
(1999) 02 KAR CK 0010
In the Karnataka High Court
Case No : Writ Appeal No. 3500 of 1998

Tukaram S. Vernekar

APPELLANT

Vs

Karnataka Electricity Board, Bangalore and Others

RESPONDENT

Date of Decision : 03-02-1999

Acts Referred:

Citation : (1999) ILR (Kar) 3877 : (1999) 3 KarLJ 28 : (1999) 2 LLJ 774

Hon'ble Judges : K.R. Prasada Rao, J;Ashok Bhan, J

Bench : Division Bench

Advocate : Sri C.R. Gururajan and Sri M.L.N. Reddy, for the Appellant; M/s. Sundaraswamy Ramdas and Anand, for the Respondent

Judgement

1. Appellant is employed as a Junior Engineer (Civil) under the respondent-Karnataka State Electricity Board (for short the "Board"). While working as Junior Engineer, he was placed under suspension on 26-5-1986 on the allegation of certain lapses, acts of omissions and commissions on his part. A regular departmental enquiry was ordered against him. Sri H. Nagappa, Retired District and Sessions Judge was appointed as Specially Empowered Authority for holding the enquiry. Enquiry Officer exonerated him of the charges levelled against him. Report of the Enquiry Officer is dated 5-10-1994.

2. The matter was placed before the Disciplinary Authority which disagreed with the enquiry report. After recording its reasons for differing with the enquiry report but without issuing notice to the appellant, the Disciplinary Authority proceeded to impose the punishment of withholding of one annual increment falling due next without cumulative effect with a severe warning that repetition of the mistake will result in severe punishment. The order of the Disciplinary Authority is dated 17-1-1995. Appellant preferred a further appeal before the Departmental Appellate Authority. The appeal was dismissed on 13-2-1998.

3. Aggrieved against the order of the Disciplinary Authority and the Single Judge, appellant filed a writ petition raising four-fold argument stating that:

- (a) the charges were not served on the petitioner by the competent authority;
- (b) he was not served with enquiry report before the order was passed by the Disciplinary Authority;
- (c) he was not supplied with certain documents; and
- (d) Disciplinary Authority had not recorded proper reasons for disagreeing with the report of the Enquiry Officer.

4. Pleas raised by the appellant were negatived by the Single Judge and as a result thereof, the writ petition was dismissed. Aggrieved against the order of the Single Judge, this appeal has been filed.

5. The only contention raised before us by the Counsel for the appellant Sri Gururajan is that the Disciplinary Authority after differing with the report of the Enquiry Officer, while awarding the punishment, failed to provide an opportunity by issuing a notice or hearing. According to him, it was incumbent on the Disciplinary Authority in case it differed with the enquiry report to record reasons for differing with the enquiry report and to issue a notice before awarding the punishment. For this reliance has been placed upon a recent judgment of the Supreme Court in Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, . Counsel for the respondent Mr. Ramadas did not have much to say against the argument raised by the Counsel for the appellant in view of the judgment referred to above.

6. In Punjab National Bank's case, supra, the Supreme Court has held that in case the Disciplinary Authority differs with the enquiry report then, it is incumbent upon it to record reasons for so doing and afford an opportunity to the Delinquent Official to accept the favourable conclusion of the Enquiry Officer. The principles of natural justice require the authority which has to take a final decision and impose a penalty to give an opportunity to the Officer charged of misconduct to file representation before the Disciplinary Authority which records its finding on the charges framed against the Officer. In para 19 of the judgment, it was observed as under.--

"19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the Disciplinary Authority disagrees with the Inquiry Authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the Delinquent Officer an opportunity to represent before it records its findings. The report of the Inquiry Officer containing its findings will have to be conveyed and the Delinquent Officer will have an opportunity to persuade the Disciplinary Authority to accept the favourable conclusion of the Inquiry Officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the Officer charged of misconduct to file representation before the Disciplinary Authority records its

findings on the charges framed against the Officer".

7. For the reasons stated above, the appeal is accepted. Order of the Single Judge dated 8-7-1998, Appellate Authority dated 13-2-1998 and the Disciplinary Authority dated 17-1-1995 are set aside. Liberty is reserved with the Disciplinary Authority to now proceed in accordance with law. In case he proposes to differ with the enquiry report, then it shall issue a notice to the appellant and afford an opportunity of putting forth his point of view before the Disciplinary Authority.

8. The appeal is accepted with no order as to costs.