IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31/08/2004

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THE HONOURABLE MR. JUSTICE P.K. MISRA

W.P.No.14524 OF 1999
& W.P.20809 OF 2000
W.P.No.14524 of 1999

R. Jayabalan .. Petitioner

-Vs-

1. The Chairman,
Tamil Nadu Electricity Board,
Anna Salai, Chennai 600 002.

2. The Chief Engineer (Personnel),
Tamil Nadu Electricity Board,
Administrative Branch, 8th Floor,
800, Anna Salai, Chennai 600 002.

3. The Divisional Engineer,
Operation & Maintenance,
Tamil Nadu Electricity Board,
Thiruthani (C.E.S)

4. The Executive Engineer/
Electrical (O & M),
Barrage Power House-1,
Checkanur, Erode. .. Respondents

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

W.P.No.20809 of 2000
R. Jayabalan .. Petitioner
Vs.

1. The Chairman,
Tamil Nadu Electricity Board,
Anna Salai, Chennai 600 002.

2. The Chief Engineer (Personnel),
Tamil Nadu Electricity Board,
Administrative Branch, 8th Floor,
800, Anna Salai, Chennai 600 002.

3. The Chief Engineer (Distribution)
Vellore Region,
Vellore-600 006. .. 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. Jinasenan
in both WPs

^For Respondents
in both WPs : Mr.V. Radhakrishnan (TNEB)

:COMMON JUDGMENT

The facts giving rise to the present writ petitions are as follows :-
The petitioner was initially appointed as Assistant Engineer under the Tamil Nadu Electricity Board in the year 1971. In course of time he was promoted to the post of Assistant Executive Engineer in the year 1980. He was placed under suspension by order dated 15.3.1985 in contemplation of a disciplinary proceeding. On 23.3.1985 and 25.4.19 85, two sets of charges were framed against him. First set of charges related to granting of on-line service connection and the second set of charges related to unauthorised absence. After enquiry, an order of dismissal was passed on 29.1.1987. At that stage, the petitioner filed W.P.No.3594 of 1987. The aforesaid writ petition was allowed on 17.6.1991 on the ground that enquiry report in the disciplinary proceedings had not been furnished to the petitioner before the order of dismissal was passed. Thereafter, a copy of the enquiry report was furnished, and the petitioner was placed under deemed suspension with effect from 29.1.1987. Subsequently, the petitioner furnished a detailed defence statement on 30.9.1991. At that stage, by proceedings dated 5.9.1992, considering the fact that charges had not been framed by the competent authority, the Board decided to revoke the previous disciplinary proceedings and to initiate a fresh proceedings from the stage of issuing charge-sheet. The Board also decided to revoke the order of suspension. Thereafter, a fresh set of charges were initiated on the very same incidents. As per charge memo dated 12.10.19 92, first set of charges related to irregularity in identifying online agricultural service connection between 1.4.1978 and 31.8.1984, failure to submit report in connection with the representation received from the public, failure to remove all the meters relating to agricultural connection after introduction of flat rate of payment for agricultural connection and unauthorised extension of agricultural service connection. The second set of charges dated 25.11.1992 was on the allegation that the petitioner had failed to hand over records and he had left without permission during the period of suspension. In course of hearing of the writ petitions, learned counsel appearing for the Board has submitted that the latter two charges were not very serious and were inconsequential.
The petitioner in his explanation indicated that charges were similar to the charges earlier framed and the defence statement dated 30.9.1991,

already filed by the petitioner, may be taken into consideration. Thereafter, in course of the enquiry, the petitioner had sought for permission to peruse the documents, but the enquiry officer had rejected such request on 26.6.1996. On 19.8.1996, the petitioner filed a further defence statement. Even though no witnesses had been examined and no documents had been marked on behalf of the Board at the fresh enquiry, the enquiry officer furnished a report dated 12.12.1996 holding that all the charges were proved against the petitioner. At that stage, the petitioner filed a detailed written statement dated 24.1.1997 explaining the charges as well as the adverse findings given by the enquiry officer and subsequently he made a further representation to the Chairman dated 20.1.1998. The Board as per its Proceedings dated 10.3.1998, imposed a punishment of compulsory retirement. At that stage, the petitioner filed a Review Petition as contemplated in the relevant Service Regulations. Since such Review Petition had remained pending, the petitioner filed W.P.No.19210 of 1998 praying for a direction to the Board to dispose of the Review Petition. The High Court by order dated 7.12.1998 issued a direction to dispose of the Review Petition within a period of 12 we eks and thereafter, the Board rejected the Review Petition on 16.7.1999. The order passed by the Board imposing the punishment of compulsory retirement and the subsequent order rejecting Review Petition have been challenged in W.P.No.14524 of 1999. Subsequently, by proceedings dated 11.7.2000 in Lr.No.13448/Adm/B2/2000, the Board decided that the period of suspension and dismissal between 15.3.1985 and 9.2.1993 shall be regularised as Earned Leave from 15.3.1985 to 17.6.1985, for a period of 95 days and the remaining period from 18.6.1985 to 9.2.1993 was regularised as leave on loss of Pay. The connected W.P.No.20809 of 2000 has been filed against the above proceedings.

