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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.12465 of 2021
and
W.M.P.No.13249 of 2021

R.Rukmangathan

... Petitioner

Vs.

1. Tamilnadu Generation and Distribution Corporation Limited [TANGEDCO] Board, represented by its Chairman - Cum - Managing Director, Anna Salai, Chennai - 600 002.
2. The Chairman - cum - Managing Director, TANGEDCO, 144, Anna Salai, Chennai - 600 002.
3. The Chief Engineer, Distribution South, TANGEDCO, Chennai - 2.
4. The Superintending Engineer, CEDC/SOUTH-II, K.K.Nagar, Chennai - 600 078.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent-TANGEDCO Board and quashing the impugned order of the first respondent Vide (PER) FB TANGEDCO PROCEEDINGS No.15 dated 26.05.2021 confirming the order of the second respondent dated 16.10.2020 Vide (PER) CMD TANGEDCO PROCEEDINGS No.170 and consequently direct the respondent-3 to post the petitioner in the rank of Asst.Executive Engineer at Taramani or in any other place within the Circle within time frame.

For Petitioner : Mr.K.Raviananthapadmanaban

For Respondents: Mr.P.Subramanian,
Standing Counsel



O R D E R

The writ petitioner is challenging the order passed by the Original Authority dated 16.10.2020 and also the order passed by the Appellate Authority dated 26.05.2021.

2. Brief facts of the case:

(a). On 28.10.2020, the respondents have framed the following charges as against the petitioner:

"Charge - I: It is brought to notice that in Pallikaranai Section/Medavakkam Sub-division of Tambaram Division 219 applications (Tariff I-A.3 phase-218 Nos and Tariff V.3 phase - 1.No.) were processed for effecting service connections to M/s.Casa Grande Apartment/Pallikaranai. The demand load for the 219 applications were 3830 KW (214x17KW + 3x40KW + 1x24 KW + 1x48KW). But the estimates were sanctioned for 1781 KW (217x8KW + 1x25KW + 1x20KW) by reducing the demanded load. The C.C.D and D.C. amount were collected for 1781 KW instead of demanded load of 3830 KW, thereby caused loss to the Board to the tune of Rs.12,33,400/- as detailed in Annexure-II.

Charge - II: Further, the entire building was constructed without the temporary supply and carried out using the single phase commercial service."

(b). The petitioner has submitted his explanation to the second respondent on 12.06.2011 and also participated in the enquiry proceedings. The enquiry officer submitted a report on 22.08.2012 to the first respondent/disciplinary authority. Pursuant to the enquiry officer's report the first respondent has served notice to the petitioner, to submit his explanation on 17.06.2013, the petitioner has submitted his explanation to the first respondent, however, on 16.10.2020, the second respondent has passed final order by imposing the punishment of reducing the petitioner's rank from AEE to AE for a period of three years and the said punishment order was implemented by the order of the third respondent dated 17.11.2020. Challenging the aforesaid punishment order, the petitioner has preferred a writ petition in W.P.No.18043 of 2020 before this Court and by order dated 16.12.2020, this Court has directed the petitioner to exhaust the alternative remedy by way of appeal and on appeal to Hon'ble Division Bench of this Court, the order of the learned Judge was confirmed in W.A.No.334 of 2021 vide order dated 28.12.2020 except the period to prefer an appeal, the learned single Judge's order was not modified. Hence, the petitioner had preferred an appeal before the TANGEDCO BOARD and by an order dated 26.05.2021, the first respondent has confirmed the order of the second respondent dated 16.10.2020 and it was served on



the petitioner on 04.06.2021. Challenging the above said punishment order, the present writ petition has been filed.

3.The learned counsel appearing for the petitioner would submit that the same charges have been framed against the similarly placed delinquents viz., one G.Perumalsami, who is Superintending Engineer and one E.Shankar, who is Commercial Inspector and one Rajenhiran, who is Assistant Executive Engineer and thereafter, the charges framed against them were dropped by the respondents, but without considering the said fact, the second respondent has passed impugned order of punishment as against the petitioner and further submitted that for the aforesaid charges the rank of the petitioner was reduced from Assistant Executive Engineer to Assistant Engineer for a period of three years. Further, the petitioner has disputed the above said charges levelled against him by his explanations before the authority, but his explanation has not been considered in a proper prospective. Further, both the original authority and the appellate authority have accepted the enquiry officer's report and without any reason or any findings, the authorities had come to the conclusion by rejecting the explanations of the petitioner and had issued impugned punishment order. Imposing the order of punishment violates the principles of natural justice and. Therefore, the aforesaid order passed by the second respondent is liable to be set aside on the ground that the said order is non speaking and cryptic order. Hence, the said order is liable to be set aside.

