

(2015) 04 KAR CK 0162

In the Karnataka High Court

Case No : Writ Petition No. 31065/2009 (S-DE)

M. Shivanna

APPELLANT

Vs

The Karnataka Power Transmission Corporation Ltd.

RESPONDENT

Date of Decision : 07-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 4 KarLJ 46

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : Satishchandra for T. Narayanaswamy, for the Appellant; G.I. Gachchinamath, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Aravind Kumar, J.

1. Heard Sri. Satishchandra, learned counsel appearing on behalf of Sri. Narayanaswamy, for petitioner and Sri. I.G. Gachchinmath, learned counsel appearing for respondent. Perused the case papers.

2. Facts in brief which has led to filing of this petition are as under:

"Petitioner was an employee of respondent-Board and articles of charge came to be issued on 17.05.1991, Annexure-A, charging that petitioner/delinquent employee had demanded and accepted illegal gratification of Rs. 300/- from Sri. A. Channa Krishna, Somasettyhalli, Chintamani Taluk, while working as Junior Engineer (Electrical), Karnataka Electricity Board, Kaiwara for showing an official favour and while accepting said amount he was trapped by Karnataka Lokayukta and a report having been submitted by Lokayukta a prima facie case has been made out against him and accordingly, after ordering an enquiry under Regulation 14A of Karnataka Electricity Board Employees Services (C.D.C. and A) Regulations, 1987, an enquiry came to be conducted for charges leveled in the charge sheet and enquiry was entrusted to Hon"ble Upa-Lokayukta and by order

dated 04.09.1991, Annexure-B, Hon"ble Lokayukta nominated Additional/Deputy Registrar, Enquiries (5), Karnataka Lokayukta, Bengaluru, as Enquiry Officer to frame charges and conduct an enquiry against the delinquent employee. Accordingly, articles of charges came to be issued against the petitioner on 05.10.1991 vide Annexure-C."

3. An enquiry came to be conducted by said authority and Enquiry Officer submitted a report on 23.12.1993, Annexure-F1, holding that charges leveled against delinquent employee has been proved. Said report submitted by Enquiry Officer also came to be accepted by Upa-Lokayukta as per report dated 06.04.1994, Annexure-F2, who recommended for dismissal of petitioner from services. Accordingly, Board accepted the report and dismissed the petitioner from services by order dated 28.03.1995.

4. Being aggrieved by this order petitioner preferred writ petition before this Court in W.P. No. 17842/1997 challenging the order of dismissal. This Court after having noticed the fact that before the order of dismissal came to be passed against petitioner, Board had not furnished the copy of enquiry report and as such holding order of dismissal being in violation of principles of natural justice, set aside the order of dismissal and reserved liberty to Board to furnish a copy of enquiry report to petitioner and thereafter to proceed in accordance with law. Accordingly, matter came to be remitted to respondent - Board to redo the entire exercise from the stage at which the defect had occurred while passing the order of dismissal. This order passed in the writ petition on 07.04.2000, Annexure-E, was pursued in appeal by the Board in W.A. No. 4408/2000 and Division Bench of this Court by order dated 15.12.2000 dismissed the writ appeal and thereafter show cause notice came to be issued to petitioner on 13.05.2004, Annexure-F, enclosing enquiry report. Delinquent employee after receiving the said show cause notice submitted his reply to enquiry report on 03.06.2004, Annexure-G. Disciplinary Authority thereafter reexamined the issue and by order dated 13.09.2005, Annexure-H, reaffirmed the order of dismissal passed against petitioner, which is assailed in the present writ petition.

5. Sri. Satish Chandra, learned counsel appearing for the petitioner after having taken through the statements made by witnesses would contend that Enquiry Officer, Disciplinary Authority as well as Appellate Authority have failed to consider the material evidence available on record or in other words, certain contradictions or discrepancies found in the evidence of complainant - P.W. 1 would clearly indicate that there was no intendment on the part of petitioner/delinquent employee either to receive illegal gratification or to do any official favour to complainant for doing official work. It is also contended that these contradictions in the evidence of witnesses are sufficient enough to hold that charges leveled against petitioner was not duly proved and on account of non consideration of these aspects in proper prospective by Disciplinary Authority though it came to be highlighted by petitioner in reply to final show cause notice issued by Board on 02.08.1994 impugned order is liable to be quashed as being

one without appreciation of evidence.