2. In course of hearing of the present writ petitions, learned counsel for the petitioner has challenged the order of compulsory retirement on several grounds. He has submitted that the incidents on the basis of which charge memo was issued related to the period prior to 1 985, and therefore, after deciding to drop the earlier disciplinary proceedings, the Board should not have started a fresh disciplinary proceedings after a long delay. It is also contended that at the subsequent enquiry, no witnesses had been examined on behalf of the Board nor any documents had been brought on record, and the enquiry officer prepared an enquiry report holding the petitioner guilty of the charges on the basis of his own personal knowledge and not on the basis of the legal materials on record. It is also contended that after enquiry report was furnished, the petitioner had filed a detailed explanation dated 24.1.1997 and yet the disciplinary authority, that is to say, the Board, mechanically accepted the report of the enquiry officer and decided to take action even without considering the detailed representation made by the petitioner. It is further contended that the review petition, which is contemplated under the Tamil Nadu Electricity Board Employee□s Discipline and Appeal Regulations, has been rejected by the Board in a mechanical manner without application of mind. It is submitted that at any rate, even assuming that the allegations had been established in full, the order of compulsory retirement is grossly disproportionate to the nature of delinquency and cannot be sustained. The learned Counsel has also further submitted that the Board has committed illegality in treating the major

portion of the period, during which the petitioner had remained on suspension, as leave on loss of pay.

3. Learned counsel appearing for the respondents has submitted that even though at the subsequent enquiry witnesses were not examined and documents were not formally marked, the conclusion of the enquiry officer is based on the own explanation furnished by the petitioner, and therefore, the report of the enquiry officer cannot be said to be vitiated. It is further submitted that since the Board had referred to the report of the enquiry officer and had accepted the findings, it was not necessary for the Board to give detailed reasonings either in the original proceedings dated 10.3.1998 or in the review proceedings dated 16.7.1999, and it cannot be said that the Board has not applied its mind. It is further submitted that even though the allegations were related to the period prior to 1985, the first disciplinary proceedings has been initiated immediately, and thereafter, the order of dismissal has been passed, which has been set aside by the High Court only in June, 1991, and thereafter, a fresh disciplinary proceedings was initiated based on the similar allegations as some technical flaws have been found in the initial disciplinary proceedings, and subsequently the enquiry continued before the enquiry officer, and it cannot be said that there has been any undue delay. It is also submitted that the question of imposition of punishment is a matter of discretion of the disciplinary authority, and ordinarily the Court of law should not interfere with the imposition of any punishment.

4. After the counsels from both sides were heard at length, matter was directed to be listed under the heading "for being mentioned" to enable the learned counsel for the Board to find out whether instead of compulsory retirement, any other could be imposed. This was so because, at that stage, this Court was prima facie of the opinion that the Board's proceedings had not been conducted in a proper manner, and more particularly, the detailed representation given by the petitioner had not been considered at all. Subsequently, when the matter was taken up, the learned counsel appearing for the Board on instructions submitted that it was not possible for the Board to reconsider the punishment imposed.

5. The contention of the learned counsel for the petitioner that allegations related to the period prior to 1985 and after the Board decided to drop the earlier proceedings, a fresh disciplinary proceedings should not have been initiated after a long delay evokes mixed response. There is no dispute that disciplinary proceedings had been initiated in 1985, and the order of dismissal had been passed in January, 1987, and thereafter, the matter remained pending in the High Court till June 1991. After the dismissal of the writ petition, the petitioner was again placed under deemed suspension, and in September, 199 2 the Board took a decision to revoke the order of suspension and to initiate a fresh disciplinary proceedings as there were some technical defects in the earlier proceedings, and accordingly, fresh charges were framed in October and November, 1992. Thus cannot be said that at that stage, there was any undue delay in initiating disciplinary proceedings as the matter was pending in different forums. However, subsequently the disciplinary proceedings followed a meandering course and

