
(2009) 02 OHC CK 0061
In the Orissa High Court

Sri P. Satyanarayan Patro

APPELLANT

Vs

Orissa Power Transmission Corporation Ltd.

RESPONDENT

Date of Decision : 26-02-2009

Acts Referred:

Citation : (2009) 108 CLT 124 : (2008) 108 CLT 124 : (2009) 1 OLR 989

Hon'ble Judges : R.N. Biswal, J;B.P. Das, J

Bench : Division Bench

Final Decision : Allowed

Judgement

R.N. Biswal, J.—In this writ petition, the petitioner seeks to challenge the order of punishment passed by opp.party as per Annexure-11 directing 20% of his pension to be reduced permanently, and the order of the appellate authority confirming the same under Annexure-13.

2. As per the writ petition, having been duly selected , the . petitioner was appointed as Sub-Assistant Engineer (Electrical) on 13.1.1975 by the Chief Engineer, Orissa State Electricity Board, Bhubaneswar and retired from service on superannuation from GRIDCO on 31.3.2003. After "his retirement, opp.party No. 1 served with a charge sheet on the gro.und that while he was working as Junior Engineer at Bhanjanagar Sub-Division for the period 9.12.1981 to 28.8.1990, he committed the following irregularities:

- (1) Negligence in duty to lack of proper supervision of construction work of the tower;
- (2) Caused heavy financial loss to OSEB/GRIDCO;
- (3) Gross misconduct;

3. It was alleged that due to his negligence, during construction of EHT towers, on Bhanjanagar-Chandaka 220 K.V. Double Circuit Lines EHT tower Nos. 178 and 179 got uprooted on 2.6.2003. During investigation, by a committee, to find out the cause of such uprooting, it was observed that with reference to the drawing

No. 1593-A for P+O type tower the stub was required to be embedded inside the concrete up to bottom of pyramid, but it was found that no portion of pyramid concrete came out of the monolithic with the stub. In other words, about 0.8 cum of concrete was only available as against the requirement of 3.34 per tower as provided in the drawing. Entry in the M.B. Book was made showing execution of full specified quantities as per drawing and not as per actual work done at site, for which, the towers were made weak to withstand gusty wind. Normally, the stub should be symmetrically placed inside the chimney and pyramid. But in the present case, it was found that the same was eccentrically placed indicating poor workmanship. The quantity of concrete was not properly checked and the quality and proportion were not homogenous as found from the test sample. A 1:2:4 concrete mix would normally give strength between 150 to 175 kg/m². But three samples which were tested varied widely indicating non-homogeneity. The soil condition at the site being semi-submerged soil, it required about 12 cum of concrete volume per tower. The volume in dry condition is 3.36 cum. From the above facts, it was alleged that the petitioner failed to adopt the design as per the site condition. It was also alleged that he did not properly supervise the work for ensuring quantity and quality of materials which led to poor condition of towers. Because of all these factors the two towers in question got up-rooted causing interruption in power transmission, beside causing huge financial loss amounting crores of rupees to GRIDCO/Government.

4. The petitioner was asked to submit his written statement of defence within 15 days from issue of charge sheet. Accordingly, he filed the written statement of defence denying the charges, wherein, he categorically stated that he was assigned with supervision of EHT construction work like survey, excavation of pits, erection of towers with other ancillary works relating to EHT line from Bhanjanagar to Nayagarh. On his supervision 180 number of EHT towers were constructed. The said works were done departmentally under supervision of S.D.O., Executive Engineer, Superintending Engineer and the Chief Engineer. He supervised the tower foundation location Nos. 178 and 179 while being constructed as per the direction of the superior officials. The S.D.O. was also present during execution of those works. It is the further case of the petitioner that the volume of concrete available in CET to be 0.8 cum per leg, instead of 3.36 cum. At the rate of 0.8 cum per leg for four legs it would be 3.63 cum. So, the volume of concrete available was exact as per the entry made in M.B. for location Nos. 178 and 179. The pyramid of every lower leg was made concrete in ratio of 1 : 2 : 4 up to volume 0.6 cum. The petitioner was present at the time of excavation of all the towers from beginning to end. Out of 180 numbers of towers, in two numbers (178 and 179) there might have defect in preparation of mixture of concrete.

