations to tarnish the image of a man of character and who is upright and honest in his dealings have not stayed too far. It is, therefore, an onerous task for the persons responsible to enforce the 2013 Act in its letter and spirit to separate the grain from the chaff. While the need to protect women from sexual harassment and abuse at workplaces can hardly be overemphasized, those entrusted to deal with such allegations of sexual harassment and abuse have to proceed



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strictly in accordance with the laid down norms, lest an innocent man and a victim of circumstances is held guilty. It is axiomatic that any punitive measure including dismissal/removal from service of a man holding a responsible office found guilty of sexual harassment and abuse of a woman at the workplace leaves an indelible stamp of ignominy on his forehead, which is hard to obliterate. People acquainted with such a man may shun his company, fearing that women folk of their families could also run the risk of being harassed and abused. Such an order of punishment, more often than not, leaves behind a stigma with which he may have to survive till the end of his life and thereby his very existence could be at stake. It is, therefore, imperative to tread with caution and circumspection so that while justice is rendered to a victim of sexual harassment, justice is also rendered to the man accused of the same. It is the due process that undoubtedly needs to be adhered to, so that a party to the proceedings has little reason to believe that he or she did not receive just justice.

12. Here, this Court is tasked to decide whether the guidelines and norms prescribed in the landmark judgment in Vishaka case (supra) have been scrupulously followed while enquiring into a complaint of sexual harassment against the petitioner.

13. At this juncture it is useful to refer to the decision of the Hon'ble Apex Court in Vishaka and Ors v. State of Rajasthan & Others [(1997) 6 SCC 141], wherein it has been held as follows:

"The GUIDELINES and NORMS prescribed herein are as under:-

HAVING REGARD to the definition of 'human rights' in Section 2(d) of the Protection of Human Rights Act, 1993, TAKING NOTE of the fact that the present civil and penal laws in India do not adequately provide for specific protection of women from sexual harassment in work places and that enactment of such legislation will take considerable time, It is necessary and expedient for employers in work places as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women:

1. Duty of the Employer or other responsible persons in work places and other institutions:

It shall be the duty of the employer or other responsible persons in work places or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or



prosecution of acts of sexual harassment by taking all steps required.

2. Definition:

For this purpose, sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as:

- a) physical contact and advances;
- b) a demand or request for sexual favours;
- c) sexually coloured remarks;
- d) showing pornography;
- e) any other unwelcome physical verbal or non-verbal conduct of sexual nature.

Where any of these acts is committed in circumstances where under the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work whether she is drawing salary, or honorarium or voluntary, whether in government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.

3. Preventive Steps:

All employers or persons in charge of work place whether in the public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the following steps:

- (a) Express prohibition of sexual harassment as defined above at the work place should be notified, published and circulated in appropriate ways.
- (b) The Rules/Regulations of Government and Public Sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.



(c) As regards private employers steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.

(d) Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work places and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

4. Criminal Proceedings:

Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.

In particular, it should ensure that victims, or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

5. Disciplinary Action:

Where such conduct amounts to mis-conduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.

6. Complaint Mechanism:

Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints.

7. Complaints Committee:

The complaint mechanism, referred to in (6) above, should be adequate to provide, where necessary, a Complaints Committee, a special counsellor or other support service, including the maintenance of confidentiality.

The Complaints Committee should be headed by a woman and not less than half of its member should be women.

Further, to prevent the possibility of any under pressure or influence from senior levels, such



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Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment.

The Complaints Committee must make an annual report to the government department concerned of the complaints and action taken by them. The employers and person in charge will also report on the compliance with the aforesaid guidelines including on the reports of the Complaints Committee to the Government department.

8. Workers' Initiative:

Employees should be allowed to raise issues of sexual harassment at workers meeting and in other appropriate forum and it should be affirmatively discussed in Employer-Employee Meetings.

9. Awareness:

Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in suitable manner.

10. Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and person in charge will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.

11. The Central/State Governments are requested to consider adopting suitable measures including legislation to ensure that the guidelines laid down by this order are also observed by the employers in Private Sector.

12. These guidelines will not prejudice any rights available under the Protection of Human Rights Act, 1993.

Accordingly, we direct that the above guidelines and norms would be strictly observed in all work places for the preservation and enforcement of the right to gender equality of the working women. These directions would be binding and enforceable in law until suitable legislation is enacted to occupy the field. These Writ Petitions are disposed of, accordingly."

