

V.Muthukrishnan Vs. 1.The Chief Engineer (Distribution),

V.Muthukrishnan Vs. 1.The Chief Engineer (Distribution),

SooperKanoon Citation : sooperkanoon.com/1169322

Court : Chennai

Decided On : Aug-12-2013

Judge : S.Manikumar

Appellant : V.Muthukrishnan

Respondent : 1.The Chief Engineer (Distribution),

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED: 12/08/2013 CORAM THE HONOURABLE MR.JUSTICE S.MANIKUMAR W.P.(MD)No.13239 of 2013 and M.P.(MD)No.1 of 2013 V.Muthukrishnan .Petitioner Vs 1.The Chief Engineer (Distribution).Tamil Nadu General and Distribution Corporation Ltd., Tirunelveli.

2.The Superintending Engineer, Tamil Nadu General and Distribution Corporation Ltd., Virudhunagar Electricity Distribution Circle, Virudhunagar.

3.M.G.Vajravelu 4.The Executive Engineer (Distribution).Enquiry Officer, Tamil Nadu General and Distribution Corporation Ltd., Srivilliputhur.Respondents Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorari to call for the records relating to the impugned charge memo issued by the fiRs.respondent in F.M.vz;.

003698/201/epgp/rp1/2013, on 26.04.2013, against the petitioner, and quash the same.

!For Petitioner ..Mr.V.Sitharanjandas :

ORDER

Challenge in this writ petition is to the impugned charge memorandum dated 26.04.2013 issued by the The Chief Engineer (Distribution).Tamil Nadu General and Distribution Corporation Ltd., Tirunelveli.

2.Material on record discloses that earlier, the petitioner was issued with a charge memo dated 24.11.2011 calling for an explanation.

He has submitted a reply on 14.12.2011 denying the charges.

Not satisfied with the explanation, the Chief Engineer (Distribution).Tamil Nadu General and Distribution Corporation Ltd., Tirunelveli, the fiRs.respondent herein, has suspended the petitioner on 21.12.2011 until further orderRs.He has exercised powers under Sub-Regulation (a) of Regulation 9 of Tamil Nadu Electricity Board Employee's Discipline and Appeal Regulation.

Thereafter, the fiRs.respondent has framed the charge memorandum dated 12.06.2012.

The charges framed are as follows: ".Charge No.1: Thiru.V.Muthukrishnan, Assistant Executive Engineer, Rajapalayam (under suspension).was serving in the office of Ezhayiram Pannai Pirivu from 28.11.2007 to 28.10.2009.

While so, when an inspection was conducted by the Special Inspecting Team in the said Ezhayiram Pannai Pirivu office pertaining to the period from the year 2008 to July 2011, as regards the accounts and the details of receipts, it was found that there were some irregularities during his period of working, ie., from 2008 to 2009, and a sum of Rs.7,28,831/- belonging to the Electricity Board, was cheated.

It was seen that the original receipt for the receipt of money was cancelled.

By doing so, that amount will be seen as balance, which was deducted from the electricity charges, thus showing the balance as nil.

On that basis, the same amount was deducted at many places, resulting in the loss of money to the Board.

If for some reasons, if any wrong bill comes in the computer, he has the authority to cancel those receipts.

If the computer becomes defective, at that time, handwritten receipts will be issued, but the same has to be fed into the computer after getting permission from the Assistant Engineer.

Moreover, the original receipts which will be received from the concerned consumers should be pasted on to the permanent register, and thereafter, another receipt should be issued for the correct amount.

Since this procedure has not been followed, it is seen that he has committed theft of money which shows his dishonesty.

During receipt of money by cheque, for the electricity connections of the local bodies, he has received unfilled cheques and thereafter he added the amount of other consumers to it, and then deposited in the bank, thus causing cheating of money.

Due to his above acts, irregularities had occurred with regard to the fund of Electricity Board, as under:- A.

Adjustment entries entered into the computer from 2008 to 2009 as regards the amount received through computer as well as by hand receipt.

Rs.4,96,297/- B.

If there are any irregularities in the amounts received, the receipts should be cancelled after getting permission from Assistant Electrical Engineer.

