

C. Selvaraj Vs. T.N.E.B.

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Court : Chennai

Decided On : Oct-05-1993

Reported in : (1994)IILLJ1070Mad

Judge : Kanakaraj, J.

Appeal No. : W.P. No. 13152/1988

Appellant : C. Selvaraj

Respondent : T.N.E.B.

Advocate for Def. : N. Kanakasabai, Adv.

Advocate for Pet/Ap. : G. Venkataraman, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Kanakaraj, J.

1. The writ petition is to quash the order of the third respondent dated May 7, 1988 confirming the order of the second respondent dated January 30, 1988 removing the petitioner from the services of the Tamil Nadu Electricity Board. The petitioner is the Vice President of the Engineering Diploma Holders' Association which was

later merged with the Tamil Nadu Electricity Board Engineers Sangam. The petitioner used to assist the other employees in several enquiry proceedings, in accordance with Clause 32(vii)(e) of the Certified Standing Orders. It is the case of the petitioner that the respondents did not relish the conduct of the petitioner in assisting and representing the members of the Union in domestic enquiries. In respect of one such enquiry held against one S. Deivanayagam on June 19, 1984, there was an altercation between -the Enquiry Officer, namely, the fourth respondent, and the petitioner as to what transpired between the two in the enquiry proceedings. There is a variation between the versions of the petitioner and the fourth respondent. The fourth respondent is said to have sent a report alleging misconduct on the part of the petitioner. On the basis of such a report, a memo was issued on August 9, 1984 asking the petitioner to show cause why disciplinary action should not be taken against him. After considering his explanation, a Charge-Sheet was issued on April 20, 1985 by the Assistant Divisional Engineer. The petitioner submitted his explanation on April 26, 1985. An enquiry was conducted and a report was submitted to the disciplinary authority. On January 1, 1988 the disciplinary authority (second respondent) issued a show cause notice proposing to remove the petitioner from service. The petitioner again submitted his explanation on January 14, 1988 and the impugned order was passed on January 30, 1988. On appeal, the same was confirmed on April 7, 1988.

2. Before dealing with the grounds raised in the writ petition, the counter affidavit filed by the respondents can be referred to. According to the respondents at the enquiry held on June 19, 1984 the petitioner purporting to represent the said S. Deivanayagam behaved indifferently and in a rough and arrogant manner. It is admitted that the Enquiry Officer ordered the petitioner and the said S. Deivanayagam to clear out of the room. In the afternoon, the fourth respondent had instructed the Lineman Muthukrishnan not to allow the petitioner to enter the room and allow only the delinquent S. Deivanayagam to enter the room. The petitioner was insisting upon entering the room along with the delinquents. Deivanayagam. The petitioner is said to have made some statements which, according to the respondents, would amount to riotous behaviour. It is also alleged that the petitioner blocked entry to two other Officers who had come to see the

fourth respondent on official work. However, it is admitted that after five minutes when the importance of the visit was explained to the petitioner, they were allowed to enter the office. It is on the basis of the above incidents the charges were framed to which I will make a reference a little later. The other facts resulting in the termination of the services of the petitioner are not disputed. But it is contended that the enquiry was conducted in accordance with law and the orders of punishment do not call for any interference.

3. Before referring to the disciplinary proceedings, it occurs to me that a small incident has been blown up into a big issue because the fourth respondent was a little presumptuous in his conduct during the disciplinary enquiry against Deivanayagam. This is clear from the fact that by a memorandum dated July 28, 1984, the Chief Engineer had advised the fourth respondent to conduct the enquiry and restrict his questions only with reference to the charges. The fourth respondent was also advised to permit any one of the Union representatives to assist the respective delinquent. This order seems to have been made with reference to the request to change the Enquiry Officer, made on behalf of the said S. Deivanayagam and six other delinquent officers. Mr. Venkataraman, learned counsel for the petitioner, has taken me through the questions and answers which were exchanged between the fourth respondent and the petitioner on June 19, 1984, Any reasonable person will come to the conclusion that the fourth respondent was concerned more with the authority of the petitioner and not with the disciplinary enquiry. I have absolutely no doubt in my mind that the whole thing could have been avoided by the fourth respondent. It may be that the Departmental Officers do not have the requisite experience in conducting disciplinary proceedings. When a Departmental Officer is designated as an Enquiry Officer, he must remember that he wears the mantle of a quasi-judicial authority, He must forget that he is a Departmental Superior Officer than the delinquent or his representative. A reference to the actual charges will disclose the trivial nature of the allegation. The charges are as follows:-

'Charge No. 1 On June 19, 1984 by about 10.30 Hrs. Thiru C. Selvaraj had entered inside the enquiry chamber of the Enquiry Officer Thiru K. Shanmuganathan, Divisional Engineer/Urban/Tirunelveli at Talayuthu Inspection

Bungalow in order to assist the delinquent Thiru S. Deivanayagam, Commercial Inspector, Central Office, Tirunelveli and had behaved in a disorderly manner by giving indifferent and arrogant answers to the questions put forward by the Enquiry Officer and did not allow the delinquent to reply and hindered the smooth conduct of the enquiry and the Enquiry Officer was constrained to order for leaving the Chamber and has refused to obey the order by Thiru C. Selvaraj. Then on the request of the Enquiry Officer to call for Assistant Engineer/SS/Thalayuthu he had remarked'

In utter disregard of official courtesy, the Enquiry Officer was forced to adjourn the enquiry at 10.30 Hrs., itself to the Afternoon session.