4.The learned Standing Counsel appearing for the respondents submitted the counter filed by the respondents and stated that based on the relevant materials and documents, the said impugned punishment order has been passed by the second respondent and the same has been confirmed by the first respondent and the relevant portion is extracted as follows:

"4.Accordingly, Thiru R.Rukmangathan, then Assistant Executive Engineer/O&M/Medavakkam (now Assistant Executive Engineer/Shift/ Taramani 230 KVSS) is awarded the punishment of "Reduction to a lower rank as Assistant Engineer with minimum pay in the level 1 of officers Pay matrix" for the period of three years (excluding the period if any spent on leave) as a measure of penalty. Thiru R.Rukmangathan, then Assistant Executive Engineer/O&M/Medavakkam (now Assistant Executive Engineer/ Shift/ Taramani 230 KVSS) is informed that appeal if any, against the above punishment lies with the Board and the same may be preferred within one month from the date of receipt of this proceedings."



5.Further, it is stated that the explanation for the aforementioned charges on the petitioner has been considered but he has not adduced the ground for consideration and the same was devoid of merits. Therefore, the charges framed against the petitioner were proved and accordingly, the second respondent has passed punishment order as against the petitioner. The appellate authority/first respondent has also confirmed the said order without giving any reason or finding that they independently come to the conclusion for awarding the punishment to the petitioner and therefore, the impugned order is perfectly valid and does not warrant any interference.

6.I have anxiously considered the submissions made by both sides and perused the materials available on record.

7.The point for consideration is whether the impugned order passed by the second respondent/disciplinary authority and confirmed by the first respondent/appellate authority, without considering the grounds raised by the petitioner is perfectly valid in law?

8.The grievance of the petitioner is that though he has raised several grounds, the second respondent/appellate authority without considering the said grounds in proper perspective, has passed a cryptic, non-speaking order and there is also a violation of principles of natural justice, on account of non-furnishing the documents to effectively, adjudicate the matter before the second respondent and the said impugned punishment order has also been confirmed by the first respondent also.

9.This Court in the case of C.Devendhiran Vs. The Deputy Inspector General of Police, Villupuram Range (W.P.No. 150 of 2013) reported in 2020 (2) WLR 332, 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;

"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



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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 :-



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"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, but indicating as to how the appellate authority has satisfied himself with the reasons given by the



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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."

10. In view of the above this Court finds that there is no such reasoned order passed by the disciplinary authority and the appellate authority and hence, the same is liable to be set aside.

11. Considering the facts and circumstances of the case and also considering the fact that the said punishment order is a cryptic and non speaking order, this Court come to the conclusion that the said punishment order passed by the disciplinary authority viz., second respondent dated 16.10.2020 Vide (PER) CMD TANGEDCO PROCEEDINGS No.170 as well as confirmed by the first respondent Vide (PER) FB TANGEDCO PROCEEDINGS No.15 dated 26.05.2021, is unsustainable and therefore, the impugned punishment order is quashed and the same is remitted back to the



second respondent to consider afresh and pass appropriate reasoned orders, after following the procedures as contemplated under the regulations and the rules and the said exercise shall be completed as early as possible preferably within a period of four months from the date of receipt of a copy of this order. It is also open to the petitioner to furnish additional particulars, if any, the same shall be submitted, within a period of two weeks from the date of receipt of a copy of this order. Further, the parties are directed to maintain the status-quo as on today.

12. With the above directions, this writ petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Chairman - Cum - Managing Director,
Tamilnadu Generation and Distribution
Corporation Limited [TANGEDCO] Board,
Anna Salai, Chennai - 600 002.
2. The Chairman - cum - Managing Director,
TANGEDCO, 144, Anna Salai, Chennai - 600 002.
3. The Chief Engineer,
Distribution South, TANGEDCO, Chennai - 2.
4. The Superintending Engineer,
CEDC/SOUTH-II, K.K.Nagar, Chennai - 600 078.

+1cc to Mr.K.Raviananthapadmanaban, Advocate, S.R.No.28731
+1cc to Mr.P.Subramanian, Advocate, S.R.No.28113

W.P.No.12465 of 2021
and
W.M.P.No.13249 of 2021

CA[co]
NSK/17/06/2022