



W.P.(MD)No.5389 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 04.01.2024

PRONOUNCED ON : 07.02.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.5389 of 2019

K.Kanthavel

... Petitioner

Vs.

1.The Chairman and Managing
Director,
Tamil Nadu Electricity Board,
No.144, Anna Salai,
Chennai-2.

2.The Superintending Engineer,
TNEB / TANGEDCO,
Ramanathapuram Distribution Circle,
Ramanathapuram,
Ramanathapuram District.

3.The Executive Engineer (Distribution),
TNEB / TANGEDCO,
Paramakudi Division,
Paramakudi,
Ramanathapuram District.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the impugned order in Thalaivar & Melanmai Eyakkunar Nilai EN:120 dated 07.12.2018 on the file of the 1st respondent and quash the same as illegal.

For Petitioner : Mr.K.Kanthavel
Party in person

For Respondents : No appearance

ORDER

The present writ petition has been filed to call for the records pertaining to the impugned order in Thalaivar & Melanmai Eyakkunar Nilai EN:120 dated 07.12.2018 on the file of the 1st respondent and quash the same as illegal, since the 1st respondent has not considered the points raised in the mercy petitions dated 29.06.2015 and 05.02.2017.

2. The brief facts which are necessary for the disposal of this Writ Petition is as follows:-

(i) The petitioner was working as an Assessor in TNEB



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Muthukulathur, Ramanathapuram District. Due to piles operation, the petitioner had applied Medical leave with Medical certificate. On receiving the same, the Assistant Engineer, Muthukulathur, had sent the petitioner's Medical leave with Medical Certificates dated 13.10.2008 and on 02.11.2008 to the Medical Board, Ramanathapuram for Medical Examination. The Medical Board, Ramanathapuram directed the petitioner to appear before the Medical Board on 12.01.2009. In the meanwhile, when, the petitioner was on medical leave the 3rd respondent had issued a temporary Transfer order to the petitioner to Perunali Section. As per the direction of the Medical Board, the petitioner went to Muthukulathur to join duty. Since the Assistant Engineer did not allow the petitioner to join duty in Muthukulathur Section, the petitioner left with no other option, had joined in Perunali Section on 17.01.2009 with protest, since 18.01.2009 was a Sunday. Thereafter, due to the sudden demise of the petitioner's grand father on 19.01.2009, the petitioner had applied for 3 days casual leave i.e. from 19.01.2009 to 21.01.2009 and had sent it through courier and the same was received by the Assistant Engineer Incharge, Perunali on 20.01.2009. While so, since the 3rd respondent is not the appointing authority / competent authority to issue Temporary Transfer Order to the Assessor, challenging the transfer order, the petitioner filed W.P.(MD)No.



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1961 of 2009 before this Court.

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(ii) Pursuant to the same, the 3rd respondent cancelled the Temporary Transfer order on 17.04.2009. Following which, the petitioner rejoined duty at Muthukulathur Section on 18.04.2009 and later, the petitioner withdrew the aforesaid W.P.(MD)No.1961 of 2009. While the petitioner was working in Muthukulathur Section, after 2 years, the Assistant Executive Engineer, Kamuthi had issued a charge memo dated 12.04.2010 and the same was served on the petitioner on 12.02.2011. Since the Superintending Engineer, Ramanathapuram is the appointing authority, the Assistant Executive Engineer, Kamuthi is not competent authority to issue a charge memo to an Assessor. That apart, the petitioner was also not provided with the documents pertaining to the charge memo. Hence, the petitioner made a representation dated 23.02.2011 to provide the exhibits in Annexure III pertaining to the said charge memo. Since the same was not considered once again, the petitioner filed another W.P.(MD)No.4425 of 2011 before this Court to quash the said charge memo. During the pendency of the said Writ Petition, the 3rd respondent had passed a final order dated 30.11.2012, thereby inflicting a punishment of stoppage of increment for a period of one year with cumulative effect including the



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leave period. The said order was received by the petitioner on 16.02.2013.

