

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

Devandran L. Vs. Superintending Engineer, Chennai Electricity Distribution Circle (Central), Tamil Nadu Electricity Board and ors.

Devandran L. Vs. Superintending Engineer, Chennai Electricity Distribution Circle (Central), Tamil Nadu Electricity Board and ors.

SooperKanoon Citation : sooperkanoon.com/835926

Court : Chennai

Decided On : Jan-27-2009

Reported in : (2009)IVLLJ895Mad

Judge : S. Manikumar, J.

Acts : Tamil Nadu Electricity Board Standing Rules - Rule 23; [Constitution of India](#) - Article 311(2); Tamil Nadu Electricity Board Standing Orders - Orders 30, 33 and 106

Appeal No. : W.P. Nos. 24987/2006 and 26857/2008 and connected M.Ps.

Appellant : Devandran L.

Respondent : Superintending Engineer, Chennai Electricity Distribution Circle (Central), Tamil Nadu Electricity B

Advocate for Def. : M. Vaidyanathan, Adv.

Advocate for Pet/Ap. : R. Muthukumarasamy, Standing Counsel for; K. Seshadri, Adv.

Judgement :

ORDER

S. Manikumar, J.

1. In W.P. No. 24987/2006, the petitioner has challenged a charge memo, dated June 27, 2006, issued by the Executive Engineer (Operation and Maintenance), Tamil Nadu Electricity Board, Chennai.

2. In W.P. No. 26857/2008, the petitioner has challenged the order, dated June 12, 2008 of the Chief Engineer (Personnel), Tamil Nadu Electricity Board, Chennai, first respondent herein and consequently prayed for a direction to the first respondent to consider and include his name in the panel to the post of Foreman Grade I, dated June 26, 2006 and promote him as Foreman Grade-I with all attendant benefits, placing his name just above his junior and for further orders.

3. In the latter writ petition, the petitioner has challenged his non-inclusion in the panel to the post of Foreman Grade I, dated June 26, 2006, due to the pendency of disciplinary proceedings, which is challenged in the former writ petition. As the petitioner's right to be included in the said panel depends upon the outcome of the writ petition, challenging the disciplinary proceedings and the pleadings being common, both the writ petitions are taken up together and disposed of by a common order.

4. Facts leading to W.P. No. 24987/2006 are as follows:

The petitioner joined the Tamil Nadu Electricity Board as temporary casual labourer in the year 1971. Gradually, he was promoted as Commercial Inspector in the year 1995-96. According to him, one Thiru. Ashok Raj, who was working as Assistant Engineer in T. Nagar East Section, along with his colleagues, indulged in swindling the Board's property by unauthorisedly misusing the dismantled cable wires without devaluating the same to the stores. He has further indulged in strengthening Meter capacity without proper sanction orders and erected unauthorised pillar on service. By indulging in such unauthorised activities, the Assistant Engineer has caused loss to the Board. It is the case of the petitioner that the Additional Director General of Police (Vigilance), Chennai, appears to have received complaints on this aspect and in the process of investigation, the Directorate enquired him and obtained a Written Statement in the form of