5. It is the further case of the petitioner that during pendency of the departmental proceeding, the petitioner submitted an application before the enquiry officer with a prayer to issue direction to the presenting officer to produce the relevant circular of OSEB/GRIDCO with regard to allotment of duties

and responsibilities of the JE/SDO/Executive Engineer working under EHT organization, but the presenting officer, did not produce the same with a vague plea that he could not be able to collect the same since it was a very old circular and was not available in the office of opp.party. Without properly assessing the material placed before him, the enquiry officer found the petitioner as well as the other two charged officers, guilty on the ratio of 5 : 3 : 2.

6. After receiving the enquiry report, the petitioner submitted his show cause before the opp.party, but he did not consider the show cause reply and on the basis of enquiry report, passed the punishment order on 18.3.2005 reducing 20% of his pension permanently. The petitioner submitted a memorandum of appeal against the order of punishment before the appellate authority on 9.4.2005, which was dismissed erroneously on 5.11.2007, that too by the Senior General Manager, HRD who is not competent to hear the appeal since he was not the appellate authority as per the standing order of the Corporation. Moreover, it is the case of the petitioner that after retirement from service, no proceeding can be initiated against the retired person. In the present case, the proceeding was initiated after his retirement and no opportunity was given to him to defend his case before the enquiry officer, as such, there was clear violation of the principle of natural justice. Under such circumstances, petitioner filed the writ petition with the prayer noted earlier.

7. Opp.party, in his counter affidavit, stated that during his service period, the petitioner was in charge of Bhanjanagar-Chandaka 220 KV line. He was in sole charge of the construction work, like line survey, excavation of pits, and erection of towers with other ancillary works relating to E.H.T. line from Bhanjanagar to Nayagarh for more than 180 number of towers. Due to bad workmanship and lack of proper supervision in ensuring quantity and quality of materials, tower Nos. 178 and 179 got uprooted causing interruption in power transmission and heavy loss. So, the Government of Orissa in the Department of Energy constituted a high level committee to enquire about the cause of uprooting of the said towers. On the basis of enquiry report of the said committee, the departmental proceeding bearing No. 243 dated 6.8.2003 was initiated against the petitioner under CCA (Pension) Rules. The then S.D.O. and the Executive Engineer were also charged on similar allegations. The enquiry officer conducted the enquiry observing all formalities and natural justice and found the petitioner guilty of the charges.

8. After going through the enquiry report and all relevant documents, Opposite party held the petitioner guilty of the charges and parsed the order of punishment in accordance with law. In absence of functional Director (HRD), the Chairman-cum-Managing Director had been declared as the competent authority to initiate disciplinary proceeding vide office order No. 24523 dated 14.12.2004. Since the C.M.D. had passed the order of punishment, the appellate authority was the Board of Directors as per GRIDCO/OPTCL Officers' Service Regulations. Under such circumstances, the opp.party prayed to dismiss the writ petition.

9. At the outset, learned Counsel for the petitioner submitted that as per Rule 7 (2) (b) (ii) of the Orissa Civil Services (Pension) Rules, 1992 (hereinafter referred to as "the Pension Rules"), no departmental proceeding shall be initiated against a retired government servant, in respect of any misconduct which took place more than four years before institution of the proceeding. In the present case, the petitioner retired from service on attaining the age of superannuation on 31.3.2003. It took four days to complete the erection of two towers in question and the work was completed on 30.3.1987, whereas, the proceeding was initiated on 6.8.2003. So, the very initiation of the proceeding is illegal. On the contrary, learned Counsel for the opp.party contended that the two towers got uprooted on 2.6.2003, so, the proceeding was initiated within time.