6. Per contra, Sri. Gachchinmath, learned counsel appearing for respondent would support the impugned order and contends that on account of petitioner having been trapped by Lokayukta while receiving illegal gratification, enquiry came to be conducted and in the said enquiry proceedings petitioner has been afforded full opportunities and as such, there is no infirmity either in the report of Enquiry Officer or erroneous consideration of material evidence by Disciplinary Authority while passing the order of dismissal on 13.09.1995 and as such, he prays for dismissal of writ petition.

7. Having heard the learned Advocates appearing for parties and on perusal of records and after bestowing my careful attention to rival contentions raised it would emerge, that petitioner while working as Junior Engineer (Electrical) at KEB, Somasettyhalli, Chintamani Taluk, during undisputed point of time i.e., 28.06.1990, one Sri. A. Channa Krishan had installed a pump set to borewell located in his agricultural lands bearing ?HYPERLINK Sy. Nos. 173 and 174 of Alambagiri Village and had applied for providing electrical energy to said pump set and had remitted necessary deposits to the Board. On account of illegal demand for money made by delinquent employee, said applicant complained to Lokayukta police, who after registering the case secured two panchas and showed them the significance of phenolphthalein test while receiving money from the complainant and accordingly they went to the house of delinquent employee on 28.06.1990 at about 8.00 p.m. and when complainant enquired with the delinquent employee about his work namely providing electrical installation to irrigation pump set, delinquent employee demanded the balance of bribe amount and accepted Rs. 300/- from the complainant and after accepting the currency notes kept the same on a tea-poy and as prearranged Lokayukta police entered the delinquent employee's house along with panchas and staff members and immediately washed the hands of delinquent employee in liquid or solution brought by them which turned to pink colour from colourless solution and at the same time, Investigating Officer also seized the currency notes from delinquent employee and seized the records pertaining to complainant's application for providing service to pump set. Lokayukta police is said to have forwarded the seized articles to chemical examiner, who after examining the phenolphthalein powder in the material object, namely solution of which had been collected by dipping the hands of delinquent employee in said colourless solution at the time of trapping him for receiving illegal gratification have also confirmed the same.

8. Before Enquiry Officer several witnesses were examined on behalf of Board including the person who had complained to Lokayukta and petitioner was extended all opportunities including permitting him to tender his statement. After considering the statements of witnesses, Enquiry Officer came to a conclusion that charges leveled against petitioner was duly proved. Accordingly, a report came to be submitted at the first instance on 23.12.1993. As already noticed hereinabove, a final show cause notice was issued to petitioner on 08.07.1994

without furnishing the finding of Enquiry Officer or report of Upa-Lokayukta and Disciplinary Authority without considering any of these aspects had passed an order of dismissal against petitioner on 23.08.1995 by dismissing the petitioner from service. Thereafter, revision filed by petitioner also came to be dismissed by Revisional Authority on 25.01.1997 and these two orders came to be assailed by petitioner in W.P. No. 17842/1997 and this Court by order dated 07.04.2000 allowed the writ petition since it was found that order of dismissal was in violation of principles of natural justice. In other words, it was found by the Coordinate Bench of this Court that Disciplinary Authority before passing order of dismissal had not furnished the petitioner with copy of enquiry report to which he was entitled to object to. As such, Board was given liberty to proceed from that stage and it is thereafter, Board issued final show cause notice on 13.05.2008, to which petitioner submitted his detailed reply. It is thereafter Disciplinary Authority while passing the impugned order has taken note of order passed by this Court on 07.04.2000 and reply given by delinquent employee to the enquiry report submitted by Enquiry Officer who had been appointed by Hon"ble Upa Lokayukta and after considering the same and discussing the evidence of P.W. 1 as well as statement of delinquent employee, impugned order of dismissal dated 13.09.2005, Annexure-H, came to be passed.

