



2023/KER/44540

C.R.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

MONDAY, THE 31ST DAY OF JULY 2023 / 9TH SRAVANA, 1945

WP(C) NO. 40499 OF 2017

PETITIONER:

BHASKARAN. K.P
AGED 57 YEARS
S/O.PAPPUNNI, AGED 57 YEARS, ASSISTANT
ENGINEER (RETIRED), KERALA STATE ELECTRICITY
BOARD LTD, ELECTRICAL SECTION, DESAMANGALAM. (NOW
RESIDING AT KUNDALIYUR HOUSE, BLUEN JAY IRIS
PARK NO.30, ATHANI.P.O, THRISSUR).
BY ADVS.
SMT.SHAMEENA SALAHUDHEEN
SMT.S.SIMY

RESPONDENTS:

- 1 KERALA STATE ELECTRICITY BOARD LTD.
REPRESENTED BY ITS SECRETARY, VYDYUTHI
BHAVANAM, PATTOM, THIRUVANANTHAPURAM-695004.
- 2 CHAIRMAN AND MANAGING DIRECTOR
KERALA STATE ELECTRICITY BOARD LTD, VYDYUTHI
BHAVANAM, PATTOM, THIRUVANANTHAPURAM-695004.
- 3 CHIEF ENGINEER HRM
KERALA STATE ELECTRICITY BOARD LTD, VYDYUTHI
BHAVANAM, PATTOM, THIRUVANANTHAPURAM-695004.
- 4 CHIEF ENGINEER TRANSMISSION-NORTH
KERALA STATE ELECTRICITY BOARD LTD,
KOZHIKODE-673020.
- 5 DEPUTY CHIEF ENGINEER
KERALA STATE ELECTRICITY BOARD LTD,
KOZHIKODE-673020.
- 6 EXECUTIVE ENGINEER
KERALA STATE ELECTRICITY BOARD LTD, TRANSMISSION
DIVISION, IRINJALAKUDA-680001.



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- 7 EXECUTIVE ENGINEER
KERALA STATE ELECTRICITY BOARD LTD, ELECTRICAL
DIVISION, WADAKKANCHERY, THRISSUR-680582.
- 8 VARUNA ENGINEERING WORKS
REPRESENTED BY ITS
PROPRIETOR, KOORKANCHERRY, THRISSUR-680007.
(CONTRACTOR FOR KSEBOARD FOR THE CONSTRUCTION OF
110 KV DC LINE FROM VALAPPAD TO
KANDASSANKADAVU).
BY ADV SMT.ANEETHA A.G., SC, KERALA STATE
ELECTRICITY BOARD LIMITED

SRI.K.S.ANIL [SC]

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
31.07.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



JUDGMENT

The petitioner retired from services of the the Kerala State Electricity Board (KSEB), on attaining the age of superannuation, on 31.03.2015. At the time of superannuation, he was working as an Assistant Engineer in Electrical Section, Desamangalam and alleges that he has not been paid the retiral benefits, on account of an uncorroborated allegation of “shortfall in materials”, of which he was in charge, which is stated to be still pending.

2. Smt.Shameena Salahudheen, learned counsel for the petitioner, explained her client’s case saying that a Charge Memo was issued by the Disciplinary Authority - who is the Deputy Chief Engineer, KSEB, on 25.07.2012, to which, he caused a reply denying all the imputations. She submitted that, however, an enquiry was thereafter conducted, in which the Enquiry Officer filed a report, saying that the first charge - namely that her client had not accounted for large amount of materials - was found to be not proved in the absence of proper verification of the accounts and materials; while, the second charge - that he had acted in gross insubordination - was proved. She then showed me Ext.P9 order of the Disciplinary Authority, whereby, it appears that, consequent to the Enquiry Report aforementioned, an



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'Investigating Team' was constituted to verify and quantify the liability against her client and an amount of Rs.14,51,286/- is alleged to have been found as shortfall; on which basis, said order imposed the said figure as 'personal liability' on her client, but without imposing any punishment for the alleged act of insubordination, which was found proved in the Enquiry Report.