complaint on September 8, 2004, wherein, he has categorised the type or illegal activities of the Assistant Engineer, Thiru. A. Ashok Raj. It is the case of the petitioner that the third respondent assured the petitioner that he would enquire into the matter in detail. While so, the Superintending Engineer, Chennai Electricity Distribution Circle (Central), in his memo dated March 18, 2005, called upon the petitioner to submit his explanation for giving false statement, dated September 8, 2004 to the Vigilance Department and a complaint to the Chief Engineer on August 17, 2004. In response to the same, the petitioner submitted a reply on May 17, 2005 to the Superintending Engineer, reiterating that the allegations referred to in his statement to the vigilance and the complaint as genuine. It is the grievance of the petitioner that though there was no material to prove that the petitioner had preferred any false complaint, he was transferred from T. Nagar to W. Mamabalam. While the matter stood thus, the Executive Engineer (Operation and Maintenance), Tamil Nadu Electricity Board, issued a memo, dated February 27, 2006 on the same lines, calling upon the petitioner to furnish details relating to the complaint, explain the reasons for the delay in not bringing it to the notice of the superior officers immediately, the source of information and also to submit his explanation as to why he had preferred false complaints, which tend to bring disrepute to the Board or those employees working in the Board, spreading panic among them. Since the petitioner had felt that memos have been issued only with a view to help the Assistant Engineer, Thiru. A. Ashok Raj, who had indulged in Malpractice in the Section, he submitted a complaint on May 25, 2006 to the Deputy Superintendent of Police (V & AC), Special Unit-III, Chennai, to investigate the matter. However, he also submitted that a detailed explanation, dated March 30, 2006 to the Executive Engineer (Operation and Maintenance) denying the allegation of false complaint levelled against the Assistant Engineer. He requested that the matter be enquired into the through an Independent Agency. While the matter stood thus, the Executive Engineer (Operation and Maintenance) issued a charge memo on June 27, 2006, alleging that the petitioner has 1 preferred a false complaint to the above said authorities, attracting Standing Order Nos. 30(xxii) and (xxiii). In response to the same, the petitioner submitted an explanation on July 26, 2006 and at that stage, he was transferred from West Mambalam to Mylapore construction. The initiation of the disciplinary proceedings is challenged in the

above writ petition.

5. In W.P. No. 26857/2008, the petitioner has submitted that the next avenue of promotion for the post of Commercial Inspector is Foreman Grade-I. As per the seniority, his name should have been considered for promotion. By communication, dated September 28, 2006 of the Superintending Engineer, he was informed that he was not selected in view of the pendency of the disciplinary proceedings. Aggrieved by the same, he preferred an appeal to the Chief Engineer (Personnel), Chennai, first respondent. Since no orders were passed in the appeal, he preferred W.P. No. 9305/2008 and this Court, by order dated April 17, 2008, directed the Chief Engineer/North, Tamil Nadu Electricity Board, Chennai-2, second respondent herein to consider and dispose of his appeal, dated November 8, 2006 on merits and in accordance with law. It is the grievance of the petitioner that without considering his appeal in proper perspective, the first respondent, under the influence of the second respondent and the Chief Engineer/North, rejected his appeal on June 12, 2008. The said order is impugned in this writ petition.

6. In the counter affidavit filed in W.P. No. 24987/2006, the Superintending Engineer, first respondent in the above writ petition, submitted that at the time of giving the complaint, the petitioner was working as Commercial inspector in West Mambalam unit and Thiru. A. Ashok Raj, against whom the complaint was given, was working in CIT-II Section. After receipt of the complaint, a discreet enquiry was conducted by the A.E.E./O & M/T. Nagar, pursuant to the instructions issued in Memos bearing No. SE/CEDC/Central (CE-D-N dated August 24, 2004 and SE/CEDC/C dated September 16, 2004. The enquiry was made with the consumers in that area and it was found that there was no truth in the complaint made by the petitioner. As the explanation given by the petitioner was not satisfactory and in order to maintain cordiality in the Section, the SE/CEDC/C had issued orders transferring the petitioner to a non-sensitive area, i.e. Mylapore Construction Sub-Division, vide Memo dated February 7, 2006 and the petitioner was relieved on February 6, 2006. The, Superintending Engineer, Chennai Electricity Circle (Central), TNEB, did not drop the departmental action against the petitioner.

7. It is further submitted that the enquiry conducted by the Assistant Executive Engineer with the consumers disclosed that the complaint' made by the petitioner against Thiru. A. Ashok Raj was false and therefore, the Superintending Engineer, vide Memo bearing Ref. SE/CEDC/C dated December 15, 2005 ordered for initiation of the departmental proceedings against the petitioner for making a false complaint against the said Thiru. A. Ashok Raj. Accordingly, departmental action was initiated against the petitioner, vide Office Memo dated February 27, 2006. As the reply submitted by the petitioner was not satisfactory, a Charge Memo was issued to him on June 27, 2006. As the reply submitted to the charge memo was not convincing, a regular departmental enquiry was ordered into the charge and the Assistant Executive Engineer (Construction), T. Nagar was appointed as Enquiry Officer, vide Office Memo dated September 16, 2006. The Superintending Engineer (Operations and Maintenance) has further submitted that the preliminary enquiry conducted by the Asst Executive Engineer (O & M), T. Nagar, shows that prima facie the complaint made by the petitioner against Thiru. A. Ashok Raj was without any substance and therefore, the procedure adopted is in accordance with the rules and regulations, governing disciplinary proceedings. The respondents have further submitted that it is open to the petitioner to defend the disciplinary action in the enquiry, which has been ordered. Non-inclusion of the petitioner, due to the pendency of the disciplinary proceedings is permissible under the service regulations and hence, prayed for dismissal of the writ petitions.