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(iii) As per TNEB service rules, the 3rd respondent is not the appointing authority / competent authority to impose punishment to the Assessor. Hence, the petitioner had preferred an appeal to the Superintending Engineer, Ramanathapuram dated 14.03.2013. Keeping the said appeal pending for more than 1 ½ years, the 2nd respondent rejected the petitioner's appeal on 24.07.2014. Challenging the same, the petitioner filed yet another writ petition in W.P.(MD)No.14634 of 2014 before this Court. During the pendency of the writ petition, the petitioner had submitted Mercy Petition to the 1st respondent, The Chairman TNEB, Chennai on 29.06.2015 and 05.02.2017 seeking to set aside the punishment. Thereafter, the Chief Engineer (Personnel) and Deputy Engineer (Personnel) had insisted the petitioner personally to withdraw the W.P.(MD)No.14634 of 2014 by assuring that a favourable order would be passed in his mercy petition. Based on the said assurance the petitioner withdrew the W.P.(MD)No.14634 of 2014 on 08.02.2017. However, later the 1st respondent passed the impugned order rejecting the petitioner's mercy petition on 07.12.2018. Challenging the same, the present writ petition came to be filed.



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3. The petitioner appeared before this Court in person and submitted that he joined duty in the Respondent Board on 19.01.2002 as an Assessor (Low Category) and he continued to serve in the cadre of Assessor till his retirement i.e., on 31.05.2016. During the period, when the petitioner availed Medical Leave, the Executive Engineer, Paramakudi Division had issued a temporary Transfer order to the petitioner from Muthukulathur to Perunali Section. Since he was not allowed to join the duty in Muthukulathur Section with protest, he joined duty in Perunali Section on 17.01.2009. While so, since the 3rd respondent is not the appointing authority / competent authority to issue Temporary Transfer Order of Assessors, challenging the transfer order, the petitioner filed W.P.(MD)No. 1961 of 2009 before this Court. During the pendency of the same, the 3rd respondent cancelled the Temporary Transfer order and the petitioner rejoined duty at Muthukulathur Section on 18.04.2009. After 2 years, a charge memo dated 12.04.2010 was issued on the petitioner on 12.02.2011 by the Assistant Executive Engineer, Kamuthi on 3 counts of charges.

4. The petitioner further submitted that even before providing the documents pertaining to the said charge memo, the 3rd respondent



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proceeded to pass a final order dated 30.11.2012 inflicting on the petitioner a punishment of stoppage of increment for a period of one year with cumulative effect including the leave period. The petitioner was not provided with any opportunity to defend the same by duly furnishing the documents pertaining to the said charge memo and the said order of punishment came to be passed by the 3rd respondent in a hurry burry manner. Hence, the petitioner preferred an appeal to the Superintending Engineer, Ramanathapuram dated 14.03.2013 and the 2nd respondent rejected the petitioner's appeal on 24.07.2014. As against the same, the petitioner had submitted Mercy Petition to the 1st respondent, The Chairman TNEB, Chennai on 29.06.2015 and 05.02.2017 seeking to set aside the punishment. Without going into the merits of the case and without application of mind, the mercy petition was rejected vide order dated 07.12.2018 and the said order was a non-speaking order. On that basis, the petitioner sought for interference of this Court seeking to allow this writ petition by quashing the impugned order dated 07.12.2018.

5. Though the case was posted for respondent side arguments on 30.08.2023, 14.09.2023, 26.09.2023, 04.12.2023 and 07.12.2023 there was no representation on the side of the respondents. Finally, this case was



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posted on 04.01.2024 for the arguments of the respondents. Despite vakalat has been filed on behalf of the respondents, on 04.01.2024, when the matter was taken up for hearing, there was no representation on the part of the respondents. Accordingly, the matter was reserved for orders. However, the respondents have filed a counter.

6. Heard, the arguments of the petitioner and carefully perused the counter affidavit filed by the respondents and the materials available on record.

7. The case in hand has been filed by the petitioner challenging the impugned order of the rejection of mercy petition dated 07.12.2018. The petitioner was serving as an Assessor in TNEB, Muthukulathur, Ramanathapuram. On 12.04.2010, the 3rd respondent issued a charge memo on the petitioner for the following reasons:

(i) Refusing to accept the memo of the Assistant Engineer Perunali dated 27.01.2009 and 03.02.2009.

