

HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P. NO. 2184 of 1998

DATED: 04-04-2007

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Between:-

Kakarlamudi Rama Joga Rao s/o K.T.Mohana Rao, aged about 43 years, occupation: Lineman, office of the Assistant Executive Engineer, Andhra Pradesh State Electricity Board, 33KV/11KV Sub-Station, BHPB Sub-station, Nathaiahpalem, Visakhapatnam District, R/o Nathaiahpalem.

PETITIONER

And

The Executive Engineer, T.L.C. Division, A.P. State Electricity Board, Visakhapatnam and another.

RESPONDENTS

HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P. No. 2184 of 1998

ORDER

Heard Sri P. Sridhar Rao, learned counsel for the petitioner.

None appears on behalf of the respondents.

The short question, which arises for consideration in this writ petition, is as to whether the disciplinary authority before disagreeing with the findings of the enquiry officer is required to put the petitioner on notice and give him an opportunity of being heard.

Facts, in brief, are that the petitioner was appointed as a Helper in the year 1975 and as a regular Helper with effect from 01-10-1977. He was promoted as a Lineman vide proceedings dated 25.04.1994. He was issued charge memo dated 31.08.1994 to produce his educational qualification certificates in original i.e. Transfer Certificate issued by the Head Master, Zilla Parishad High School, Rajam. The petitioner contends that, in his explanation thereto, he had submitted that he never studied IX Class in Zilla Parishad High School, that he studied VIII Class in Zilla Parishad High School, Kanathi, Visakhapatnam and that he subsequently passed S.S.C. in March, 1984, as a private candidate. Subsequently,

vide Memo dated 15.09.1994, the petitioner was directed to produce the original S.S.C. certificate which he claims to have produced on 29.09.1994. Thereafter an Enquiry Officer was appointed, vide proceedings dated 05-10-1994, and the Enquiry Officer in his report observed that the charge levelled against the petitioner be dropped. Thereafter the first respondent, vide Memo dated 24.09.1997, called upon the petitioner to show cause as to why the punishment of reversion to the lower cadre of Junior Lineman permanently should not be imposed on him and that, after receipt of the petitioner's explanation dated 24.09.1997, the impugned proceedings dated 01-01-1998 were passed imposing on the petitioner the punishment of reversion to the lower post as Helper (presently Junior Lineman) permanently. A representation filed by the petitioner on 17-01-1998 was pending consideration at the time of filing of the writ petition.

In the counter-affidavit, the merits of the dispute are dealt with as also to the report of the Vigilance Cell of the A.P.S.E.B., and imposition of the punishment is sought to be justified. It is necessary to note that the Enquiry Officer (Divisional Engineer (Enquiries), Vijayawada, in his report dated 26-12-1995 held that, in view of the circumstances explained in the report, the charge leveled against the petitioner was not established and was dropped. The Executive Engineer, in his proceedings dated 24-09-1997, observed that the report of the Enquiry Officer had been examined carefully with

reference to the charge sheet issued to the petitioner, the explanation offered by him and the findings of the Enquiry Officer and that it was not proper to drop the charge. After holding the charge as proved, the Disciplinary Authority observed that as the charge relating to production of bogus educational qualification certificate was a grave misconduct of a serious nature, the Vigilance department had also confirmed the fact of production of bogus certificate, and it was clear that the petitioner had produced a bogus certificate at the time of appointment with the Board, he had, therefore, come to the provisional conclusion to revert the petitioner to the lower cadre of Junior Lineman permanently. The petitioner was directed to show cause as to why the said punishment should not be imposed on him for the gravity of the charge. As noted above the Enquiry Officer, in his report, has categorically held that the charge leveled against the petitioner was not established and was dropped. Since the Enquiry Officer has held the charge not established and as the disciplinary authority has disagreed with the findings of the Enquiry officer, an opportunity of being heard was required to be given to the petitioner prior thereto. As held by the Supreme Court, in **PUNJAB NATIONAL BANK AND OTHERS VS. KUNJ BEHARI MISRA**^[1]; **YOGINATH D. BAGDE V. STATE OF MAHARASHTRA AND ANOTHER**^[2] and this Court in **AHMED MOHIUDDIN V. STATE BANK OF HYDERABAD, HYDERABAD AND OTHERS**^[3], in case where the disciplinary

authority disagrees with the findings of the enquiry officer that the charges are not proved, he is obligated to provide at that stage an opportunity to the delinquent to enable him to convince the disciplinary authority in respect of the findings recorded in his favour by the enquiry officer, that the findings were justified and proper and a post decisional opportunity of hearing was of no avail. In the present case, the notice only required the petitioner to show cause as to why he should not be imposed the punishment of reversion to the lower post of Junior Lineman permanently. The petitioner has not been afforded an opportunity to show cause as to why the findings of the Enquiry Officer in his favour should not be accepted or that the findings of the Enquiry Officer were justified.

In view of the law down in the aforesaid judgments, the impugned order of punishment is liable to be quashed. It is made clear that this order shall not preclude the respondents from providing such an opportunity to the petitioner and thereafter take action against him in accordance with law. It is also made clear that this Court has not examined the merits of the case, and it is only on the short ground that the petitioner has been denied reasonable opportunity to show cause as to why the findings of the Enquiry Officer should not be accepted, has the writ petition been allowed.

The writ petition is, accordingly, allowed. However, in the circumstances, without costs.

RANGANATHAN, J
Dated: 04-04-2007
vp

RAMESH

[\[1\]](#) AIR 1998 S.C. 2713
[\[2\]](#) AIR 1999 S.C. 3734
[\[3\]](#) 2003 (4) ALD 738