8. Mr. R. Muthukumarasamy, learned senior counsel appearing for the petitioner submitted that as an employee of the Board, the petitioner submitted a complaint to the Chief Engineer on August 17, 2004, relating to the misuse of power and authority, by the Assistant Engineer and he has pointed out the irregularities committed by him, which caused huge 10 financial loss to the Board. According to him, Standing Order 33 for workmen of the TNEB, enables the workmen to prefer a complaint and whenever the said complaint is preferred, the same should be enquired into by the competent authorities. He further submitted that the Additional Director General of Police, Vigilance, TNEB, as a procedure of investigation, enquired the petitioner and in the course of investigation, obtained a written statement in the form of complaint on September 8, 2004. When the Vigilance Department of the Board has entertained a certain complaint with regard to misuse

of the power, thereby causing loss to the Board and when the same was pending investigation, the question of alleging that the petitioner had committed a misconduct under Standing Orders 30(xxii) and 30(xxiii), does not arise.

9. Learned senior counsel for the petitioner further submitted that on the same set of allegations, the Superintending Engineer, Officer superior in rank to the Executive Engineer, has already issued a memorandum, dated March 18, 2005, calling upon the petitioner to submit his explanation as to why, disciplinary action should not be taken against him for giving false information and having satisfied with the explanation, as to the genuineness of the allegations, contained in the complaint, dated September 8, 2004 obtained by the Vigilance Department, did not choose to proceed further and therefore, the Executive Engineer (Operation and Maintenance), who is a subordinate officer, has no power to initiate fresh disciplinary action under the Board Standing Orders.

10. Inviting the attention of this Court to Standing Order 30(xxii), applicable for Workmen, he submitted that the statement obtained by the Vigilance Department during the course of investigation into the allegations of misuse and thereby, causing loss to the Board, would not fall under the above said Standing Order, which speaks about, 'writing of anonymous or pseudonymous letters criticising the Board or any person employed by the Board' and when the petitioner himself has admitted that he has given a statement before the Vigilance Department in his own name, initiation of the disciplinary proceedings under Standing Orders 30(xxii), exhibits total non-application of mind.

11. As regards formulation of the charge, under Standing Order 30(xxiii) for giving false information intend to bring disrepute to the Board or those employees working in the Board, spreading panic among them, learned senior counsel submitted that the petitioner has given only a statement to the Vigilance Department, during the course of their investigation and while the investigation is ending enquiry with the Vigilance Department, it is not open to the authorities to obtain a report, by conducting a discreet enquiry with the customers, who would in all probability support the Assistant Engineer to cover up the illegalities. Learned senior counsel further submitted that when serious allegations are levelled as

against the Assistant Engineer and Others, in respect of misuse of dismantled cables wires without devaluating the same to the stores, etc., the discreet enquiry said to have conducted by the Assistant Executive Engineer with the consumers in the area itself, is farce.

12. According to learned senior counsel for the petitioner, the discreet enquiry said to have been committed by the Assistant Executive Engineer of the Board on the directions of the higher officials is only to shield the Assistant Engineer, against whom, the allegations of misuse and causing loss to the Board, are made. According to him, when the charge levelled against the petitioner of giving false information has got a telling effect on his conduct and when it affects the chances of the petitioner for being considered for promotion, even if any preliminary enquiry is conducted, the officer, who conducted such enquiry, ought to have provided with an opportunity to the petitioner to put forth his case, in respect of the irregularities committed by Assistant Engineer and Others.