(ii) With regard to his letter dated 22.02.2009 dropped on the table of the Assistant Engineer, Perunali stating that he would not attend the works allocated to him in Kovilangulam, Kombuthi, Nerinjipatti



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Distribution areas.

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(iii) Causing financial loss to Board by not attending to the works allocated to the petitioner.

(iv) Causing inconvenience to the consumers.

(v) For unauthorised absence on 19.01.2009, 20.01.2009, 21.01.2009, 03.02.2009, 04.02.2009 and 05.02.2009.

8. When the charge memo was issued to the petitioner on 12.04.2010, seeking for explanation, the petitioner refused to receive it. Further, when the 3rd respondent tried to serve the charge sheet in person on 15.09.2010, the petitioner categorically refused to receive it. Thereafter, only the 3rd respondent had sent the same vide letter dated 07.01.2011 and the petitioner received it on 10.02.2011. The petitioner submitted his explanation and as the explanation was not satisfactory, a domestic enquiry was initiated, and Assistant Executive Engineer was appointed as Enquiry Officer on 01.04.2011. In the interregnum, the petitioner challenged the charge memo issued by the 3rd respondent before this Court in W.P.



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(MD)No.4425 of 2011. However, no stay was granted by this Court.

Letters dated 17.11.2011, 08.12.2011 and 23.01.2012 were sent calling for the petitioner to attend the enquiry proceedings on 20.11.2011, 16.12.2011 and 03.02.2012 respectively. However, the petitioner did not attend any of the hearings, even after the enquiry officer granted several opportunities.

9. Hence, the enquiry officer was constrained to proceed with the proceedings in the absence of the petitioner. On 03.02.2012, on behalf of the respondent, witnesses were examined, and documents were marked by the enquiry officer. In the meanwhile, on 25.04.2012, W.P.(MD)No.4425 of 2011 has been disposed of by directing the 3rd respondent to serve the documents that are mentioned in Annexure III of the charge memo dated 12.04.2010 to the petitioner. Thereafter, on 11.06.2012, a 2nd show cause notice was issued to the petitioner proposing a punishment of stoppage of the next increment with cumulative effect for one year including leave spent if any. By letter dated 09.07.2012, the petitioner gave his explanation to the 2nd show cause notice. The respondents found that the explanation of the petitioner was not satisfactory and imposed a punishment of stoppage of increment with cumulative effect for one year including leave spent if any. Challenging the same, on 14.03.2013, the petitioner preferred an



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appeal before Superintending Engineer, Ramanathapuram, TANGEDCO / 2nd respondent and the said appeal was dismissed vide order dated 21.07.2014. Challenging the same, W.P.(MD)No.14364 of 2014 was filed by the petitioner before this Court. During the pendency of the writ petition, the petitioner preferred mercy petition before the 1st respondent seeking to set aside the punishment.

10. The petitioner contended that the 1st and 2nd respondents compelled to withdraw W.P.(MD)No.14364 of 2014, accordingly, the petitioner had withdrawn the aforesaid writ petition on 08.02.2017. However, the 1st respondent rejected the mercy petition filed by the petitioner on 07.12.2018. Challenging the same, the petitioner filed this writ petition.

11. A careful perusal of the said order would reveal that the petitioner was neither furnished with the documents in Annexure III of the charge memo nor his elaborate explanation was duly considered. That apart, the details of the total proved witnesses examined on the side of the board was also not detailed in the impugned order and the basis of which the allegations were held proved were also not explained. Simply



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observing that the petitioner's explanation is not acceptable and on the basis of the witness of the board enquiry report, petitioner's past conduct and the petitioner's disciplinary file, the said punishment came to be imposed. Even there was no fair consideration of those facts of which the said order was based. Thereafter, only on 16.02.2013, the petitioner received the punishment order dated 30.11.2012 and within the mandated period of two months from the date of order being communicated him i.e., on 14.03.2013, the petitioner preferred an appeal before the 2nd respondent.