3. Smt.Shameena Salahudeen further submitted that the matter did not end with Ext.P9, but that the Disciplinary Authority then modified it through Ext.P11, lowering the liability to an amount of Rs.10,54,844/-; and argued that, in spite of the fact that the Enquiry Officer had not found the first charge to be proved against him, said figure was mulcted as a liability against her client, without causing any further proceedings. She contended that, since this was improper and impermissible, her client preferred an appeal before the statutory Appellate Authority against Ext.P11, which was now concluded in Ext.P12, affirming it and holding that the above mentioned amount is liable to be treated as 'personal liability' on her client, thus recovering it from the retiral benefits. She thus prays that Exts.P11 and P12 be set aside and the KSEB be directed to disburse to her client all retiral benefits, within a time frame to be fixed by this Court.



4. Sri.K.S.Anil, learned Standing Counsel for the KSEB, very pertinently, conceded - as has been averred in the counter pleadings also - that reports of the 'Investigating Team' reflected in Exts.P9, P11 and P12 are not available, but explained that this is because of lapse of time. He then argued that, when the Enquiry Officer found that the first charge against the petitioner had not been proved solely for want of verification of stock and quantification of liability, an 'Investigating Team' was constituted by the Disciplinary Authority, which found that articles worth Rs.14,51,286/- had been lost. He submitted that, however, taking a humanitarian consideration, this figure was reduced to Rs.10,54,844/-, giving credit to certain extra articles that were found in the stock; and that the Disciplinary Authority thus issued Ext.P11 order, treating this figure as personal liability of the petitioner. He submitted that, in such circumstances, neither the said order, nor Ext.P12 order of the Appellate Authority, can be assailed by the petitioner.

5. I must say upfront that there are grave issues glaring at the KSEB, going by their own statements and averments recorded above.

6. To put it in perspective, when it was imputed against the petitioner that he had caused loss to the KSEB, along with



that he had committed acts of indiscipline, an Enquiry Officer was appointed to complete the disciplinary action against him. The said officer admittedly settled this report, finding the first charge, namely that the petitioner caused loss to the KSEB to be not proved because, necessary investigation had not been conducted; while, he found the petitioner to be guilty of insubordination.

7. Interestingly, the Disciplinary Authority - namely the Deputy Chief Engineer - through Ext.P9, decided not to impose any punishment to the petitioner to the proven act of insubordination, but concluded that an amount of Rs.14,51,286/- is to be treated as 'personal liability'.

8. It is here that the Disciplinary Authority committed its first error.

9. This is because, once the 'Investigating Team' had found liability against the petitioner, the matter should have gone back to the Enquiry Officer for completing the disciplinary proceedings because, as I have said above and as is conceded in all pleadings and documents, said Authority had found the charge to be inconclusive for want of proper inputs. Instead of doing so, the Disciplinary Authority took upon himself the role of the Enquiry Officer also, thus to find the petitioner guilty and to



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finally conclude that the afore figure should be reckoned as his 'personal liability'. These proceedings were never completed with the participation of the petitioner, nor was he kept informed as to the manner in which investigation was done by the 'Investigating Team'; and perhaps, it was not necessary at that stage for the Team to have done so because, all inputs arising out of their exercise ought to have gone back to the enquiry, for the Enquiry Officer to finally conclude on the guilt or otherwise of the petitioner.

10. To make matters far worse, the Disciplinary Authority reviewed his own Ext.P9 order through Ext.P11, to bring down the final liability against the petitioner to be Rs.10,54,844/-, again affirming that this is his 'personal liability'. Perhaps, being unaware of the impropriety of the proceedings until now, the petitioner filed an appeal against Ext.P11 and the Appellate Authority issued Ext.P12, confirming it for the reasons as have been indited supra.

11. This is where the second error has occurred because, the Appellate Authority did not notice that the order of the Disciplinary Authority was not one which emanated out of the disciplinary enquiry, but was based on his own assessment of liability, for which, in turn, he had relied upon the report of the



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‘Investigating Team’.

12. Incredulously, the stand of the KSEB before this Court now is that report of the ‘Investigating Team’ is not available and that it might perhaps have been destroyed on account of lapse of time.