13. In this context, he invited the attention of this Court to the act of misconduct in Standing Order No. 30(xxi), i.e., acceptance of gifts from subordinates and submitted that if the misconduct of acceptance of gift is levelled against a superior officer of the Board, then in such circumstances, the preliminary enquiry has to be conducted not only with the subordinates, but also with the superior officers, otherwise, a discreet enquiry can be conducted with the superior officer and any subordinate can be victimised. He therefore, submitted that initiation of the disciplinary action on the basis of such discreet enquiry is not permissible and the consequent charge memo, is liable to be set aside.

14. Referring to the contents of charge memo and the list of documents and witnesses appended thereto, learned senior counsel submitted that excepting the complaint said to have been given by the petitioner and the oral evidence to be let in by the Assistant Executive Engineer, who conducted the discreet enquiry, there are no materials to come to a prima facie conclusion that the petitioner has given any false information, attracting Standing Orders 30(xxii) and (xxiii) of the Board. Referring to the Standing Order 30(xxiii), he submitted that even before the completion of departmental enquiry, the Board on the basis of discreet enquiry,

had come to a final conclusion that the petitioner has committed the misconduct as per the Standing Orders and therefore, the proposed enquiry is nothing but an empty formality. He would further attack the disciplinary action that to arrive at the finding of fact of giving false information, which is a misconduct as per the Standing Order 30(xxiii), the Board cannot initiate departmental action and then, come to a final conclusion. Barring the report of the discreet enquiry, which according to him, is inadmissible, there are no materials against him and in such circumstances, it is not open to the disciplinary authority to initiate action under the above Standing Order and therefore, he submitted that the procedure adopted by the Board is against service jurisprudence. For the above said reasons, he submitted that the respondents have misapplied the provisions in initiating the disciplinary action, which affected the petitioner being considered for promotion to higher posts.

15. Per contra, Mr. Vaithiyanathan, learned Counsel for the Board, taking this Court through the allegations contained in the complaint, dated September 8, 2004 and the contents of the letter, dated November 16, 2005 of the Superintending Engineer, CDEC/ Central/Chennai, addressed to the Chief Engineer, Distribution, Chennai Region North, Chennai, submitted that the allegations levelled against Thiru. A. Ashok Raj, Assistant Engineer (O & M), T. Nagar, were enquired into independently by the Board, without reference to the complaint of the petitioner said to have been recorded in writing by the Vigilance Department and found that the allegations are not substantiated and therefore, it was prima facie found that the petitioner has furnished false information, so as to bring disrepute to the Board or those employed by the Board, by giving false information, which has created panic among the officers of repute. He further submitted that the transfer of the petitioner from West Mambalam to a non-sensitive post, cannot be construed as finalisation of the enquiry for the reason that a regular departmental enquiry was not initiated at that stage.

16. Learned Counsel for the Board further submitted that the preliminary enquiry was conducted to find out the veracity of the allegations made against the Assistant Engineer into the aspect of misuse and causing loss to the Board and it was found that there was no truth in the complaint made by the petitioner, as

Thiru. Ashok Raj, Assistant Engineer, against whom the allegations were made was not at all working in the said place and not the officer incharge during the relevant period. He further submitted that when serious acts of irregularities are alleged against officers of the Board, it is the bounden duty of the higher officials of the Board to conduct an independent enquiry and conclusion of the same, prima facie revealed that there was no truth, but it was only a mudslinging against the said officer. He further submitted that no personal animosity or mala fide can be attributed against the Executive Engineer, in formulating the charge against the petitioner for his act or misconduct and the decision to launch disciplinary proceedings, was taken only after conducting a preliminary enquiry with the customers in that area. He further submitted that when certain allegations of misuse of power by the Assistant Engineer are levelled, there is nothing wrong in enquiring the customers, who are said to be involved in the alleged irregularities and on that score, mala fide or bias cannot be attributed. When the Department, on the basis of the materials, has initiated action, after considerable deliberation, the said decision cannot be said to have been taken in haste.

