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W.P.No.3185 of 2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.11.2023

PRONOUNCED ON : 05.12.2023

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.3185 of 2021

R.Jayaprakash

...

Petitioner

versus

1.The Board of Directors,
Represented by Chairman cum Managing Director,
(Appellate Authority),
TANGEDCO,
144, Anna Salai,
Chennai - 600 002.

2.Chairman-cum-Managing Director,
(Disciplinary Authority),
TANGEDCO,
144, Anna Salai,
Chennai - 600 002.

...

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the second respondent in (Per)CMD TANGEDCO Proceedings No.70 (Secretariat Branch) dated 21.04.2020 and the first respondent Order in (Per) FB TANGEDCO Proceedings No.25 (Secretariat Branch) dated 23.10.2020 and quash the same and to direct the respondents herein to forthwith reinstate the petitioner with consequential benefits.



For Petitioner : Mr.M.Ravi
For Respondents : Mr.K.Rajkumar
Standing Counsel for TNEB

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ORDER

The petitioner has filed this petition seeking a writ of Certiorarified Mandamus, calling for the records on the file of the second respondent in (Per)CMD TANGEDCO Proceedings No.70 (Secretariat Branch) dated 21.04.2020 and the order of the first respondent in (Per) FB TANGEDCO Proceedings No.25 (Secretariat Branch) dated 23.10.2020 and quash the same and consequently direct the respondents to reinstate the petitioner with consequential benefits.

2. Heard Mr.M.Ravi, learned counsel for the petitioner; Mr.K.Rajkumar, learned Standing Counsel for the respondents and perused the materials available on record.

3. Mr.M.Ravi, learned counsel for the petitioner submitted that the disciplinary proceedings were initiated against the petitioner for the charges of misappropriation by issuing cheques in collusion with the other staff members on the allegation that the petitioner failed to maintain absolute integrity and thereby contravened Regulation 3(a) of the Tamil Nadu



Electricity Board Employees Conduct Regulations read with Tamil Nadu Electricity (Re-organisation & Reforms) Transfer Scheme, 2010. At the conclusion of the enquiry, the petitioner was found guilty as against the charges framed against him and consequently he was dismissed from service.

4. The preliminary grounds on which the impugned order is challenged is that it is in violation of principles of natural justice; the order of dismissal is a non speaking one without application of mind; the petitioner was not given with full enquiry report but he was given only 1½ page of the report; at the time of issuing the charge memo, the petitioner was not furnished with the list of witnesses and documents and the questionnaire forms were not attached with the charge memo; the disciplinary authority is predetermined with regard to the guilt of the petitioner; similarly placed persons like the petitioner were not given with the charge memo but the petitioner alone was removed from service.

5. It is submitted by Mr.M.Ravi, learned counsel for the petitioner that the petitioner was actually working as an Assistant Account Officer and he was in-charge of accounts between the period from 01.02.2011 to 13.02.2011; 30.04.2011 to 03.07.2011; the controversial cheques relate to



the period during which the petitioner was holding additional charge and it was a conscious design to make him a scape goat for the fraud committed by some other persons. The persons who were instrumental had escaped and one person by name Srinivasan who played a major role was allowed to retire. The charge memo was given to the petitioner after 3 years just in order to enable Srinivisan to retire by that time.

5.1. The further submission of the learned counsel for the petitioner is that one Shanmugam was authorised to withdraw the accounts and he was kept under suspension and no action has been taken against him so far. The petitioner had issued cheques on the instruction of the Superintending Engineer, Srinivasan and another Superior Officer by name Rajendiran. Since the impugned cheques were issued over and above Rs.1,00,000/-, the petitioner alone cannot pass the same and it has to be signed by the above said Superior Officers namely Rajendiran and Srinivasan.

5.2. In normal course, only the officials in the lower rank would prepare the note file and place it for approval through proper channel for passing the bill. *'Through proper channel'* file procedure is to ensure whether the file notes has been properly placed with all the materials facts and rules and whether the same is approved by officials at each level and



then reaches the hands of the officer who needs to pass orders on the same.