13. Therefore, as matters now stand, it is ineluctable that the disciplinary enquiry against the petitioner, at least as regards charge no.1 in the Memo of Charges, had never been completed and the report of the Enquiry Officer was to such effect. As already said above, the Disciplinary Authority, nevertheless, took upon himself the role of the Enquiry Officer and found the petitioner guilty of the said charge, thus mulcting him with a ‘personal liability’ of the final figure of Rs.10,54,844/-.

14. One can never construe Ext.P9 or Ext.P11, at least as far as the first charge in the Charge Memo, to be culmination of the disciplinary enquiry against the petitioner, but can only be seem to be the personal assessment, based on the now untraceable report of the ‘Investigating Team’, by the Deputy Chief Engineer.

15. This Court, therefore, is compelled to hold that the disciplinary enquiry against the petitioner was never complete as regards Charge No.1 in the Charge Memo; and consequently, that



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Exts.P9 and P11 orders of the Deputy Chief Engineer cannot obtain favour in law.

16. When that is said, it does not require further expatiation to hold that Ext.P12 order is also rendered without forensic support because, the Appellate Authority has also proceeded on the basis that Exts.P9 and P11, and in particular the latter, is an order of the Deputy Chief Engineer in his position as the Disciplinary Authority in the domestic enquiry against the petitioner, when it is not so.

17. That being said, this Court could have perhaps offered some solace to the KSEB, had the report of the 'Investigating Team' been made available for assessment and scrutiny. The failure or refusal of the KSEB, as the case may be, to do so for whatever reasons that they may say, certainly casts great strain on the manner in which the proceedings against petitioner were taken forward and completed by them. When the said report is not even available, this Court fails to fathom how the Appellate Authority could have issued Ext.P12, holding that said untraceable report has found a liability of Rs.10,54,844/- against the petitioner.

In the afore circumstances, this court is left with no other option, but to allow this writ petition and to thus quash Exts.P11



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and P12. It is so ordered.

All necessary and corollary consequences resultant to the afore shall follow and the petitioner shall be paid his eligible amounts within a period of two months from the date of receipt of a copy of this judgment.

Sd/-

DEVAN RAMACHANDRAN, JUDGE

ACR



APPENDIX OF WP(C) 40499/2017

PETITIONER EXHIBITS

- EXHIBIT P1 A TRUE COPY OF THE MATERIALS ACCOUNT ISSUED BY THE PETITIONER AND COUNTERSIGNED BY THE 8TH RESPONDENT
- EXHIBIT P2 A TRUE COPY OF THE HANDING OVER REPORT BETWEEN THE PETITIONER AND HIS SUCCESSOR IN OFFICE
- EXHIBIT P3 TRUE COPIES OF GATE PASSES DATED 29/04/2010 AND 21/05/2010 TOGETHER WITH DEBIT NOTE AND FIELD RETURN NOTE
- EXHIBIT P4 A TRUE COPY OF THE MEMO DATED 02/12/2011 ISSUED BY THE 5TH RESPONDENT
- EXHIBIT P5 A TRUE COPY OF REPLY SUBMITTED BY THE PETITIONER TO EXT.P4
- EXHIBIT P6 A TRUE COPY OF THE EXPLANATION SUBMITTED BY THE PETITIONER DATED 12/09/2012
- EXHIBIT P7 A TRUE COPY OF THE SHOW CAUSE NOTICE DATED 18.03.2015
- EXHIBIT P8 A TRUE COPY OF THE EXPLANATION DATED 23/03/2015 SUBMITTED BY THE PETITIONER AS AGAINST EXT.P7
- EXHIBIT P9 A TRUE COPY OF ORDER DATED 28.03.2015 ISSUED BY THE 5TH RESPONDENT
- EXHIBIT P10 A TRUE COPY OF THE APPEAL SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT
- EXHIBIT P11 A TRUE COPY OF ORDER DATED 02.12.2015 ISSUED BY THE 5TH RESPONDENT
- EXHIBIT P12 A TRUE COPY OF ORDER DATED 01/07/2016 ISSUED BY THE 2ND RESPONDENT IN EXT.P10 APPEAL.