17. Referring to the Board Standing Order No. 33 for workmen, TNEB, learned Counsel for the Board further submitted that the nature of complaints, permissible under Order 33, relate only to his employment of the workmen, including those relating to unfair treatment or wrong assertion on the part of anyone employed by the Board and the said provision cannot be pressed into service, where the complaint relates to misuse of power and causing loss to the Board, attributable to another person and which tend to bring disrepute to the Board or those employees working in the Board, spreading panic among them. He also submitted that it is early to traverse and examine the evidence to be let in against the petitioner by the department and therefore, no interference is called for. Inasmuch as initiation of disciplinary action and the formulation of the charge are within the competence of the Executive Officer, interference at this stage, would affect the morale and discipline of the employee of the Board. He further submitted that the petitioner would be given a fair opportunity in the enquiry.

18. Learned Counsel for the Board further submitted that as per the Board Standing Orders, a person, facing disciplinary proceedings for serious charges is

not eligible to be promoted and what is guaranteed under law, is only a right to be considered for promotion, which is duly taken note of by the authorities. Having found that the petitioner is not eligible for 18 promotion on account of pendency of the disciplinary proceedings, his claim for promotion has been rightly rejected. For the above said reasons, he prayed for dismissal of both the Writ Petitions.

Heard the learned Counsel for the parties and perused the materials available on record.

19. A cursory look at the relevant Standing Orders for the purpose of adjudication of the issues is required. Standing Order 30 of the Tamil Nadu Electricity Board deals with acts and omission constituting misconduct. Standing Order 30(xxii) and (xxiii) are as follows:

(xxii) Writing of anonymous or pseudonymous letters criticising the Board or any person employed by the Board.

(xxiii) Spreading false rumours, or giving false information which tends to bring into disrepute the Board or those employed by the Board, or spreading panic among them.

20. Standing Order 33 of the Act deals with complaints and it reads as follows:

All the complaints arising out of workman's employment including those relating to unfair treatment or wrongful exaction on the part of anyone employed by the Board, shall be submitted to the immediate superior authority of the person against whom the complaint is made. That authority shall dispose of the representation if it is competent to do so, and if not, it shall forward it to the competent authority for disposal. The immediate superior authority or the competent authority, as the case may be, shall personally investigate the complaint expeditiously at such time and places as may be fixed and the complainant workman or an employee member of the union, to which the complainant workman belongs, shall have the right to be present and assist at such investigation. A copy of the order finally made shall be supplied to the workman. Prompt and quick action shall be taken by all the authorities concerned by whom the complaints are received and delays should be

scrupulously avoided. However, cases of complaints relating to:

(i) Assault or abuse by any person holding a supervisory position; or

(ii) Refusal of an application for urgent leave shall be enquired into, within 3 days from the date of receipt of complaints.

In case the complainant feels aggrieved and it is not satisfied with the disposal of his complaint, he may represent the matter to the next higher authority under copy to the lower authority. The decision of the higher authority shall be final.

21. Before adverting to the facts of the case and having regard to the specific act of misconduct levelled against the petitioner, it is necessary to demarcate the scope, purpose of conducting preliminary enquiry, source of information, etc., vis-a-vis, a regular departmental enquiry in the service matters.

22. The word 'enquiry' implies to investigate the matter from various sources in order to find the truth and the person being affected by such enquiry on the basis of fair play is definitely required to be heard, establish when it is that personal conduct, which is the subject matter of the enquiry.

23. The purpose of a preliminary enquiry is to find out whether there is sufficient justification for embarking on a full-fledged departmental enquiry against a particular employee. Such a preliminary enquiry does not result either in exoneration or punishment, but it merely decides the preliminary issue whether to proceed against a particular employee or not, and its purpose is to see whether a prima facie case exists for issuing a charge sheet calling for explanation. The enquiry is for the personal satisfaction of the disciplinary authority to enable him to come to a decision whether the matter should be dropped or any further action should be taken. Whereas a regular departmental enquiry is to arrive at the final conclusion on the accusation levelled against such employee. The enquiry may result in imposition of punishment or exoneration of the J employee.

24. It is well settled that though it may be desirable to call for an explanation before serving charge sheet there is no principle which compels such a course. The calling for an explanation can only be with a view to make an enquiry

unnecessary where the explanation is acceptable, if after a preliminary enquiry, there is prima facie reason to think that the workman was at fault a chargesheet setting out the details may be furnished and the evidence to let in by the department may be indicated and if the rule permits copies of the materials proposed to be relied on by the department may be furnished. Any irregularity in a preliminary enquiry will not vitiate the subsequent proceedings and the provisions of Article 311(2) is not applicable at this stage of preliminary enquiry.

