

(2013) 08 KAR CK 0239

In the Karnataka High Court

Case No : Writ Petition No. 15469 of 2013 (S-DE)

T. Bhaskar

APPELLANT

Vs

Karnataka Power Transmission Corporation Limited and
Another

RESPONDENT

Date of Decision : 14-08-2013

Acts Referred:

Citation : (2014) 1 AKR 12 : (2013) 5 KarLJ 433

Hon'ble Judges : L. Narayana Swamy, J

Bench : Single Bench

Advocate : Subramanya Jai S., for Sri K.C. Shantakumar, for the Appellant; P.S. Dinesh Kumar, for the Respondent

Judgement

L. Narayana Swamy, J.—Enquiry initiated against the petitioner, which has resulted in enquiry report as per Annexures-H and punishment order as per Annexure-J have been challenged and sought for quashing the same. The respondent framed 13 charges against the petitioner. The Enquiry Officer was appointed and Enquiry Officer by his report dated 11-10-2010, exonerated the petitioner from all the 13 charges. Disagreeing with the same on the ground that he has not given a detail reason, the Enquiry Officer was further asked to give detailed order in the form of enquiry report, As a result Enquiry Officer in his second enquiry report as per Annexure-J, dated 25-10-2010 again as per the report exonerated the petitioner from all the charges. The Disciplinary Authority disagreeing with the enquiry report issued a show-cause notice to the petitioner on 2-11-2010 and passed an order on 8-3-2013. In Annexure-A, the petitioner has been punished by withholding 3 increments with cumulative effect and suspension period was directed to be treated as leave without salary.

2. The learned Counsel for the petitioner submits that the impugned action on the part of the second respondent who is the Disciplinary Authority who has ordered for second enquiry report, which is impermissible. In both first and second enquiry report the petitioner has been exonerated the of charges. The

second respondent having not agreed with the enquiry report issued a show-cause notice for which he has answered in his reply dated 18-11-2010. The second respondent has kept quiet for about 2.5 years and now has issued the impugned order of punishment on 8-3-2013. The action of the second respondent in not acting on the show-cause notice dated 18-11-2010 within a reasonable time is itself arbitrary one. Accordingly, the same is liable to be quashed. The petitioner further referred the judgment in Venkatesh Vs. The State of Mysore, . After having submitted the reply to the show-cause notice if the Disciplinary Authority has not acted within a reasonable time an interference could be drawn in favour of the petitioner as if he has been exonerated.

3. The learned Counsel for the respondents supports the Impugned order of punishment. It is submitted that the Annexure-J is the second enquiry report since the earlier enquiry report dated 11-10-2010 was not with detailed reasons. Hence the Enquiry Officer asked to give detailed report narrating the evidence and materials. Even in the subsequent enquiry report the petitioner has been exonerated but the Disciplinary Authority disagreeing with the findings has issued show-cause notice to the petitioner as to why he shall not be punished after rejecting the enquiry report. Hence the respondent has not committed any error, petition to be dismissed.

4. The learned Counsel for the respondents further submitted to dismiss this petition since the petitioner has not availed alternative remedy by way of appeal to the Appellate Authority. If the petitioner is directed to approach the Appellate Authority the same would be considered and order would be passed early. The learned Counsel refers the judgment of the Supreme Court in State of Madhya Pradesh Vs. Nerbudda Valley Refrigerated Products Company Pvt. Ltd. and Others, .

5. I have heard both the learned Counsel for the petitioner and learned Counsel for the respondents.

6. After hearing the arguments, in my considered opinion, the Enquiry Officer has failed to analyse the evidence and materials in his enquiry report and hence he has committed an error in this regard. Even in the second report, the Enquiry Officer has done the same thing and therefore the Disciplinary Authority has disagreed with the enquiry report for which there is no quarrel, the Disciplinary Authority has power. When Disciplinary Authority has disagreed and decided to pass fresh orders on the basis of the charge, he should give notice to the delinquent. Accordingly, notice was issued on 2-11-2010 directing the petitioner to show cause why the enquiry report should not be rejected and fresh order of punishment shall not be passed, for which the petitioner has replied on 18-11-2010. However, the said reply was not acted till 8-3-2013. The delay occurred for such length of time is not explained in the impugned order. As it is referred in the judgment in Venkatesh's case, the respondent-authority should react at a reasonable time after the reply is made by the petitioner. Hence, there is an inherent defect in the order at Annexure-A. The impugned order of

punishment is also defective one for the reason that while discussing each charge no reasons have been assigned as to impose the punishment no evidence and materials have been discussed, for charge No. 1 he has given 6.5 line reason, 5.5 line reasons for charge Nos. 2, 4.5 line reason for charge No. 3 like that he has given very cryptic reasons for each charge. In respect of charge Nos. 6, 12 and 13, he has given only 2.5 and 1.5 line reasons. Without proper appreciation of the evidence and materials on record, the Disciplinary Authority is not justified in passing the impugned order. Further, the Disciplinary Authority has not assigned any reasons for the delay after the reply submitted by the petitioner. Under these circumstances, impugned order at Annexure-A dated 8-3-2013 is arbitrary, biased and hence required to be quashed. Accordingly, I pass the following:

ORDER

(i) Writ petition is hereby allowed.

(ii) Order Annexure-A dated 8th March, 2013 in No. KPTCL:B52/13412/2009-10 issued by the second respondent is hereby quashed.