But in the instant case, a reverse procedure is seen to have been adopted.

Despite being a Subordinate Officer, the petitioner had signed the cheque.

Srinivasan who was the Superintending Engineer, was allowed to retire. The other officer Rajendiran was given with a lesser punishment of reversion alone. During the vigilance enquiry, the petitioner was forced to give certain statements and he was also forced to make a payment of Rs.12,00,000/-.

6. Mr.K.Rajkumar, learned Standing Counsel for the respondents submitted that during an audit party inspection, misappropriation of the Board's money by issuing 19 cheques in the year 2011 was found out; subsequently, the Vigilance Cell conducted a discreet enquiry and in which the petitioner has been found to be the main architect of the fraudulent activity; he is seen to have acted in collusion with others. The petitioner had falsified the records, proposed inflated indents and written wrong cheques; during the vigilance enquiry itself, the petitioner has stated that he had received his share of unlawful gain and purchased a plot at Madhavaram and the balance amount was deposited to repay the loan which he obtained in the E.B. Thrift society.



6.1. The respondents submitted that based on the vigilance report, disciplinary proceedings were initiated after issuing the charge memos. Even during the enquiry proceedings, the petitioner protracted by filing litigations and thereafter he had withdrawn the case. After a considerable delay, he gave his representations. The petitioner himself had confessed about the misappropriation of the Board's money and remitted the misappropriated money. The principles of natural justice has not been violated and sufficient opportunities were given to the petitioner during each and every stage of the enquiry. The delay is not due to the fault of the respondents' Department but due to the actions of the petitioner in filing Writ Petition and obtained stay.

6.2. Mr.K.Rajkumar, learned Standing Counsel for the respondents asserted that the disciplinary proceedings have been conducted in accordance with the rules and regularisations of the respondents' Board and hence there is no violations as alleged. There is no selective discrimination of the disciplinary proceedings and the punishment has been given in accordance with the gravity of the charges proved against the individuals. As per the old regulations, the petitioner was given with the extract of the



enquiry report and hence there is no violation of any mandates prescribed in the regulations.

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7. In the matters challenging the disciplinary proceedings, this Court has got only limited scope for interference. The above position has already been well settled by the Division Bench of the Hon'ble Supreme Court in *Union of India and others Vs. P.Gunasekaran* reported in (2015) 2 SCC 610. In the said judgment, the *Do's and Don'ts* of the High Courts while exercising the powers under Articles 226 / 227 of the Constitution of India while dealing with the writs filed challenging the disciplinary proceedings and punishment have been laid down below:-

“12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:



- (a) the enquiry is held by a competent authority;*
- (b) the enquiry is held according to the procedure prescribed in that behalf;*
- (c) there is violation of the principles of natural justice in conducting the proceedings;*
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- (i) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
- (f) the finding of fact is based on no evidence.*

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

- (i) reappreciate the evidence;*
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;*
- (iii) go into the adequacy of the evidence;*
- (iv) go into the reliability of the evidence;*



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(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience.”

8. So a simple exercise is required find out whether the parameters laid down for a fair enquiry has been complied by the respondents' Department. There is no grievance on the part of the petitioner about the competence and jurisdiction of the authority who held the disciplinary proceedings. So far as the observance of the principles of natural justice is concerned, the respondents had followed their own Discipline and Appeal Regulations.

9. Even in the absence of Regulations, there can be some standard operating procedure in accordance with the principles of natural justice and that itself is sufficient to meet out the essential requirements of conducting a fair enquiry. On perusal of the proceedings, it is seen at the end of the enquiry, the petitioner himself has expressed his satisfaction about the



manner in which the enquiry was conducted and that he did not have any grievance. Even prior to the enquiry, some discreet enquiry is seen to have been conducted by the Department in order to find out the blacksheeps, who involved in the misappropriation. There are serious allegations of falsification of records, preparing inflated intends, writing wrong cheques and thus misappropriating the funds of the Board.