Charge No. 2

Then in the Afternoon session at about 14.40 Hrs., when he has accompanied Thiru S. Deivanayagam, Commercial Inspector, he was stopped by Thiru S. Muthuramalingam, Assistant Engineer/SS/Thalaiyuthu saying that he would be permitted to enter only after the specific permission of Enquiry Officer. Then he shouted:

Still the Assistant Engineer/Substation/Talayuthu had not permitted him to enter. Further Thiru Ramasubramaniam, Stores Officer, Central Stores, Thalayuthu along with Thiru V.A. Jeyanandan, Assistant Divisional Engi-neer/C & I Urban, Tirunelveli and Subbarayalu, Store Keeper, have come to see the Divisional Engineer Urban, Tirunelveli, on official duty, he has blocked their way by standing in front of the door and they have to wait for about 5 minutes and at last they are allowed to go in after a few minutes.

Thereby he has prevented the Board Officers from discharging their duties. After completing his official business with them and returning to the enquiry chamber he has threatened and abused and forcibly entered into the enquiry chamber and the Enquiry Officer was forced to adjourn the enquiry.'

4. The words used by the petitioner even according to the charge- sheet do not appear to be abusive or unparliamentary. A Union representative representing a

delinquent in a disciplinary enquiry will necessarily represent the case of the delinquent with some vehemence, so that he can justify his engagement as a representative. The above charges are said to violate Clause 30(ix) and (xiii) of the Standing Orders. Those Clauses relate to riotous and disorderly behaviour during working hours in the premises and acts subversive to discipline, causing wilful damage to work in progress in the establishment. Here again I am unable to see how these two Standing Orders are attracted on the basis of the incident on June 19, 1984. The enquiry by the fourth respondent cannot be equated to the normal work of the Board during working hours. Equally, the behaviour of the petitioner cannot certainly be said to be riotous or disorderly. In this connection observations of the apex court in *State of Punjab v. Ram Singh Ex-Constable* 1993-I- LLJ-218 (at p.220) come to my mind.

'Thus it could be seen that the word 'misconduct' though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, willful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character.'

5. Coming now to the enquiry report it is not disputed that the fourth respondent who was the Enquiry Officer did not give evidence in the enquiry against the petitioner. Nor was the Assistant Engineer who prevented the petitioner from entering the room of the fourth respondent, examined. However, Assistant Divisional Engineer whose entry is said to have been blocked, was said to be examined as a witness. The Stores Officer, who accompanied him, was also examined. The Enquiry report shows that those two witnesses had given evidence that the 'official business of conducting enquiry' was damaged. They also stated that they were prevented from entering the room of the fourth respondent. I have already referred to the fact that after five minutes of discussion the petitioner had allowed the two witnesses to enter the room. I am unable to see how the petitioner had damaged the conduct of the enquiry against Deivanayagam. On the basis of

the above averments, the Enquiry Officer comes to the conclusion that both the charges against the petitioners had been proved. I am clearly of the opinion that there is absolutely no averments to bring home the charges. The disciplinary authority has not taken any care to find out whether the charges had been proved by the oral evidence. Equally, the appellate authority has in one sentence said that the depositions of the witnesses have established the charges. He also says that all the points raised by the petitioner had been met by the disciplinary authority. In this connection observations of the Apex Court in *A.L. Kalra v. Project and Equipment Corpn.* 1984-II-LLJ-186 come to my mind (at p.189):

'By what process this conclusion is reached of what evidence appealed to him is left to speculation. The reasons in support of the conclusion are conspicuous by their absence. The findings are the ipse dixit of the Inquiry Officer.'

6. On a thorough examination of the disciplinary proceedings I am satisfied that the very charges do not violate the Clause 30(ix) and (xiii) of the Standing Orders. The evidence does not prove the charges. Therefore, this is a case which will fall under the category of 'no evidence'. The respondents have apparently thought that the petitioner is a nuisance to the Board because he had been appearing in several departmental enquiries and was raising complicated questions. At the same time I must observe that the petitioner cannot engage himself only in the conduct of disciplinary enquiries for his colleagues and should also do 'some work' for the Board also.

7. The Tamil Nadu Electricity Board might as well consider the question of having a panel of Enquiry Officers drawn from retired Judicial Officers or renowned Advocates who can be expected to conduct such enquiries in an unbiased and impartial manner. The Board can also save the time of their own Officers being engaged in such departmental enquiries with which they are not accustomed.

8. The impugned orders are liable to be set aside for the above reasons and they are accordingly set aside. The Writ Petition is allowed as prayed for. There will, however, be no order as to costs.

