

i. Sundaram Vs. the Assistant Executive Engineer (Civil), Tamil Nadu Electricity Board, Periyar Project, Madurai Dt.

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Court : Chennai

Decided On : Jul-16-1996

Reported in : [1996(74)FLR2718]; (1997)ILLJ317Mad; (1996)IIMLJ331

Judge : S.M. Abdul Wahab, J.

Appeal No. : W.P. No. 9673/1987

Appellant : i. Sundaram

Respondent : The Assistant Executive Engineer (Civil), Tamil Nadu Electricity Board, Periyar Project, Madurai Dt.

Judgement :

ORDER

1. This writ petition has been preferred by a Junior Engineer (Civil) Grade 1, Tamil Nadu Electricity Board challenging the order of dismissal dated September 16, 1986 by the second respondent as confirmed by the third respondent dated July 21, 1987.

2. The case of the petitioner is that he was a qualified L.C.E. On August 14, 1973 second respondent appointed the petitioner as Junior Engineer in the Electricity Board. In October, 1979 the petitioner was promoted as Junior Engineer, (Civil) Grade I. During 1985 disciplinary proceedings were initiated against him for 13

charges. An enquiry was conducted after getting his explanation. Enquiry officer has submitted his report on September 3, 1985. He was given second show-case notice for the proposed punishment of dismissal from service. After getting the explanation, the second respondent passed final order on September 16, 1986. He appealed to the Chairman the third respondent herein and the same was rejected on November 7, 1986. Learned counsel for the petitioner contended that the charge memo was issued by the Chief Engineer (Personnel) who is not the competent authority. Secondly, he contended that a preliminary enquiry ought to have been conducted. Thirdly he submitted that the Chairman has not applied his mind to his appeal, the appeal has been rejected by the Chief Engineer, who passed final order of punishment.

3. The first contention that the disciplinary proceedings ought to have been initiated only by the appointing authority is not tenable in view of the latest Supreme Court decision in *Inspector General Of Police v. Thavasiappan* : (1997)11LLJ191SC on the subject. Hence the first contention is rejected.

4. Second contention that enquiry must be proceeded with a preliminary enquiry is also not acceptable. Learned counsel for the petitioner was not in a position to take me any rule or regulation. Hence, I am not able to consider that contention also.

5. Thirdly, he contended that on a reading of the order that the Chairman has not applied his mind to the appeal preferred before him. There is some force in the contention. A reading of the entire order purported to have been passed by the Chairman shows that there is non-application of mind by the Chairman. The order has been signed by the Chief Engineer (Personnel) by order of the Chairman. Only in last paragraph of the order it is stated that the Chairman finds no valid reasons to interfere with the order of punishment. Further, I do not understand why the Chairman was not in a position to sign the order if he had himself passed the order.

6. The Appellate Authority is bound to apply his mind to an appeal preferred by a delinquent official. When the rules provided for an appeal before the Appellate Authority, the Appellate Authority must indicate his considered opinion of the

memorandum of appeal. As already stated it is very difficult to find out whether it is the Chairman, who has passed the order or not. Therefore, I feel that the matter has to be remitted back to the Chairman for reconsideration of the appeal and to pass suitable orders. The order purported to have been passed by the Chairman alone is set aside. The matter is remitted to the third respondent (Chairman). He shall consider the memorandum of grounds of appeal submitted by the petitioner and pass suitable orders on merits in accordance with law. The Chairman shall consider the original memorandum of appeal as well as the supplemental memorandum of appeal if any and pass orders within a period of three months from the date of receipt of copy of the records. The writ petition is ordered accordingly. There will be no order as to costs.

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