10. The cheques were issued during the year 2011 and for which the vigilance enquiry has been initiated in the year 2011 itself and the report of the vigilance department was also submitted. It is observed in the report that without placing any supporting bills or vouchers, hefty sum was misappropriated by falsifying the records and passing cheques. Though the petitioner himself has given a confession about the modus in which the fraud has been committed and how the fraud proceeds were shared between the interested persons, he claims that he has given the said confession under pressure. But he did not give any complaints stating that he was forced to give statements.



11. In support of his above contention, Mr.M.Ravi, learned counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court in ***Roop Singh Negi Vs. Punjab National Bank [Civil Appeal No.7431 of 2008 dated 19.12.2008]*** wherein it is held that the burden should not be shifted upon the delinquent to prove his innocence but the Department has to prove the charge of misconduct.

12. There is no second thought about the above principle. In the above said judgment, earlier judgments have been referred and in crux, it is held that the High Court should apply the principles in accordance with the essential facts. However it is not the duty of the Court to appreciate each and every fact involved in the matter, except the apparent omissions of not taking any material evidence or commissions of receiving any inadmissible evidence during the disciplinary proceedings. In the case on hand, even though the vigilance enquiry was the base for bringing out the fraudulent activities of a team of the staff members, the enquiry proceedings have been initiated only in accordance with the Regulations.



13. The attention of this Court was drawn to the proceedings of the Secretary, TANGEDCO, dated 28.04.2017. It was the Memo given to the petitioner informing him about the result of the enquiry proceedings and that it has been accepted by the disciplinary authority and only thereafter he was given with the opportunity to make further submission.

14. So it is claimed by the petitioner that before accepting the enquiry officer's report by the disciplinary authority, the petitioner ought to have been given with an opportunity. In the proceedings itself it is stated that the disciplinary authority had accepted the report. Hence it is claimed that the disciplinary proceedings was prejudiced and an essential opportunity to the petitioner for making his submission on the enquiry report was not given to him.

15. Technically the petitioner could have been given with an opportunity to make his submission about the enquiry report. But he did not have any grievance in the manner in which the enquiry was conducted by the enquiry officer. Further, the petitioner did not challenge the proceedings immediately after he received the gist of it by stating that the principles of



natural justice has not been strictly complied. Even in the representation made by the petitioner, he did not state about any prejudice caused to him due to the non furnishing of the entire report or that the disciplinary authority has accepted the report in any prejudiced manner.

16. While putting forth an argument of violation of principles of natural justice, it should be substantiated how the petitioner was aggrieved or prejudiced due to the alleged action on the part of the respondents. The petitioner is fully aware of the materials placed before him during enquiry and he himself had the knowledge about his involvement in the scam and he had consciously given a confession during the vigilance enquiry. He had even paid back the amount which was the loss due to misappropriation. These facts were not denied by him.

17. However, the above aspects will not confer any privilege on the part of the respondents' Department for punishing the petitioner straight away without giving due opportunity to him for a fair enquiry. But the fact remains that the respondents had adopted the fair enquiry process throughout the enquiry. The petitioner did not give any further complaints



against the authority that he was intimidated for giving the confession and making the payments. So I find no force in the submission made by Mr.M.Ravi, learned counsel for the petitioner that the disciplinary authority was prejudiced and that it accepted the enquiry officer's report before the petitioner could make his representations.

18. Even if the petitioner was aggrieved due to the above ground, his opportunity to appeal was not denied to him. Further, the petitioner did not place before the Court to show that during the enquiry proceedings some irrelevant or extraneous materials were admitted and the material evidence produced by the petitioner was ignored. So without establishing the above facts, I do not find any reason to accept the argument that the petitioner was not given with due opportunity and that the authorities had some malafide intention to impose a major punishment on him.

