



## KERALA STATE ELECTRICITY BOARD LIMITED

(Incorporated under the Companies Act, 1956)

Corporate Identity Number : U40100KL201 ISGC0272424

Regd Office: Vydyuthi Bhavanam, Pattom,

Thiruvananthapuram-695004

Phone No.0471 2444554, FAX No.0471 2554414

e-mail: vigilance.kseb@gmail.com Web: www.kseb.in

### Abstract

Disciplinary action initiated against Sri. Mohandas.S, Senior Assistant , Electrical Section , Thottabhagam ( formerly of Electrical Section Mallappally) –Review petition - Disposed of - Orders issued –

### CORPORATE OFFICE (VIGILANCE WING)

BO (DB) No: 322/2021(VIG/B3/3097/2020)Thiruvananthapuram Dated:05 .05.2021 /1059

Read:

1. Memo of Charges No. GB1/Disc/MLPY/1/2008-2009/2553 dated 30-01-2009.
2. Proceedings No. GB1/Disc/MLPY/1/2008-2009/ 3274 dated 19-02-2010. of the Executive Engineer, Electrical Division Thiruvalla.
3. Request from Sri. Mohandas.S for revoking the Departmental punishment
4. Proceedings No. EBVS 3/21/2018/389 dated 31-05-2017 of the Chief Engineer ( HRM)
5. Review petition dated 30-12-2019 submitted by Sri. Mohandas.S, before the Chairman & Managing Director.
6. Letter No. Vig/B3/3097/2020/3482 dated 04-11-2020 to Sri. Mohandas.S
7. Judgement of Hon'ble High Court of Kerala No. WP (C ) No. 25886 of 2020 dated 11-12-2020.
8. Argument note submitted by Sri. Mohandas on his personal hearing held on 22-01-2021.
9. Note No. Vig/B3/3097/2020 of the Chairman & Managing Director dated 21-01-2021 placed before the Director Board of KSEB Ltd as Agenda item No. 17-03 /2021
10. Proceedings of the 58<sup>th</sup> meeting of the Board of Directors held on 17-03-2021 vide Agenda item no. 17-03/2021.

### ORDER

Sri. Mohandas.S while working as Cashier at Electrical Section, Mallappally was suspended on 16-04-2008 and charged sheeted for misappropriation of Board's money. A Criminal Case as Crime. No. 647/2008 punishable U/s 408 of IPC was also registered against him in Keezhvaipur Police Station. Subsequently as a part of departmental action Memo of charges read as 1<sup>st</sup> above was issued to him by the Executive Engineer, Electrical Division, Thiruvalla. In his reply to the Memo of charges the incumbent expressively admitted all the charges and assured more careful in future in discharging of his duties and functions. Meanwhile, he was reinstated into

Board's service on 07-03-2009. Further, the Executive Engineer relying upon the provision 8 of Manual of Disciplinary proceedings issued a Show Cause Notice by proposing a punishment of barring 3 increments with cumulative effect to the delinquent. After perusing the reply disciplinary action was finalized by the disciplinary authority by confirming the punishment proposed in the Show Cause Notice and treated the period of suspension as suspension itself as per the order read as 2<sup>nd</sup> above.

Against the order of the disciplinary authority, Sri. Mohandas filed an appeal petition before the Deputy Chief Engineer, Electrical Circle, Pathanamthitta and it was disposed as per the order dated 29-03-2012 by upholding the punishment awarded by the disciplinary authority. Further, Sri. Mohandas submitted a representation read as 3<sup>rd</sup> above before the Hon'ble Minister for Electricity, Government of Kerala requesting to withdraw the criminal case registered against him in connection with the money defalcation. The matter was taken up with the Board. The Board decided not to withdraw the case taking into account of the seriousness of the offences committed. On 30-05-2016, the Judicial First Class Magistrate Court, Thiruvalla pronounced its final verdict on Crime Case. The Court acquitted the incumbent from the offences U/s 321 (b) of Cr.PC.

On the basis of the above judgement, Sri. Mohandas.S submitted a review petition before the Chief Engineer (HRM) to exonerate him from the departmental proceedings. Accordingly, a hearing was granted to him on 23-03-2017. During hearing session, the incumbent pleaded for exoneration from punishment, taking into account of his pathetic family condition and ill-health. Accordingly, taking into account of the above, his review petition was disposed off as per proceedings read as 4<sup>th</sup> above by reducing his punishment to that of barring two increments with cumulative effect and regularizing the period of suspension as eligible leave or Leave without Allowance which will not count for any purpose.

Aggrieved by the above order he filed 2<sup>nd</sup> review petition read as 5<sup>th</sup> above before the Chairman & Managing Director through the Executive Engineer, Electrical Division, Thiruvalla and the Deputy Chief Engineer, Pathanamthitta has forwarded his review petition to the O/o the Chief Engineer (HRM) for transmitting it to the O/o of the Chief Vigilance Officer as per paper read as 5<sup>th</sup> above. In disciplinary action cases, there is provision for one appeal and later review by Board. Here the delinquent had

availed two appeals already. The Regulation 38 of KSEB Ltd Employees (CCA Regulations) 1969 clearly stipulates that, “no application for review shall be entertained after the expiry of a period of one month from the date of passing the order provided further that no action under this Regulation shall be initiated more than one year after the date of the order to be reviewed”. In the instant case Sri. Mohandas has filed the review petition after the expiry of 2 ½ years after the appellate order was pronounced. On the basis of the above facts the Chairman & Managing Director as per letter read as 6<sup>th</sup> above declined the second review petition submitted by Sri. Mohandas.