9. This Court while examining the correctness or otherwise of the order of dismissal passed by Disciplinary Authority would neither act as an Appellate Court nor reappreciate the evidence tendered by parties in a domestic enquiry. If there has been violation of principles of natural justice or non appreciation of material evidence available on record which has resulted in an order of punishment being passed against delinquent employee/officer, which no person of ordinary prudence would have passed such an order, then alone this Court would get jurisdiction to interfere with the orders of Disciplinary Authority as otherwise not. In the instant case, perusal of enquiry report submitted by Enquiry Officer as well as order passed by Disciplinary Authority dismissing the petitioner from service, which is at Annexure-H, would clearly indicate that evidence of witnesses came to be analysed in detail and it was found that charges leveled against the petitioner is duly proved.

10. One of the contentions raised by learned counsel for petitioner is that there is inconsistency or discrepancy in the evidence of witnesses and thereby report submitted by the Enquiry Officer is improper or contrary to evidence on record. Said contention requires to be considered with circumspection inasmuch as in the instant case complainant before Upa Lokayukta has been examined as P.W. 1. In the domestic enquiry he has reiterated the contentions made in his complaint. His cross examination read in toto does not even remotely suggest that his evidence is to be disbelieved. On the other hand, Sri. Satish Chandra, learned counsel appearing for petitioner has made a valiant effort to contend that in view of admission made by witness - P.W. 1 in his cross examination with regard to mode, method and manner in which the alleged money was thrust into the hands of delinquent employee, would suggest that there was no demand made by the

delinquent employee for doing any official favour and as such, charge of receiving illegal gratification cannot be accepted in view of evidence of delinquent employee himself, which came to be recorded under Rule 11(18) of K.C.S. (CCA) Rules and said admission of delinquent employee reads as under:

"Ques. : 12) PW-1 - has stated that you took the money from your right hand and after counting the money, kept the same on the teapoy. What do you say?

Ans : False. He kept it on the teapoy when I refused to receive. I pushed it and asked him to take it back. But, without doing so, he went outside. I called him when he was going outside."

11. This admission of delinquent employee came to be recorded on 30.11.1993 by which time evidence of complainant had already been concluded. In the cross-examination of P.W. 1 namely complainant conducted on behalf of delinquent employee on 23.11.1992, would indicate that as though complainant himself offered money to delinquent employee and when he refused to receive the said money offered by complainant, it fell on the tea-poy. On these lines, suggestion had been made to complainant in his cross-examination. In the words of complainant himself as elicited in his cross examination it reads as under:

"12. It is false to say that when I offered the money to the AGO, he refused to receive the same and pushed the notes, and they fell on the tea-poy. It is false to say that the AGO called me when I was going out, to take my money (the witness says that the AGO called him)."

12. The inconsistency in the suggestion made to complainant - P.W. 1 and his own statement namely statement of delinquent employee is writ large in view of above recorded statements. In view of above inconsistency found in the stand of delinquent employee himself, this Court is of the considered view that report submitted by Enquiry Officer cannot be held as one suffering from either erroneous appreciation of evidence or non appreciation of available evidence and thereby resulting in material irregularity or illegality calling for exercise of jurisdiction of Article 226 of the Constitution of India. What is required to be examined by Disciplinary Authority in respect of report submitted pursuant to Domestic Enquiry would be probabilities of case and such degree of proof would be sufficient whereas in a criminal case proof required is beyond reasonable doubt. If preponderance of probabilities of case would point the guilt to Delinquent Officer, it would suffice and this precise exercise was duly undertaken by Enquiry Officer to ascertain whether charge leveled against petitioner was true and in this process it has been held in affirmative. Disciplinary Authority has also found evidence available on record which would clearly point out that charges leveled against petitioner are duly proved and accordingly has passed the impugned order.

13. For reasons stated hereinabove, I am of the considered view that there is no infirmity committed by Disciplinary Authority in accepting the said report and passing order of dismissal against petitioner. In that view of the matter, I

proceed to pass the following:

ORDER

(i) Writ petition is hereby dismissed.

(ii) Order dated 13.09.2005, Annexure-H, passed by respondent - Board is hereby affirmed.

(iii) Rule discharged.

(iv) Costs made easy.