Clause (6) of the guidelines in the aforesaid decision clearly prescribes that complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim and Clause (7) prescribes that a complaint of sexual harassment at workplaces should be enquired into by a duly



14. It is to be pointed out that at this juncture, though in compliance of the Guidelines prescribed under Vishaka's case (cited supra), "The Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act, 2013 came to be enacted with effect from April 2013, the procedures laid down in the said enactment cannot be applied to the case on hand, since the alleged complaint in this case said to have lodged on 14.09.2004 and the entire disciplinary proceedings were concluded during the year 2007 and the appeal and revision filed by the petitioner had also ended in rejection during the year 2011.

Question No.2

<https://hcservices.ecourts.gov.in/hcservices/>



17. The petitioner submitted his explanation to the charge memo on 26.04.2005 denying the charges. Pending enquiry, the petitioner sought for certain documents, but the enquiry officer hastily concluded the enquiry and sent the report to the Disciplinary Authority. Challenging the same, the petitioner filed W.P.(Md)No.6322 of 2005 and vide order dated 20.07.2005, this Court had disposed of the writ petition with a direction to give copies of documents and complete the enquiry proceedings after giving sufficient opportunity to the petitioner within four weeks. In spite of specific direction given by this Court, the documents were finally furnished to the petitioner only on 29.03.2006. However, the Enquiry Officer submitted the Enquiry Report dated 12.04.2005 to the second respondent holding that all the 3 charges were proved and therefore, the second respondent passed the punishment order dated 05.05.2006, imposing punishment of reduction of 3 stages pay for 3 years with effect from the date of the order. Challenging the same, the petitioner filed W.P.(MD)No.4264 of 2006, which was allowed by this Court and directed the respondent to pass orders afresh, by furnishing the petitioner a copy of the enquiry report to submit his reply and provide opportunity of personal hearing as enumerated in the Service Rules of TNEB. Pursuant to which the petitioner submitted his reply dated 03.04.2007, specifically denying the charges and on 28.06.2007, the second respondent / Disciplinary Authority has confirmed the order of punishment of reduction of pay by three stages for three years in the present pay with effect from the date of the order.

18. At this juncture it is pertinent to note that only after intervention of this Court on two occasions, the documents and the Enquiry Report were furnished to the petitioner and opportunity of personal hearing was afforded to the petitioner before passing the order of punishment. A perusal of the complaint would disclose that there is no seal of the respondent and a perusal of the charge memo dated 14.09.2004 would also disclose that under what provisions of law or the under what service regulations or rules, the petitioner has been charged has not been spelt out. The charge memo simply contained the brief explanation of charges and the petitioner was simply asked to submit his explanation within ten days from the date of receipt of the order.

19. A perusal of the impugned order passed by the second respondent dated 28.06.2007 would disclose that the second respondent/Disciplinary Authority has simply accepted the findings of the enquiry officer, without assigning valid reason, but simply reproduced the earlier order passed by the respondent dated 05.05.2006, which was set aside by this Court in W.P.(MD) No.4264 of 2006, vide order dated 06.03.2007, wherein the learned Standing Counsel for the respondents had admitted that



no opportunity was granted to the petitioner. Thereafter, in pursuant to the order passed by this Court, the petitioner has submitted his explanation to the Enquiry Officer report on 03.04.2007.

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20. On going through the impugned order, it could be seen that the second respondent/Disciplinary Authority has merely reiterated that the Hon'ble High Court in its order dated 06.03.2007 has directed to give opportunity to the petitioner to submit his explanation and after examining the said explanation stated that there is no ground to consider the said explanation and passed the impugned order of punishment on 28.06.2007, by imposing punishment of reduction of pay by three stages for three years in the pay with effect from the date of the order, without clearly spelling out whether it is with cumulative effect or without cumulative effect. Only after passing audit objection, the respondents interpreted the order as if it is with cumulative effect and ordered recovery of excess payment to the petitioner as per Revenue Recovery Act, which is challenged in W.P.No.24240 of 2011. According to the learned Senior Counsel for the petitioner, before passing the impugned order of recovery, the petitioner was not afforded with any opportunity and therefore, the same has been passed in violation of the principles of natural justice.