25. It is also well settled that a preliminary enquiry to frame charges can be held ex-parte. In such enquiries, the delinquent has no right to say that he is being condemned behind his back, because he is not being condemned at all, but what is being done is that the superior authority is endeavouring it for its own satisfaction whether there is justification for initiating a regular departmental enquiry against him. The preliminary enquiry is of very informal character and the methods to vary in accordance with the requirements of each case. In some cases, preliminary enquiry may be closed after, examination of the explanation of the employee or the explanation of the employee can be examined with reference to other sources.

26. The collection of information or formal verification of the truth or otherwise of the complaint made by the petitioner/delinquent employee through discreet enquiry, cannot be found fault with, as the source of information or the basis on which, the disciplinary proceedings are initiated should be left with the discretion of the authorities and it is not the function of the Court to assess the credibility of the persons from whom the evidence is collected or examine the source of information at the commencement of the disciplinary proceedings. It is purely the discretion of the disciplinary authority to provide an opportunity to the workmen in the preliminary enquiry and not providing such opportunity would not vitiate the proceedings. Therefore, the contention of the learned senior counsel that only after providing an opportunity to the petitioner in the preliminary enquiry, a regular departmental enquiry ought to have been initiated, cannot be countenanced.

27. It is evident from the proceedings, dated December 15, 2005 of the Chief Engineer, Distribution, Chennai Region (North), Chennai, that the contents of the

petitioner, dated August 17, 2004 addressed to the Chief Engineer, were enquired into by the authorities and orders were issued to take suitable action against the petitioner, for having furnished false information, besides transferring him to non-sensitive post. The Superintending Engineer was also instructed to furnish his action taken report to the Office of the Chief Engineer. Perusal of the letter further indicate that a higher official, viz., Chief Engineer has decided to gather information from various sources to find out the veracity of the contents of the letter, dated August 17, 2004, independently without reference to the statement in the form of complaint, dated September 8, 2004, alleged to have been obtained by the Vigilance Department.

28. Though the petitioner claims to have given the statement, dated September 8, 2004 during the course of the investigation conducted by the Vigilance Department, no materials have been placed before this Court, to substantiate the said averment. Even assuming that he was summoned in the course of such investigation, it is open to the petitioner to prove his case in the oral enquiry and examine the defence witnesses from the Vigilance Department that it was only at the instance of the Vigilance Department, he was constrained to give such statement in the form of complaint. Though the petitioner had responded to the show cause notice, dated February 27, 2006 issued by the Executive Engineer and submitted his explanation, dated March 30, 2006, no documents have been enclosed along with his explanation. In that explanation, he himself has categorically admitted that only certain details of misuse of the authority resulting in loss to the Board alone were furnished and asserted that his complaint was genuine. If the complaint is supported by evidence or materials, there is no need to feel shy of facing the departmental enquiry and prove the misuse of power resulting in loss to the Board. Ultimately, if the petitioner is able to establish the bona fides and genuineness of the complaint, then the charge made against him has to naturally fall ground.

29. Perusal of the materials on record shows that the enquiry ordered to be conducted by the Chief Engineer into the allegations made in the complaint, dated August 17, 2004 submitted by the petitioner is independent of the Vigilance investigation claimed by the petitioner and that there is nothing on record to

indicate that the preliminary enquiry was done to shield the officer against whom allegation was made. Such conclusion can be arrived at only if the petitioner is able to establish the allegations contained in the complaint in the oral enquiry. Though the petitioner claims to have given a statement, which is recorded in the form of complaint, dated September 8, 2004, before the Vigilance Department, pleadings disclose that similar allegations were also made by him to the Chief Engineer on August 17, 2004. If any allegation of misuse of power and causing loss to the Board is levelled against an officer or employee of the Board, nothing prevented the higher authorities from conducting the preliminary enquiry to ascertain the truth or otherwise of the allegations made against such officer and they need not wait for the vigilance enquiry, if any commensurate against such officer against whom the allegations are made. No rule or regulation has been placed before this Court, restricting the power of the department from holding any independent enquiry. Further, no materials have been produced before this Court about the course of action taken by the Vigilance Department, if the said department has also taken action independently on the petition, dated August 17, 2004, submitted to the Chief Engineer, it is well open to the petitioner to let in defence evidence during the regular departmental enquiry, by summoning the officials from the Vigilance Department.