But without stating any reason, wrong entries in the computer had been made cancelling the receipts during the above period.

Rs.2,32,534/- Rs.7,28,831/- The above acts show theft of money, cheating and dishonesty.

Charge No.2: Thiru V.Muthukrishnan, Assistant Executive Engineer, Rajapalayam (under suspension).when he was working as Assistant Engineer in Ezhariyam Pannai Pirivu during 28.11.2007 to 28.10.2009, he had not done his work properly with regard to his allocation of work.

Since he was not supervising the work properly and adopted a lethargic attitude, and also not appraising the said cheating to his next grade officer during the appropriate time, he was instrumental in making loss to the Board.

This act pertains to non-performance of the work allocated to him."

3.According to the petitioner, he was not served with copies of documents required for his defence.

By order dated 05.07.2012, the suspension was revoked.

On 31.08.2012, the Chief Engineer (Distribution).Tamil Nadu General and Distribution Corporation Ltd., Tirunelveli, the fiRs.respondent herein, appointed the Executive Engineer (Distribution).Tamil Nadu General and Distribution Corporation Ltd., Kadayanallur, as Enquiry Officer.

The petitioner has submitted that the documents relied on by the Board has to be furnished to him.

Subsequently, on 25.10.2012, the charges framed against the petitioner were cancelled without prejudice to fresh charges to be framed against the petitioner.

Thereafter, on 26.04.2013, the Chief Engineer (Distribution).Tamil Nadu General and Distribution Corporation Ltd., Tirunelveli, has framed the following charges: ".Thiru V.Muthukrishnan, Former Assistant Electrical Engineer, Ezhariyam Pannai Pirivu, presently working as Assistant Executive Engineer in Alangulam, was working previously in Ezhariyam Pannai Pirivu Office from 28.11.2007 to 28.10.2009.

While so, when an inspection was conducted by the Special Inspecting Team in the said Ezhayiram Pannai Pirivu office pertaining to the period from the year 2008 to July 2011, as regards the accounts and the details of receipts, and also the amounts received through computer and hand written receipts during his period of work, if there are any irregularities found through the computer allocated to him, as regards the adjustment entries of Rs.4,96,297/- or any irregularities in the monies received, then, the receipts should be cancelled by getting permission from the Assistant Electrical Engineer.

But without stating any reason, through the password allocated to him, he made wrong entries and cancelled a sum of Rs.2,32,534/- during his tenure.

In view of this, he had cheated the Board's money by committing irregularities.

Charge No.2: Thiru V.Muthukrishnan, Former Assistant Electrical Engineer, Ezhariyam Pannai Pirivu, presently working as Assistant Executive Engineer in Alangulam, when he was working previously in Ezhariyam Pannai Pirivu Office from 28.11.2007 to 28.10.2009, he had not taken any action to maintain the Adjustment Register and cancelled PR Register.

Moreover, he had not carried out proper supervision in exercise of his work.

Since he had not supervised the accounts properly and adopted a lethargic attitude, and also not appraising the said cheating to his next grade officer during the appropriate time, he was instrumental in making loss to the Board.

This act pertains to non-performance of the work allocated to him."

4.Assailing the correctness of the charge memorandum dated 26.04.2013, Mr.V.Sitharanjandas, learned counsel for the petitioner, submitted that once the charge memorandum dated 12.06.2012 has been withdrawn, it would amount to exonerating the petitioner from the charges and that therefore, it is not open to the fiRs.respondent to issue another charge memorandum.

He further submitted that the charges framed in the earlier charge memorandum dated 12.06.2012 and the impugned charge memorandum dated 26.04.2013, are

identical and therefore, it cannot be treated as fresh charges, warranting the disciplinary authority to frame charge memorandum, in succession.

5.He also submitted that Tamil Nadu Electricity Board Employee's Discipline and Appeal Regulations, do not authorise the disciplinary authority to issue any fresh charge memorandum.

Inviting the attention of this Court to the impugned charge memorandum dated 26.04.2013, the learned counsel for the petitioner further submitted that there is nothing to indicate that it is a continuance of the earlier disciplinary proceedings.

For the above said reasons, learned counsel for the petitioner prayed for quashing the impugned charge memorandum.