21. The order passed by the appellate authority / first respondent in the appeal filed by the petitioner would disclose that the appellate authority has not assigned any reasons for rejecting the appeal but simply stated that the appeal petition has been carefully examined with connected records and as the charged person did not adduce any valid point to mitigate the proven charges, but only accused the enquiry officer and the way of enquiry conducted and since there was no valid reason to reconsider the punishment ordered, it was decided to reject the appeal as devoid of merits. The same reasoning has been given by the first respondent in the revision petition filed by the petitioner. Therefore, this Court is of the view that the impugned order of punishment passed by the second respondent / Disciplinary Authority as well as the rejection of appeal and revision by the first respondent / Appellate Authority are cryptic and non-speaking order and therefore, the same are liable to be set aside.

22. In C.Devendhiran Vs. The Deputy Inspector General of Police, Villupuram Range (W.P.No. 150 of 2013) reported in 2020 (2) WLR 332, wherein I had an occasion to deal with the same issue in detail and held that the order passed by the appellate authority is a cryptic/non-speaking order. The relevant portion of the order is extracted hereunder;



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"13. The Learned Senior Counsel for the Writ Petitioner has relied upon the decision reported in 1989 writ law reporter 274 considered rule 6(1) of TNPSS (D&A) Rules and it has been held as follows at para 3 and 4 of the said judgment.

"The rule enjoins the concerned authority to consider the three aspects set out therein specifically. Unless the appellate authority considers them it cannot be said that it has carried out its duties properly. The Supreme Court had occasion to discuss a similar question under R.27(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. Dealing with the word 'consider' used in the said rule, the Supreme Court observed that the word 'consider' implies due application of mind-vide R.P.Bhatt v. Union of India. The following paragraph in the above judgment of the Supreme court can be usefully referred to with advantage-

"The word 'consider' in R.27(2) implies 'due application of mind'. It is clear upon the terms of R.27(2) that the appellate authority is required to consider (1) whether the procedure laid down in the Rules has been complied with; and if not, whether such non-compliance has resulted in violation of any provisions of the Constitution or in failure of justice; (2) Whether the findings of the disciplinary authority are warranted by the evidence on record; and (3) Whether the penalty imposed is adequate and thereafter pass orders confirming, enhancing etc, the penalty, or may remit back the case to the authority which imposed the same. R27(2) casts a duty on the appellate authority to consider the relevant factors set forth in clauses (a), (b) and (c) thereof.

There is no indication in the impugned order that the Director General was satisfied as to whether the procedure laid down in the Rules had been complied with and if not, whether such non-compliance had resulted in violation of any of the provisions of the Constitution or in failure of justice. We regret to find that the Director General has also not given any finding on the crucial question as to whether the findings of the disciplinary authority were unwarranted by the evidence on record. It seems that he only applied his mind to the requirement of clause (2) of R.27(2) viz., whether the penalty imposed was adequate or justified in the facts and circumstances of the present case. There being non-compliance with the requirements of R.27(2) of the Rules the impugned



order passed by the Director General is liable to be set aside."

14. In another judgment of this Court in the case of K.Kandasamy Vs. Deputy I.G. of police, reported in 2006 (4) MLJ 1382 in para 7, this Court has held as follows :-

"It is seen from the aforesaid portion of the impugned order that the Appellate Authority did not deal with any of the grounds of appeal raised by the petitioner. A departmental appeal is a continuation of the original proceedings. It is needless to point out that the last opportunity available for a delinquent, to canvass his case on merits, is at the appellate stage. After the appeal, a delinquent loses his right to challenge any disciplinary proceedings on merits, since the scope of interference on a revision or on a writ petition is very limited. Therefore, the rules themselves contemplate Appellate Authorities to go into the factual details and consider all the grounds of appeal before deciding an appeal. Unfortunately, the first respondent has chosen to dismiss the appeal by a non-speaking order and hence, the Appellate Authority's order is liable to be set aside."

15. It is also pertinent to refer the Judgment of the Hon'ble Supreme Court in Narinder Mohan Arya Vs. United India Insurance Company Ltd, reported in 2006(4) SCC 713, wherein the Hon'ble Supreme Court has held that even when an Appellate Authority agrees with the findings of the Disciplinary Authority in a departmental enquiry, it should give reasons so as to enable the Writ Court to ascertain there was an application of the mind as required by the relevant rules. The relevant portion is extracted hereunder;

"33. An appellate order if it is in agreement with that of the disciplinary authority may not be a speaking order but the authority passing the same must show that there had been proper application of mind on his part as regard the compliance of the requirements of law while exercising his jurisdiction under Rule 37 of the Rules."