12. On careful perusal of the order passed by the 2nd respondent in the said appeal on 21.07.2014, the same would reveal that the said appeal has not been disposed of as mandated under Rule 15 of the Tamil Nadu Electricity Board Employee Disciplinary and Appeal Regulations. The relevant portion of the order is extracted as follows:

“15. Consideration of appeals :

(1) In the case of an appeal against an order imposing any penalty specified in Regulation 5, the appellate authority shall consider:



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(a) whether the facts on which the order was based have been established;

(b) whether the facts established afford sufficient ground for taking action;

(c) whether the penalty is excessive, adequate or inadequate and pass orders

*(i) confirming, enhancing, reducing or setting aside the penalty:
or*

(ii) remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case: provided that-

(i) If the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in items (iii), (iv) (c), (v) (vi) and (vii) of Regulation 5 and an enquiry under sub-Regulation (b) of Regulation 8 has not already been held in the case, the appellate authority shall subject to the provisions of the sub-Regulation (c) of regulation 8, itself hold such enquiry or direct that enquiry be held in accordance with the provisions of sub-Regulation (b) of Regulation 8 and thereafter, on a consideration of the proceedings of such enquiry and after giving the appellant a reasonable opportunity of making representation against the penalty proposed on the basis of the evidence adduced during such enquiry make such orders as it



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may deem fit (ii) If the enhanced penalty which the appellate authority proposes to impose is one of the penalties in items (iii), (iv) (c), (v), (vi) and (vii) of Regulation 5 and an enquiry under sub-Regulation (b) of Regulation 8 has already been held in the case, the appellate authority after giving the appellant reasonable opportunity of making representation against the penalty proposed on the basis of the evidence adduced during enquiry, make such orders as it may deem fit; and

(iii) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be in accordance with the provisions of sub-regulation (b) of Regulation 8 of making representation against such enhanced penalty.

(2) Any error or defect in the procedure followed in imposing a penalty may be disregarded by the appellate authority if such authority considers, for reasons to be recorded in writing, that the error or defect was not material and has neither caused injustice to the person concerned nor affected the decision of the case.”

13. However, the order passed by the 2nd respondent by rejecting the appeal preferred by the petitioner on 21.07.2014 is a clear case wherein the appellate authority failed to consider the facts in detail on the basis of



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which the order of punishment was based to have been established. That apart, the facts established confirming sufficient ground for taking action is also not discussed. The question of penalty being adequate on the basis of which the same was confirmed was also not dealt with the appellate authority. The reason for rejecting of the petitioner's elaborate appeal on his representation was also not detailed in the said rejection order. Thereafter, the petitioner preferred a mercy petition before the 1st respondent on 29.06.2015 and 05.02.2017 respectively. The said mercy petition had elaborate details including the fact that the 3rd respondent is not the appointing authority and hence he is not competent to impose punishment on an Assessor. However, the 1st respondent while rejecting the mercy petition without going into the merits of the facts and circumstances and the relevant rules pertaining to the lis in hand had mechanically without application of mind has passed a non speaking order.

14. In view of the same, this Court is of the considered opinion that the impugned rejection order of the mercy petition is bad in the eye of law and fit to be necessarily interfered with. Hence, this Court hereby quashes the impugned order dated 07.02.2018 and remand the same back with the following directions.



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(i) The 1st respondent is directed to elaborate the details on the basis of which the order of punishment as against the petitioner is based to have been established.

(ii) The petitioner should be provided with an opportunity to submit fresh representation with supporting documents to substantiate his defence.

(iii) The question as to whether the facts alleged to have been established by the respondents afford sufficient ground for taking action against the petitioner need to be elaborated.

(iv) The reasons for confirming the punishment as adequate need to be explained.

(v) The petitioner should be furnished with all the documents cited in Annexure III of the charge memo dated 12.04.2010 in compliance to the order passed by this Court in W.P.(MD)No.4425 of 2011 dated 25.04.2012.



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15. Accordingly, this writ petition stands allowed. There shall be no order as to costs.

07.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
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Note: Issue order copy on 07.02.2024.



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L.VICTORIA GOWRI, J.,

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