6.Heard the learned counsel for the petitioner and perused the materials available on record.

7.Though the learned counsel for the petitioner has assailed the impugned charge memorandum on the grounds stated supra, this Court is not inclined to accept the said contentions for the reason that on more than one occasion, the Supreme Court has held that interference with the charge memorandum, at the threshold is not permissible, unless and until the charge memorandum has been issued by an incompetent authority or contrary to statutory provisions.

At the outset, it could be noticed that the petitioner has not challenged the competency of the Chief Engineer (Distribution).Tamil Nadu General and Distribution Corporation Ltd., Tirunelveli, to initiate disciplinary proceedings and formulate the charges.

On the above aspect, it is worthwhile to extract the following decisions of the Supreme Court: (i) In State of U.P.v.

Brahm Datt Sharma reported in 1987 (2) SCC179 at Paragraph 9, held as follows: ".When a show cause notice is issued to a government servant under a statutory provision calling upon him to show cause, ordinarily the government servant must place his case before the authority concerned by showing cause and the courts

should be reluctant to interfere with the notice at that stage unless the notice is shown to have been issued palpably without any authority of law.

'The purpose of issuing show cause notice is to afford opportunity of hearing to the government servant and once cause is shown it is open to the Government to consider the matter in the light of the facts and submissions placed by the government servant and only thereafter a final decision in the matter could be taken.

Interference by the court before that stage would be premature, the High Court in our opinion ought not to have interfered with the show cause notice."

(ii) In Union of India v.

Upendra Singh reported in 1994 (3) SCC357 the Central Administrative Tribunal examined the correctness of the charges against the respondent therein, on the basis of the material produced by him and quashed the same.

The Union of India preferred an appeal.

The Supreme Court, after considering the decisions in T.C.Basappa v.

T.Nagappa reported in AIR 1954 SC440 which was followed in Ujjam Bai v.

State of U.P., reported in AIR 1962 SC1621 and V.D.Trivedi v.

Union of India reported in 1993 (2) SCC55 at Paragraphs 4 and 6 of the judgment in Upendra Singh's case, held as follows: ".In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law.

At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges.

The tribunal cannot take over the functions of the disciplinary authority.

The truth or otherwise of the charges is a matter for the disciplinary authority to go into.

Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to Court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be.

The jurisdiction of the Central Administrative Tribunal is akin to the jurisdiction of the High Court under Article 226 of the Constitution.

Therefore, the principles, norms and the constraints which apply to the said jurisdiction apply equally to the Tribunal.

If the original application of the respondent were to be filed in the High Court, it would have been termed, properly speaking, as a Writ of prohibition.

A writ of prohibition is issued only when patent lack of jurisdiction is made out.

It is true that a High Court acting under Article 226 is not bound by the technical rules applying to the issuance of prerogative writs like certiorari, prohibition and mandamus in United Kingdom, yet the basic principles and norms applying to the said writs must be kept in view."

(iii) The Supreme Court in *Special Director v.*

Mohd.

Ghulam Ghouse reported in 2004 (3) SCC440 at paragraph 5, held as follows: ".This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show-cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties.

Unless the High Court is satisfied that the show-cause notice was totally non est in the eye of the law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking

and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show-cause notice and take all stands highlighted in the writ petition.

Whether the show-cause notice was founded on any legal premises, is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the court.

Further, when the court passes an interim order it should be careful to see that the statutory functionaries specially and specifically constituted for the purpose are not denuded of powers and authority to initially decide the matter and ensure that ultimate relief which may or may not be finally granted in the writ petition is not accorded to the writ petitioner even at the threshold by the interim protection granted."

(iv) In Union of India v.

Kunisetty Satyanarayana reported in AIR 2007 SC906 the respondent therein was issued with a charge memo for availing reservation against the post earmarked for ST, though he did not belong to the said category.

Instead of submitting a reply to the charge memo, he preferred Original Application before the Central Administrative Tribunal, which disposed of the same with a direction to the respondents to submit the explanation to the charge memo and on such reply, the disciplinary authority was directed to consider the same.

Instead of filing the reply, the respondent therein filed a Writ Petition, which was allowed.

