



W.P.(MD)No.11797 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.04.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P(MD)No.11797 of 2014

T.Ponnusamy

... Petitioner

Vs.

- 1.The Chairman,
Tamil Nadu Electricity Board
Now designated as TANGEDCO,
Anna Salai,
Chennai.
- 2.The Chief Engineer,
Tamil Nadu Electricity Board
Now designated as TANGEDCO Distribution,
K.Pudur,
Madurai.
- 3.The Superintending Engineer,
Tamil Nadu Electricity Board
Now designated as TANGEDCO,
Madurai Distribution Circle,
Madurai.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the third respondent in his proceedings in க.எண்.மேபொ/உநிஅ/மமிபவ/நிமே/நிபி2/உத3/கோ.ஓய்வு/அ.எண்81/14 dated 18.02.2014 and the order issued by the first respondent in his proceedings in Board Regulation (தலைவர்) எண்.32 dated Administrative wing dated 04.02.2005 confirming the order issued by the second respondent in his proceedings Memo No.2253/38/d.1/2004 2 dated 07.04.2004 confirming the order issued by the third respondent in his proceedings in கு.எண்.534/உநிஅ/நிபி1/உதவி3/கோப்பு/2002-10 dated 02.12.2003 and quash the same as illegal consequentially to direct the respondents to promote the petitioner on par with his immediate junior and confer all other consequential monetary and attendant benefits.

For Petitioner : Mr.Md.Imran
for M/s.Ajmal Associates
For Respondents : Mr.S.Arivalagan
Standing Counsel

ORDER

This writ petition has been filed to quash the impugned order, dated, 18.02.2014 and the order issued by the first respondent in Regulation No.32 dated Administrative Wing, dated, 04.02.2005 confirming the order issued by the



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second respondent, dated, 07.04.2004 and confirming the order issued by the third respondent dated, 02.12.2003 and consequentially to direct the respondents to promote the petitioner on par with his immediate junior and confer all other consequential monetary and attendant benefits.

2. The brief facts of the case are that the petitioner was initially appointed as Commercial Assistant on 01.07.1970 and he was promoted as Lineman on 18.09.1979. Further, promoted as Foreman on 08.09.1993 and retired on 30.06.2005. While the petitioner was working as Foreman, Charge Memo, dated, 09.05.2002 was issued on the petitioner and he has submitted his explanation, refusing all charges.

3. The contention of the petitioner is that on receipt of the Charge Memo, the petitioner has submitted his explanation, narrating the circumstances under which the report was submitted as to why electricity connection should not be given to one Alagar. Regardless of the explanation, enquiry officer was appointed



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and the petitioner was directed to attend enquiry scheduled on 17.09.2002. The petitioner had appeared before the enquiry authority. On that day itself, the enquiry was completed and enquiry report was also submitted holding that the Charge against the petitioner was not proved. However, the petitioner was directed to appear in the re-enquiry scheduled on 25.03.2003. Again, the petitioner appeared before the Enquiry Officer and during this enquiry the Charge was held to be proved. The mere perusal of the enquiry report will show that the conclusion arrived at is not supported by any material evidences and the evidence relied upon by the respondents is perverse. The Charge held to be proved by merely relying on the statements given by the complainant. The explanation of the petitioner was ignored in toto and there is no discussion as regards the explanation of the petitioner. The petitioner further submitted his explanation in response to the show cause notice, dated, 30.10.2003 seeking to show cause as to why the petitioner should not be compulsory retirement. The third respondent vide proceedings, dated, 02.12.2003 imposed the punishment of withholding of increment for a period of 3 years with cumulative effect. The third respondent



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while imposing the punishment has neither considered the explanation of the petitioner nor assigned any reasons for imposing such punishment. Non consideration of the explanation of the petitioner in toto renders the impugned order unsustainable. Aggrieved over the punishment order, the petitioner preferred an appeal and the same was rejected by the second respondent on 07.04.2004. The second respondent has not adverted to any of the grounds the petitioner raised in the appeal. It has simply stated that the explanation of the petitioner was not satisfactory. The second respondent being the fact-finding authority, has not considered the petitioner's appeal in proper prospective. Hence, the petitioner has filed a mercy petition before the first respondent and the same was also rejected vide impugned proceedings Board Regulation No.32 dated Administrative Wing, dated, 04.02.2005 without assigning any reasons.