remained pending for more than 5 years. It is seen that at the subsequent disciplinary proceedings even though enquiry was held at several dates, actually no witnesses were examined either on behalf of the Board or on behalf of the petitioner, and therefore, there was no justification for the continuance of the matter for such a long period, when ultimately the decision was taken only on 10.3.1998. The proceedings could obviously have been concluded much earlier. However, since the petitioner himself has been reinstated, it cannot be said that the petitioner had suffered any serious prejudice on account of the unjustified prolongation of the disciplinary proceedings, save and except that he must have continued under mental agony for the entire period. The unjustified delay in concluding the disciplinary proceedings at an earlier date cannot have the effect of vitiating such proceedings in the absence of any real prejudice suffered by the delinquent. However, the fact that such proceedings continued for a long period without any valid justification on the part of the enquiry officer or the disciplinary authority is a relevant factor for considering the question of punishment.

6. The second submission of the learned counsel for the petitioner to the effect that without any material on record the finding of guilt has been arrived at by the enquiry officer on the basis of his own personal knowledge, even though prima facie attractive on the face of it, is not acceptable. As pointed out by the learned counsel for the respondents, some of the conclusions are based on the explanation furnished by the petitioner himself, and it cannot be said that the conclusions are based on no evidence.

7. Third and fourth submissions made by the learned counsel for the petitioner to the effect that the Board dealt with the matter in a mechanical manner without proper application of mind at the time of imposition of punishment as well as at the subsequent stage of consideration of review petition, however, appear to be justified.

8. A perusal of the proceedings of the Board dated 10.3.1998 indicates that the Board has merely extracted six charges framed against the petitioner and has recounted the fact that the enquiry officer had been appointed and had conducted enquiry on 11.6.1996, 11.7.1996, 16.7.1996 and 24.7.1996, wherein the delinquent had participated. The Board has further observed that the enquiry officer had held that all the charges had been proved, and a copy of the findings had been furnished. It is further recited that the delinquent has not submitted his defence statement within the stipulated time. Thereafter, in paragraph 3, it was concluded :-

 3. The matter was thus placed before the Board for consideration. The Board after careful consideration of the case with connected records and agreeing with the findings of the Enquiry Officer, comes to the conclusion that Thiru.R. Jayabalan, Assistant Executive Engineer/Electrical be imposed with the penalty of COMPULSORY RETIREMENT with pensionary benefits.

9. Learned counsel appearing for the petitioner has rightly submitted that except merely recounting the charges and the fact that enquiry had been conducted and report had been furnished, the Board had not at all

applied its mind to the relevant facts and circumstances. Moreover, even though after receipt of the enquiry report on 12.12.1996 , the petitioner had given a written representation on 17.1.1997 (which was admittedly received on 24.1.1997 by the authorities) explaining the position, there is no reference at all to such representation/explanation. A copy of the detailed explanation furnished by the petitioner is available at pages 46 to 83 of the typed set filed by the petitioner in W.P.No.14524 of 1999. A perusal of the aforesaid representation indicates various circumstances explained by the petitioner, and all details are given. It is rather surprising that such a detailed representation running to about 40 pages, has not been dealt with even in a single sentence.

10. It is well settled that after enquiry officer furnishes his enquiry report, the delinquent is offered opportunity to give his representation/explanation so that the disciplinary authority can examine the report in the light of the representation given by the delinquent. Giving an opportunity to the delinquent to explain the adverse findings at that stage, obviously is not an empty formality. The explanation furnished by the delinquent at that stage is required to be considered with all seriousness by the disciplinary authority. The disciplinary authority is required to consider the materials, including the report of the enquiry officer as well as the explanation furnished by the delinquent officer, so that it can come to its own independent conclusion, and is not blindly swayed away by the enquiry report furnished by the enquiry officer. It is of course true that the disciplinary authority may not be required to give detailed reasons, where it accepts the report of the enquiry officer, but the proceedings/ order of the disciplinary authority should adequately reflect that such authority has applied its mind to the relevant facts and circumstances and has arrived at a conclusion only thereafter.

11. Learned counsel appearing for the respondents has placed reliance upon the decision of the Supreme Court reported in AIR 1987 SC 204 3 (RAMKUMAR v. STATE OF HARYANA) in support of his contention that where the punishing authority agrees with the findings of the Enquiry Officer and accepts the reasons given by him, it is not necessary for the punishing authority to again discuss evidence and come to the same findings as that of the Enquiry Officer and give the same reasons for the findings.
The ratio of the aforesaid decision would not be applicable to the present case as the punishing authority, in the present case, has totally ignored the explanation / representation filed by the petitioner after the Enquiry Officer submitted his report.