Testing the correctness of the order of the Andhra Pradesh High Court, the Supreme Court, at paragraphs 13, 14 and 16, held as follows: ".13.

It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show-cause notice vide, Executive Engineer, Bihar State Housing Board v.

Ramdesb Kumar Singh and ORS.[JT1995(8) SC33, Special Director and Anr.v.Mohd.

Ghulam Ghouse and Anr.

[AIR 2004 SC1467, Ulagappa and Ors.v.Divisional Commissioner, Mysore and ORS.[2001(10) SCC639, State of U.P.v.

Brahm Datt Sharma and Anr.

[AIR 1987 SC943 etc.14.

The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature.

A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so.

It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established.

It is well settled that a writ lies when some right of any party is infringed.

A mere show-cause notice or charge-sheet does not infringe the right of any one.

It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

16.

No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal.

However, ordinarily the High Court should not interfere in such a matter."

(emphasis supplied) 8.While exercising jurisdiction under Article 226 of the Constitution of India, this Court cannot go into the correctness of the allegations contained in the charge memo on merits and assume the role of a Disciplinary Authority, particularly when the Supreme Court has time and again held that ".interference by the Courts to the show cause notice or charge memo at the threshold, would be premature and mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order".9.The contention of the learned counsel for the petitioner that the cancellation of the earlier charge memorandum dated 12.06.2012, would amount to exoneration, cannot be accepted.

A perusal of the letter of the Chief Engineer (Distribution).Tamil Nadu General and Distribution Corporation Ltd., Tirunelveli, dated 25.10.2012, makes it clear that the charge memorandum dated 12.06.2012 has been cancelled without prejudice to framing of fresh charges against the petitioner.

As stated supra, an Enquiry Officer has already been appointed to enquire into the charges framed on 12.06.2012.

The Chief Engineer (Distribution).Tamil Nadu General and Distribution Corporation Ltd., Tirunelveli, having decided to proceed against the petitioner, has only stated in his letter dated 25.10.2012 that the earlier charge memorandum has been cancelled, without prejudice to frame fresh charges to be framed against the petitioner, thus reserving his right to proceed against the petitioner, for the imputations already levelled against him.

Therefore, the contention of the petitioner that he should be treated as exonerated of the charges, cannot be accepted.

10.As regards the contention that the charges framed in the proceedings dated 12.06.2012 and the impugned charge memorandum dated 26.04.2013 are one and the same, and therefore, they cannot be said to be fresh charges, and hence the impugned memorandum has to be set aside, this Court is of the view that the

charges framed in the impugned charge memorandum, have been elaborated with details, though the sum and substance of the charges may appear to be one and the same.

In the later charge memorandum dated 26.04.2013, fresh materials have been incorporated while formulating the charges.

Comparison of two memorandums shows variance.

The words ".fresh charges".

should not be construed to mean that all the earlier charges are wiped out and that the charges, now framed in the impugned proceedings, should contain some other charges, other than the one framed.

At this juncture, it should be noted that the enquiry has not even commenced, and therefore, the disciplinary authority is empowered to include fresh materials or imputations in the revised charge memo.

Though the learned counsel for the petitioner has also contended that the petitioner was not responsible for the illegalities and blamed the Supervisor, this Court is not inclined to delve into the said aspect and convert this Court into that of an Enquiry Officer.

Since serious financial irregularities have been made against the petitioner, and that he has also been alleged to be responsible for loss of money to the Electricity Board, the matter has to be enquired into by the Board.

In the light of the decisions of the Supreme Court, stated supra, interference with the charge memorandum at the threshold, would be amounting to putting spokes into the wheels of the disciplinary authority.

11.The writ petition is dismissed.

Consequently, the connected miscellaneous petition is closed.

No costs.

KM To 1.The Chief Engineer (Distribution).Tamil Nadu General and Distribution Corporation Ltd., Tirunelveli.

2.The Superintending Engineer, Tamil Nadu General and Distribution Corporation Ltd., Virudhunagar Electricity Distribution Circle, Virudhunagar.

3.The Executive Engineer (Distribution).Enquiry Officer, Tamil Nadu General and Distribution Corporation Ltd., Srivilliputhur.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com