Aggrieved by the above order of the Chairman & Managing Director, Sri. Mohandas.S filed a Writ petition before the Hon'ble High Court of Kerala vide WP ( C) No. 25886/2020 with a prayer to consider the appeal filed before the Chairman & Managing Director, KSEB Ltd. The Hon'ble Court disposed the Writ petition filed by Sri. Mohandas as per judgement read as 7<sup>th</sup> above directing the Board of KSEB Ltd to take up and consider the statutory Appeal filed by the appellant and dispose the same, after affording him an opportunity of being heard-either physically or through video conferencing this culminating in an appropriate order thereon, as expeditiously as possible, but not later than two months from the date of receipt of a copy of the judgement.

In the Writ Petition Sri. Mohandas.S contented that the dismissal of his second review petition was without entering into the merit of the issue, but only on as time barred. To him, it was absolutely untenable in law as there is no prescribed period of limitation for submitting a review petition under the Regulation No. 35 of KSEB Employees (CCA) Regulations 1969. As such a personal hearing was afforded to Sri. Mohandas on 22-01-2021 and an argument note read as 8<sup>th</sup> above along with Medical Certificates describing his ill health was submitted by him. In the argument note he contented that there is no incidence of misappropriation, but only shortage of remittance. He pointed out that, on verification by RAO shortage of remittance and its interest of Rs. 9,387/-(Rupees Nine thousand three hundred eighty seven only) was fixed as his liability and the amount was remitted by him. Though he remitted the whole amount, he was kept under suspension for about one year and criminal case was registered against him. The Crime. No. 647/2008 registered against him for alleged commission of offence punishable U/s 408 of IPC was withdrawn by the Assistant

Public Prosecutor who is the petitioner on the ground that there is no material evidence to show that the accused has made false entries in the cashbook. He further contented that he was finally awarded withholding of two increments with cumulative effect and the period of suspension was regularized as eligible leave or LWA which will not count for any service benefits. He requested that by taking into the gravity of the offence, the case has to be finalized with a punishment of warning. He also expressed his health issues and requested to exonerate him from punishment imposed to him and treat the period of suspension as eligible leave. The Chairman & Managing Director observed that no new arguments or averments other than already submitted have been adduced by delinquent for worthwhile consideration and the punishment imposed to him is not at all excessive on considering the gravity of offense committed by him.

Here the acquittal of Sri. Mohandas on the criminal case is not after trial but under section 321 of Cr. PC consequent to withdrawal from prosecution. The mere fact that Sri. Mohandas was acquitted under Section 321 (b) of Cr. PC consequent to the withdrawal of prosecution is not a ground to revoke the departmental punishment taken against him legally and which has attained finality.

Mere acquittal from a criminal case doesn't absolve an employee from departmental proceedings as both are entirely different proceedings and departmental proceedings is conducted purely based on preponderance of probability by relying upon the documentary evidences and deposition of witness. The misappropriation of public money committed by Sri. Mohandas was clearly established in the departmental enquiry and since defalcation and misappropriation are coming under the purview of Criminal breach of trust, mere acquittal from Criminal Case would not entitle the delinquent employee to claim for the immunity from the disciplinary proceedings. Moreover, the disciplinary action initiated against Sri. Mohandas was strictly in accordance with the provisions contained in MDP, CCA Regulations and Standing Order of Workmen 1996. More over principle of natural justice has not been violated at any stage of disciplinary proceedings against the petitioner. In the instant case, the Chief Engineer (HRM) had taken a lenient attitude to him in humanitarian consideration and the review petition was disposed by reducing the punishment to barring of his two increment with cumulative effect, after observing all the formalities as contemplated in CC&A Regulation.



However the Chairman and Managing Director after meticulously examining the entire history of the case along with the arguments raised by Sri. Mohandas S in the second review petition and judgment of WP(C) 25886/ 2020 pronounced by the Honorable High Court of Kerala in detail, ordered to place the matter before the Board of Directors for taking decisions in this regard.

Having examined the case in details, the Board of Directors in its meeting held on 17-03-2021 vide Agenda item no. 17-03/2021 **resolved not to review the punishment of barring two increments with cumulative effect and treating the period of suspension as eligible leave or leave without allowance which will not count for any service benefits imposed upon Sri. Mohandas.S, Senior Assistant, Electrical Section, Thottabthagam (formerly of Electrical Section Mallappally) as per the orders dated 31-05-2017.**

**Orders are issued accordingly.**

**By Order of the Director Board,  
(Sd/-)  
G.LEKHA  
COMPANY SECRETARY(I/C)**

To

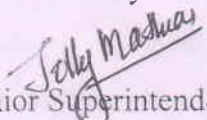
Sri.Mohandas.S,  
Senior Assistant  
Electrical Section Thottabthagam  
Thiruvalla,  
Pathanamthitta- 686664)

( Through the Executive Engineer, Electrical Division Thiruvalla)  
( By Registered post with A/D)

Copy to:

1. The Chief Engineer(HRM), KSEB Ltd.
2. The Deputy Chief Engineer, Pathanamthitta
3. TA to the Chairman & Managing Director / Director (D, IT & HRM)/  
Director (T&SO) / Director (Gen- Ele. & SCM)/Director (Corp. Plg.& Safety) /  
Director (Gen.-Civil), KSEB Ltd.
4. PA to the Director (Finance)/ Company Secretary (Administration), KSEB Ltd
5. Fair Copy Superintendent /Library/Stock File.

Forwarded /by order

  
Senior Superintendent