19. The next point putforth is that similarly placed persons were given with the lesser punishment but the petitioner alone was discriminated and he was given with the major punishment of removal from service. Removal of a person from service by imposing it as a punishment for misappropriating the funds is not disproportionate or unreasonable. The



modus in which the misappropriation was committed shows a larger role played by the petitioner.

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20. However the petitioner had made out a point that he was not given with the full enquiry report but only the extract of the same. Even in the absence of any regulation, a delinquent employee is entitled to get a copy of the full enquiry report and only thereafter he can make his effective representations.

21. Mr.K.Rajkumar, learned Standing Counsel for the respondents submitted that the failure to furnish the entire enquiry report shall not result in any order for reinstating the petitioner with backwages. He relied on the judgment of the Hon'ble Supreme Court in *Hiran Mayee Bhattacharyya Vs. Secretary, S.M.School for Girls and others* reported in (2002) 10 SCC 293 wherein it is held that whenever there is a direction to follow something for the sake of strict compliance of the principles of natural justice, there need not be any order for reinstatement or to set aside the order of termination which has been given already. In the said judgment, it is held as under:-

“4. We, therefore, direct the disciplinary authority to furnish a copy of the enquiry report to the appellant and then permit her to submit her representation/explanation to the same and



pass final orders thereafter, However, this will not lead to reinstatement or to back wages inasmuch as this Court has decided in the case of Managing Director, ECIL, Hyderabad v. B.Karunakar ((1993) 4 SCC 727] that there need be no reinstatement nor back wages need be paid when the Court directs that the principles of natural justice should be followed. We, therefore, remit the matter to the disciplinary authority, being Secretary, Shibarampur Madhyamik High School for Girls, Shibarampur, Calcutta 700 061 for the aforesaid purposes. The termination order already passed will remain, but subject to the result of the fresh consideration as directed above.

5. The abovesaid disciplinary authority is directed to give a copy of the enquiry report to the appellant within one month from the receipt of a copy of this order and thereafter grant four weeks for filing an explanation. On receiving the same the disciplinary authority may decide the matter within six weeks thereof. If the appellant is entitled to any subsistence allowance from the date of her removal till the date of termination already made, she may make appropriate application therefor. If the application is so made, the disciplinary authority will consider the same on its own merits.”



22. The enquiry report reveals the active participation of the petitioner along with Kathiresan and Shanmugam. Shanmugam died subsequently and hence the charges against him got abated. The petitioner cannot compare the intensity of the charges proved against these persons with the other persons who might have been charged for not being vigilant.

23. Mr.M.Ravi, learned counsel for the petitioner relied on the judgments of the Hon'ble Supreme Court in *N.Nandagopalan Vs. The Secretary To Government [(2006) 3 MLJ 191]* and *Man Singh Vs. State of Haryana [(2008) 12 SCC 331]* which are not applicable to the facts of this case.

24. The only point that has been made out is non furnishing of the entire enquiry report to the petitioner, before he could make his submissions. Hence a limited direction can be given to the respondents to furnish a copy of the entire enquiry report to the petitioner within a period of two weeks from the date of receipt of a copy of this order and thereafter the petitioner is directed to submit his representation to the respondents within a period of two weeks. On receipt of the same, the second respondent (Disciplinary



Authority) shall decide and pass final orders within a period of four weeks thereafter. However the petitioner shall not be reinstated and the termination order will not be set aside, till the above exercise is done by the respondents.

With the above observation, this Writ Petition is **disposed**. No costs.

05.12.2023

Speaking order

Index : Yes

Neutral Citation : Yes

sri



To

W.P.No.3185 of



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1. The Board of Directors,
Represented by Chairman cum Managing Director,
(Appellate Authority),
TANGEDCO,
144, Anna Salai,
Chennai - 600 002.

2. The Chairman-cum-Managing Director,
(Disciplinary Authority),
TANGEDCO,
144, Anna Salai,
Chennai - 600 002.



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W.P.No.3185 of '21



R.N.MANJULA, J.

sri

Pre-Delivery Order made in
W.P.No.3185 of 2021

05.12.2023