16. In view of the decisions cited supra and Rule 6(1) of Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules, it is clear that the appellate authority is the final fact finding authority and he is expected to assess the evidences available on record by due application of mind and also record the reasons even though not elaborately,



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but indicating as to how the appellate authority has satisfied himself with the reasons given by the disciplinary authority. When Rule 6 (1) of Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules mandates that the appellate authority should consider all those materials, in the instant case, no such finding has been given by the appellate authority except simply saying that he has perused some documents and came to the conclusion that the punishment awarded by the 1st respondent is not an excessive and rejected the same.

17. Considering the facts and circumstances of the case and also the decisions rendered by the Hon'ble Supreme Court and this Court cited supra, this Court with no hesitation, has come to the conclusion that the second respondent/ appellate authority has passed a cryptic order/non-speaking order without considering the issues that were raised by the petitioner in his Appeal. As rightly pointed out by the learned senior counsel for the petitioner, the order of the appellate authority/ 2nd respondent is not in conformity with the rule 6(1) of TNPSS (D&A) Rules.

18. In fine, the impugned order in RC. No.047950/AP1(2)/2000, dated 03.07.2010 passed by the second respondent in respect of P.R. No. 67/ 2009 is quashed and the matter is remitted to second respondent to consider afresh and to pass orders thereon, on merits and in accordance with law, within a period of twelve (12) weeks from the date of receipt of the copy of this order."

19. With the above observations and directions, this writ petition is disposed of. No costs."

Keeping in mind the ratio laid down in the above cited decision and in view of the reasons assigned above, this Court has no hesitation to hold that the impugned order passed by the Disciplinary Authority as well as the orders rejecting the appeal and revision passed by the first respondents are liable to be set aside and the matter deserves to be remitted back to the disciplinary authority for conducting disciplinary proceedings afresh, from the stage of submission of explanation by the petitioner to the Enquiry Officer Report on 03.04.2007 and to pass appropriate orders.

23. Accordingly, the impugned orders passed by the second respondent bearing No.18571/616/NEP/C2/2005-29 dated 28.06.2007 and the consequential orders passed by the first respondent bearing (PER.) B.P.(Ch) No.31 dated 21.05.2010 and (Per.)



FB/TANGEDCO Pro.No.10 dated 16.07.2011 are set aside and the matter is remitted back to the disciplinary authority / second respondent for fresh consideration. The second respondent / disciplinary authority shall conduct disciplinary proceedings from the stage at which the petitioner has submitted his explanation dated 03.04.2007, as directed by this Court in W.P. (MD)No.4264 of 2006 dated 06.03.2007 and after providing opportunity of hearing and after furnishing additional documents, if any, shall pass appropriate orders on its own merits and in accordance with law at an earliest, preferably within a period of six months from the date of receipt of a copy of this order. It is open to the petitioner to raise all the grounds and agitate before the Disciplinary Authority / first respondent.

24. In view of the above, W.P.No.18955 of 2011 is partly allowed. No costs. In view of setting aside the impugned orders of punishment and remanding back the matter to the disciplinary authority/second respondent for fresh consideration, the consequential order of recovery passed by the third respondent dated 17.09.2011 is set aside. Hence, W.P.No.22420 of 2011 stands allowed. No costs.

25. With regard to the prayer in W.P.No.29737 of 2012 is concerned, the same depends on the outcome of the fresh disciplinary proceedings to be initiated by the second respondent. Hence, W.P.No.29737 of 2012 stands dismissed for the present. No costs.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

Jvm

To

- 1.The Chairman,
Tamil Nadu Electricity Board,
800, Anna Salai, Chennai-600 002.
- 2.The Chief Engineer (Distribution),
Tamil Nadu Electricity Board,
Tirunelveli Division, Tirunelveli-11.



3.The Superintending Engineer,
Tamil Nadu Electricity Board,
Tiruvannamalai, Tiruvannamalai District.

4.The Internal Audit Officer,
Tamil Nadu Electricity Board,
O/o. The Chief Engineer,
Villupuram, Villupuram District.

5.The Secretary,
Tamil Nadu Electricity Board,
800, Anna Salai, Chennai-2.

+1cc to Mr.P.Subramaniam, Advocate SR.No.10135

+3ccs to Mrs.A.V.Bharathi, Advocate SR.No.9791

W.P.Nos.18955 and 24240 of 2011
and W.P.No.29737 of 2012

MT (CO)
GMY (21/03/2022)