

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/09/2003

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION.NO.38390 OF 2002

Janarthanan
Assistant Executive Engineer,
Palacode, Dharmapuri District. .. Petitioner

-Vs-

1. The Chief Engineer
Distribution,
Tamil Nadu Electricity Board,
Vellore Region, Vellore-6.

2. The Chairman,
Tamil Nadu Electricity Board,
Nadipisaipulavar K.R. Ramasami Malligai,
800, Anna Salai,
Chennai 600 002.

3. The Tamil Nadu Electricity Board,
rep. by its Secretary,
Nadipisaipulavar K.R. Ramasami Malligai,
800, Anna Salai,
Chennai 600 002. .. Respondents

Petition filed under Article 226 of the Constitution of India for the
issuance of Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr. A.E. Chelliah,
Senior Counsel for
Mrs.Vasanthakumari Chelliah

For Respondents : Mr.V. Radhakrishnan

:J U D G M E NT

The petitioner has prayed for issuing certiorarified mandamus

for quashing the punishment imposed upon him.

2. While the petitioner is working as Assistant Executive Engineer under the Tamil Nadu Electricity Board, in 1999, a charge memo was issued against him consisting of three charges. At the enquiry, he was exonerated of charge No.1 and found guilty of charge Nos.2 & 3, which are to the following effect :-

□ Charge No.2:

Even when there were no required load, is the connected loads are 2 40 watts and 640 watts for the houses of Kuppammal, W/o. Nagarajan and taking that itself into account, for giving power as three phase connection, he has granted approval to the estimate. Accordingly three phase power connection has been given.

Charge No.3:

For the houses of Rukkammal, W/o. Munusamy and Kuppammal, W/o. Nagarajan, where there was no capacity for the connected loads, for giving three phase connection the intention for giving approval to the three phase connection, i.e. the above said houses are situate near their wells, in a later period, for giving power connection through one pole system it will be helpful and with this intention, approval has been given to the estimate sent to him.

This is a misconduct.□

3. The petitioner had denied the allegations and offered detailed explanation. The enquiry officer in his report relating to charge No.2 inter alia observed:

□ . . . Further, generally when the Assistant Executive Engineer examines, there is no compulsion that there should be sufficient power load at that time itself. It is enough, if there has been wiring for the three phase connection. . . .□

Relating to Charge No.3, it has been observed inter alia :

□ . . . Janardanan says that when he took up spot inspection he did not see the wells. This is confirmed by the Board's witnesses also. For giving approval without the required load, Janardanan has not received money or anything as bribe. There is no complaint or report to this effect against Janardanan. . . .□

4. Inspite of the above findings, the enquiry officer had concluded that two charges had been proved and the disciplinary authority accepting the same, imposed punishment of stoppage of two increments with cumulative effect. The appeal preferred by the petitioner before the Chairman has been rejected by merely recording that no new points had been urged necessitating review of the order of punishment.

5. A perusal of the report furnished by the enquiry officer and the order passed by the disciplinary authority makes it amply clear that there is no allegation of any corruption or bribery. There is also no material on record to indicate that for sanctioning three phase connection, the delinquent was required to find about the actual necessity for such three phase connection. Merely because a well was in the house of the applicant and the delinquent did not discover the well or had not visualised that subsequently the applicant may apply for electric connection for agricultural purpose, is not sufficient to come to a conclusion regarding any serious delinquency on the part of the petitioner. The punishment of stoppage of two increments with cumulative effect in the background of allegations and the conclusions arrived at by the enquiry officer or the disciplinary authority appear to be grossly disproportionate.

6. Learned counsel appearing for the respondents has placed reliance upon the decision of the Supreme Court reported in 1999(1) SCC 759 (APPAREL EXPORT PROMOTION COUNCIL v. A.K. CHOPRA) . According to me, the present case can be said to be a fit case to invoke jurisdiction under Article 226 of the Constitution of India. Firstly because the conclusions of the enquiry officer do not make any specific misdemeanor and secondly because, assuming that there has been some dereliction in duty, the punishment imposed is grossly disproportionate.

7. The appellate authority has merely confirmed the order of the disciplinary authority stating that no new points had been urged. If an appeal has been filed, it is the duty of the appellate authority to consider the contentions raised by application of independent mind. That having not been done, such order passed by the appellate authority cannot be sustained.

8. In normal course, I would have remanded the matter to the appellate authority for fresh consideration. However, after considering the nature of the allegations and some of the conclusions arrived at by the enquiry officer, which have already been extracted, I feel, it would not be in the interest of justice to prolong the matter any further. The allegations, even if proved, did not call for any severe punishment, much less, stoppage of two increments with cumulative effect, particularly in view of the specific finding that there was no allegation of any payment of bribe.

9. For the aforesaid reasons, I am inclined to quash the order of punishment imposed on the petitioner. Since the order of punishment has been quashed, it goes without saying that the petitioner's case for promotion is required to be considered by the authorities concerned in accordance with law. The writ petition is accordingly allowed. No costs.

Index : Yes

Internet : Yes

dpk

To

1. The Chief Engineer
Distribution,
Tamil Nadu Electricity Board,
Vellore Region, Vellore-6.

2. The Chairman,
Tamil Nadu Electricity Board,
Nadipisaipulavar K.R. Ramasami Malligai,
800, Anna Salai,
Chennai 600 002.

3. The Tamil Nadu Electricity Board,
rep. by its Secretary,
Nadipisaipulavar K.R. Ramasami Malligai,
800, Anna Salai,
Chennai 600 002.

□