12. The very fact that in the present case the detailed explanation given by the petitioner after enquiry report was furnished has been totally ignored, clearly indicates the lack of application of mind by the Board. It is obvious that the Board has blindly accepted the report of the enquiry officer without any application of mind, which has obviously vitiated the order dated 10.3.1998. The subsequent order in Review Proceedings is equally vitiated as the proceedings dated 1 6.7.1999 does not indicate any reason even though the Review Petition was on the basis of a specific Regulation to that effect. Since the Proceedings dated 10.3.1998 is vitiated

on account of nonconsideration of relevant materials, the order imposing punishment of compulsory retirement cannot be sustained.

13. Learned counsel for the petitioner has also submitted with some justification that even assuming that some of the conclusions reached by the enquiry officer were correct, imposition of punishment of compulsory retirement is disproportionately harsh and some lesser punishment like stoppage of increment, could have been imposed. Keeping in view the peculiar facts and circumstances of the case, such submission appears to be justified and the punishment imposed shocks the conscious and is grossly disproportionate.

14. The natural upshot of above conclusions should be to direct the Board to reconsider the matter on merit, and more particularly, on the question of punishment, and in normal course, this Court would have done so. However, I desist from doing so for the following reasons.

15. In 1995(6) SCC 749 (B.C. CHATURVEDI v. UNION OF INDIA AND OTHERS), it was observed :-

 18. A review of the above legal position would establish that the disciplinary authority, and on appeal the Appellate Authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

16. Similar view was expressed in 2001(2) SCC 386 (OM KUMAR v. UNION OF INDIA AND OTHERS). It was observed :-

 71. Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is questioned as arbitrary under Article 14, the court is confined to Wednesbury principles as a secondary reviewing authority. The court will not apply proportionality as a primary reviewing court because no issue of fundamental freedoms nor of discrimination under Article 14 applies in such a context. The court while reviewing punishment and if it is satisfied that Wednesbury principles are violated, it has normally to remit the matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the courts, and such extreme or rare cases can the court substitute its own view as to the quantum of punishment.

17. Keeping in view the aforesaid principles of law and the various peculiar facts and circumstances of the present case and with a view

to bring an end to further litigations and wranglings, I intend to decide the matter finally by adopting a path of balancing of the scales of justice.

18. Admittedly, the petitioner has reached the age of superannuation sometime during the year 2003, while the matter was pending in the High Court, and therefore, even if the disciplinary proceedings is fully quashed, he cannot be reinstated in service at present. As per the order passed by the Board, the petitioner was compulsorily retired in March, 1998 entitling him to receive the retirement benefits. The disciplinary proceedings related to incidents prior to 1985, and at present, third round of litigation is in the High Court. As already indicated, even though there was no illegality in starting a fresh proceedings in 1992, the disciplinary proceedings had unnecessarily remained pending without any valid justification for a period of about 6 years from 1992 to 1998, obviously causing much mental agony to the petitioner. The Board has already directed that the period between 15.3.1985 and 9.2.1993 shall be treated as leave on loss of pay except for a period of about 95 days, which was treated as earned leave. It is obvious that because of the pendency of the disciplinary proceedings, the petitioner has stagnated as Assistant Executive Engineer, even though his contemporary colleagues must have received at least two promotions thereafter. In the charges made against the petitioner, there is no allegation of any improper motive or any corruption, but the allegations relate to irregularities and lack of supervision, etc., not touching upon the integrity of the petitioner in any manner. Some of the findings by the enquiry officer can be said to be on the basis of the explanation of the petitioner himself, and therefore, it is not a case as if the petitioner would be fully exonerated even if the matter is remanded.

19. Having regard to all these aspects, I feel interest of justice would be served by quashing the order of punishment of compulsory retirement and directing that the petitioner shall be deemed to have been reinstated in service. It is further directed that a punishment of with-holding of promotion for a period of one year in 1998 is to be imposed. However, since the petitioner had not actually worked and the departmental proceedings cannot be said to be fully without justification, it is not proper to reward the petitioner with backwages. The petitioner shall be deemed to have continued in service until his normal date of retirement. The increments for the extended period would be notionally calculated. The case of the petitioner shall also be considered for notional promotion for the year 1999 and thereafter shall also be considered. The pension and other retiral benefits are to be recalculated on the basis of such notional increments and notional promotion, if any, and paid to the petitioner. Such direction should be implemented within a period of four months from the date of receipt of the order.

20. So far as W.P.No.20809 of 2000 is concerned, the direction issued by the authorities does not call for any interference in the peculiar facts and circumstances of the case.

21. In the result, W.P.No.14524 of 1999 is allowed in part to the extent indicated above and W.P.No.20809 of 2000 is dismissed. No costs.

Index : Yes / No
Internet: Yes / No
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