30. If there is some truth in the allegations made by the petitioner against the said Mr. A. Ashok Raj, the Board or the competent authority would have taken necessary departmental proceedings against him. Whenever the departmental proceedings are initiated to enquire into the irregularities or acts of enumerated misconduct in the service regulations or service, it has to proceed on the basis of some prima facie evidence and that the act of misconduct levelled against the delinquent employee has to be proved by the department with some evidence on the principles of preponderance of probability. The accusation or the act of misconduct, which is levelled against the petitioner that he has given false information, intending to bring disrepute to the Board or those employees working in the Board, spreading panic among them, cannot be said to be the finding of fact, concluded on the basis of full-fledged enquiry, during which, the petitioner and the delinquent employee has to provide with all reasonable opportunity in terms of the constitutional guarantee and the rules and regulations framed thereunder,

applicable to the workmen. However, perusal of the Standing Order would indicate that the petitioner has got a prima facie case, in respect of act of misconduct levelled against him under Standing Order 30(xxii), when the complaint dated September 8, 2004, is not either anonymous or pseudonymous and further that the whole disciplinary proceedings cannot be set at naught. To that extent, the charges levelled against the petitioner has to be set aside.

31. Reading of the Standing Order 33 makes it clear that the complaints, a workman's employment, including those relating to unfair treatment or wrongful exaction on the part of any one employed by the Board, alone would under the said Standing Order and the complaint made against the Superior Officer in respect of misuse of power would not fall within its ambit. Therefore, the petitioner cannot take shelter under Standing Order 33.

32. Perusal of the materials on record shows that though a show cause notice, dated May 18, 2003 was given by the Superintending Engineer, calling upon the petitioner to submit his explanation as to why disciplinary action should not be taken against him for giving false information, in order to maintain the credibility in the Section, the petitioner-employee seemed to have transferred to a non-sensitive area, i.e., Mylapore construction area. No proceeding has been placed before this Court to prove that the Superintending Engineer has dropped further action on the show cause notice issued by him.

33. On the contra, it is evident from the letter, dated November 16, 2005 of the Superintending Engineer, CDEC (Central) Chennai to the Chief Engineer, Distribution, Chennai Region North, Chennai-2, that with reference to the Chief Engineer's Memo, dated June 3, 2005, he has submitted an extract of the report regarding allegation made against Thiru. A. Ashokraj. In the said letter, he has stated that the Assistant Executive Engineer (O & M), T. Nagar, has conducted a discreet enquiry and submitted his report into the allegations made against Thiru. A. Ashokraj. Therefore, it is evident that the Chief Engineer, a senior officer of the Board to whom the petitioner has submitted a petition, dated July 17, 2004, has ordered for an independent enquiry into the allegations made against the Assistant Engineer and if there was any incriminating materials found against the said

individual, action would have been taken against him. But prima facie, the Chief Engineer or the Superintending Engineer, for that matter, have not found any culpable evidence to proceed against the Assistant Engineer, but on the contrary, have come to a formal conclusion that the complaint made by the petitioner against the Assistant Engineer, was without any basis and therefore, the Board have decided to frame charges against him under Rule 23 of the Standing Orders.

34. In view of the above, I do not find any procedural irregularity or violation of the principles of natural justice in initiating disciplinary action against the petitioner. However, the charge against the petitioner under Standing Order 30(xx) may not be justified. Standing Order 106 referred to by the learned senior counsel for the petitioner does not clothe any right to be promoted, pending disciplinary action into the serious acts of misconduct. Therefore, the rejection of the claim of the petitioner for promotion to the post of Foreman Grade cannot be found fault with.

35. Hence, the Writ Petitions are dismissed as indicated above. No costs. Consequently, connected Miscellaneous Petitions are also closed.

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