10. As per the above provision of the Pension Rules, departmental proceedings, if not instituted while the government servant was in service, whether before his retirement or during his re-employment, shall not be instituted for any event (emphasis supplied) which took place more than four years before such institution. The charge framed against the petitioner was that due to his negligence in duty and lack of proper supervision, the two towers in questions which were constructed during the period 27.3.1987 to 30.3.1987 got uprooted. By the time the departmental proceeding was instituted against the petitioner, sixteen years had already elapsed from the event which took place in that year 1987. The submission of learned Counsel for the opp.party that the period of four years would be counted from 2.6.2003, when the two towers got uprooted cannot be accepted. Because the misconduct for which the departmental proceeding was initiated was with regard to lack of supervision etc, while the towers in question were erected. No doubt, the inferior quality of the work could be known only after the towers got uprooted in the year 2003 and the opp.party had no knowledge about such bad workmanship prior to that. But there is nothing to show in the Pension Rules that the period of four years as envisaged in Rule 7 can also be counted from the date of knowledge. So, we are in agreement with the view of the learned Counsel for the petitioner that the very initiation of the departmental proceeding is bad in law.

11. Learned Counsel for the petitioner, next submitted that the Senior General Manager (HRD) not being the Appellate Authority, was not competent to reject the appeal memo and as such the order of rejection dated 5.11.2007 under Annexure-13 was not sustainable. As against this, learned Addl. Standing Counsel contended that the appellate order was passed by the Board of Directors, the competent body and not the Senior General Manager (HRD), he only communicated the said order under Annexure-13.

Perusal of Annexure-13 shows that the appellate order was passed by the Competent Authority i.e. the Board of Directors O.P.T.C.L. and it was communicated by the Senior General Manager (HRD), I/C. So, the submission of learned Counsel for the appellant would not hold good in this respect.

12. Learned Counsel for the petitioner, next submitted that all the three charged

officers - the petitioner, the then S.D.O. and the then Executive Engineer were found guilty in the ratio 5:3:2, but the disciplinary authority exonerated the S.D.O. and Executive Engineer of the charges and found only the present petitioner guilty which is illegal.

13. As found from the enquiry report, the work of S.D.O. was to supervise the work of the petitioner. He passed the bill without supervising the work in question. He can not wash off his hands by merely saying that he was not present in the site while the work was being executed. So, there is some importance in the submission of learned Counsel for the petitioner.

14. Learned Counsel for the petitioner, next submitted that reasonable opportunity was not given to the petitioner to defend his case. "Reasonable opportunity" has not been defined in the Constitution or the General Clauses Act, but the words have acquired legal meaning. "Reasonable" means according to Rules of Natural Justice. Natural justice means that opportunity must be given to the delinquent to deny the charge, to defend himself by cross-examining the witnesses produced against him and to examine himself and any other witness in support of his defence. Natural justice also demands that no material should be relied on against the delinquent in the enquiry without giving him an opportunity to explain it. Opportunity should also be given to him to make his representation as to why the proposed punishment should not be inflicted upon him.

15. In the present case, admittedly, the charge memo was supplied to the delinquent to file written statement of defence. Accordingly, he filed his written statement of defence. No material had been relied on against him in the enquiry without giving him an opportunity to explain the same. A copy of the enquiry report was also made over to him and he was asked as to why the proposed punishment would not be imposed on him. But as found from the enquiry report, no witness was examined on behalf of the department, even though the delinquent specifically denied all the charges. No document was also proved. All the three delinquent officers were examined by the enquiry officer and whatever the senior officers stated, that was accepted to be true. As per the case of the petitioner, he was working under the direct supervision of S.D.O. but when it was confronted, the S.D.O. told that since the Junior Engineer (petitioner) did not ask him for his assistance while constructing the tower Nos. 178 and 179, he did not give any guidance and the statement of the S.D.O. was accepted to be true, which is illegal. As stated earlier, no witness was examined on behalf of the department. The enquiry officer put questions to all the delinquents and the presenting officer and on the basis of their answers, particularly, the answers of the S.D.O. and Executive Engineer, gave his finding. The presenting officer did not place his case, all of which are illegal per se. So, there was violation of the principle of natural justice. The Disciplinary Authority without examining all those points closely found the petitioner guilty while exonerating the other two delinquents.

16. Therefore, under such premise, the writ petition is allowed and Annexure-11

and 13 are hereby quashed. No costs.

B.P. Das, J.

17. I agree.