4. The contention of the petitioner is that the Charge against the petitioner is that he had demanded amount as bribe to give electricity connection. The petitioner has reported in detail even at the earliest point of time as to why



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electricity connection cannot not be granted and also narrated the circumstances, under which, he did not give electricity connection. Since the consumer did not get the electricity connection, he had chosen to prefer a complaint stating that the petitioner has demanded bribe. This was narrated before the original authority as well as the appellate authority and the same was not considered. The contention of the petitioner is that the petitioner did not recommend for granting electricity connection to Mr.Alagar on the ground that High Tension Wire was passing three feet above from Alagar's house. That is the sole reason for not granting electricity connection. Hence, the petitioner submitted the report to that effect that electricity connection cannot be granted. The petitioner's report was fully admitted by the Assistant Electrical Engineer, T.Vadipatti and he stood by the report before the District Consumer Dispute Redressal forum, Madurai and also before the State Consumer Disputes Redressal Commission, Chennai. The consistent stand of the Assistant Electrical Engineer before the Forum is that the electricity connection cannot be granted because of passing the High Tension Wire. The Assistant Electrical Engineer ought to have filed an appeal before the State Consumer



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Dispute Redressal Forum or before the National Consumer Dispute Redressal Commission, but they have failed to do so. The respondent cannot take two stands one before the consumer Forums and another in disciplinary proceedings initiate against petitioner. The official respondents are legally estopped from initiating any disciplinary proceedings. Hence, the petitioner has filed this writ petition.

5. The respondents have filed a counter stating that the writ petitioner was working as Foreman and has received illegal gratification for effecting service connection to the consumer, namely, Alagar. Hence, the Charge was framed against the petitioner stating that he was received bribe to the tune of Rs.150/- (Rupees One Fifty only) for effecting service connection. The petitioner knowing fully well that the electricity connection cannot be granted to the house, which is situated below the High Tension line. The petitioner has fixed the meter and other accessories in order to grant a service connection to the said Alagar. In order to give the electricity connection, the petitioner obtained bribe of Rs.500/- (Rupees Five Hundred only). The said Alagar refused to pay the said amount. Hence, the



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petitioner has not effected any service connection to the said Alagar's house and the consumer has preferred a complaint that for effecting the service connection, the petitioner has demanded Rs.500/-(Rupees Five Hundred only). The third respondent has appointed as Enquiry Officer. The petitioner has appeared before the enquiry authority and submitted his explanation and he denied the allegation of demanding bribe. It is further submitted that agreeing with the findings of the Enquiry Officer, the third respondent had issued show cause notice, proposing the punishment of compulsory retirement. The third respondent after having considered the explanation of the petitioner, the order was modified as “withholding of increment for a period of 3 years with cumulative effect” and directed the writ petitioner to file an appeal before the appropriate higher authority, if he is aggrieved against the order of the punishment. The petitioner had preferred an appeal to the second respondent. After perusing the same, the second respondent has rejected the appeal and the review application was also rejected. The petitioner has violated the Board Rules by effecting service connection directly under the High Tension Wire. The writ petitioner along with



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one P.M. Selvam, Field Assistant both were responsible to effect service connection to the consumer after getting bribe. Therefore, the present disciplinary proceedings were initiated against the petitioner. Hence, the respondents prayed to dismiss the writ petition.

6. Heard Mr.Md.Imran, learned counsel appearing for the petitioner and Mr.S.Arivalagan, learned standing counsel appearing for the respondents.

7. The allegation against the petitioner is that while he was working as Foreman, a Charge Memo dated, 09.05.2002 was issued alleging that the petitioner has granted service connection to the proposed consumer, namely, Alagar violating the provisions of the Electricity Board. Under the provisions of the Electricity Board, if any High Tension wire or line crosses the building or crosses the place, the owner of the building cannot have any electricity connection. In the present case, the petitioner has effected service connection by obtaining bribe of Rs.500/- (Rupees Five Hundred only) along with the co-delinquent, namely, P.M.Selvam.



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8. The contention of the petitioner is that at the earliest point of time itself, the petitioner had refused to grant the electricity connection for the reason, the house is coming under the High Tension Line. Since the proposed consumer Alagar had preferred a complaint against the Board for not effecting electricity connection and the Board has taken a stand before the Forum that electricity connection cannot be granted since High Tension Line was running through the house of the proposed consumer. This stand was taken by the Board based on the report of the petitioner. But in the Consumer Court the Board had lost the case and against which the Board had not preferred any appeal. Based on the order of the Forum the petitioner had effected service connection. Now the Board alleges that the petitioner had effected service connection without following the provisions of the Electricity Board after receiving bribe. But if it is a case of the bribe, then the respondent ought to initiate criminal proceedings. But in the present case, there is no such criminal proceedings at all. Hence the allegation of bribe cannot be substantiated.



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9. Therefore, this Court is of the considered opinion that since the allegation of bribe was not proved, but there is a negligence of duty by effecting electricity connection to the consumer, which is situated beneath the High Tension Wire. Hence the punishment is not proportionate and it needs interference. Therefore, the punishment is modified as stoppage of increment for three months and the respondents are directed to implement this punishment and also consider the petitioner's name for notional promotion on par with his junior. The said exercise shall be completed within a period of 6 weeks from the date of receipt of a copy of this order.

10. With the above directions, this Writ Petition is disposed of. No costs.

28.04.2022

Index : Yes / No

Internet : Yes

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S.SRIMATHY, J

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