



KERALA STATE ELECTRICITY BOARD LIMITED

(Incorporated under the Companies Act, 1956)
Corporate Identity Number : U40100KL201 ISGC0272424
Regd Office: Vidyuthi 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.Joseph.T.X, former Senior Assistant (Removed from Service), Electrical Section, Thengana –Review Petition - Disposed off-orders issued.

CORPORATE OFFICE (VIGILANCE WING)

BO (DB) No:292/2021 (VIG/B2/4301/2016) Thiruvananthapuram,Dated:04 .05.2021 /1040

Read:

1. Memo of Charges No: 73/GB2/TXJ/Sr.Asst./TNA/16-17/103 dated 16.06.2016 of the Executive Engineer, Electrical Division, Changanacherry.
2. Letter F.No. 73/GB2/TXJ/Sr.Asst./TNA/16-17/128 dated 04.07.2016 of the Executive Engineer, Electrical Division, Changanacherry addressed to Sri.T.X.Joseph.
3. Show Cause Notice No. EBVS.4/19/2016/866 dated 21.11.2016 of the Chief Engineer (HRM) issued to Sri.T.X.Joseph.
4. Memo No.EBVS.4/19/2016/12 dated 05.01.2017 of the Chief Engineer (HRM) addressed to Sri.T.X.Joseph.
5. Proceedings No. EBVS.4/19/2016/257 dated 03.04.2017 of the Chief Engineer(HRM).
6. Appeal Petition dated.10.05.2017 submitted by Sri.Joseph.T.X. before the Chairman & Managing Director, KSEBL.
7. Proceedings No.VIG/B2/4301/2016/1613 dated 18.07.2017 of the Chairman & Managing Director, KSEBL.(Ext.P9)
8. Review Petition dated.20.11.2017 submitted by Sri.Joseph.T.X. before the Director Board of KSEBL.
9. Letter No. VIG/B2/4301/2016/157 dated.19.01.2018 of the Chief Vigilance Officer addressed to Sri.Joseph.T.X.(Ext.P10)
10. Judgment dated15.01.2021 of the Hon'ble High Court of Kerala in WP(C) No:11636/2018 filed by Sri.Joseph.T.X.
11. Argument note dated 26.02.2021 submitted by Sri.Joseph.T.X to the Chairman& Managing Director through e-mail.
12. Note No: VIG/B2/4301/2016 dated 03.03.2021 of the Chairman & Managing Director placed before the Director Board of KSEBL.

13. Proceedings of the 58th meeting of the Board of Directors held on 17.03.2021 vide Agenda 19-03/2021.

ORDER

Sri.TX.Joseph while working as Senior Assistant at Electrical Section, Thengana had availed LWA for ten years from 25.02.2006 to 25.02.2016 for joining spouse abroad. He had joined duty on 25.02.2016 after the expiry of LWA and again applied for LWA for one more year to join spouse abroad. The request for extension of LWA for one more year of Sri.TX.Joseph was declined by the KSEBL since the maximum period of LWA was limited to 10 years as per the orders existing then and the same was intimated to him vide letter dated 8-04-2016 by the Chief Engineer (HRM) through the Executive Engineer, Electrical Division, Changanacherry. Even though the request for extension of LWA of Sri.TX.Joseph was declined by the KSEBL Ltd, he left India on 11.04.2016 without seeking any sanction and consent from his Employer and became unauthorized absent from duty with effect from 11.04.2016. Since unauthorized absence and absconding from the office is coming under the purview of grave misconduct and insubordination he was departmentally proceeded by issuing a memo by the Executive Engineer, Electrical Division, Changanacherry with a direction to explain the reason for unauthorized absence which was sent him on his residential address by Registered Post. But the same was returned by the Postal Authorities with remarks "addressee left India present address is not known". Since he had not responded on Memo issued to him, as a part of departmental disciplinary action, Memo of Charges read as 1st above was issued to him by the Executive Engineer, Electrical Division, Changanacherry for the unauthorized absence.

Sri.Joseph.TX had submitted a reply to the Memo of Charges through e-mail wherein he requested to grant a personal hearing to explain his part and the same was granted to him on 7.7.2016 by the Executive Engineer Electrical Division,

Changanacherry as per letter read as 2nd above. But Sri.Joseph.TX neither attended the hearing on the prescribed date nor submitted any explanation for the same. However taking a lenient view and humanitarian consideration one more chance was given to him to attend hearing on 12.1.2017 as per letter read as 4th above after serving Show Cause Notice read as 3rd above and the same was also not attended by him. Subsequently disciplinary action initiated against Sri.Joseph.TX was finalized by the Chief Engineer (HRM) vide order read as 5th above by inflicting punishment of removal from service upon him w.e.f.11.04.2016 after observing all the formalities and rules prevailing in KSEBL.

Aggrieved by the above orders, Sri.TX.Joseph filed an appeal petition read as 6th above, before the Chairman & Managing Director, wherein he contended that due to certain unavoidable circumstances he had to travel abroad to join his spouse which resulted in disciplinary proceedings and the intimation regarding the 2nd personal hearing scheduled on 12.1.2017 was seen by him only on the next day, which was intimated to the Chief Engineer (HRM) on 11.1.2017. But the Chief Engineer removed him from service without taking on account of the request made by him which is against the principles of natural justice. Hence he requested to set-aside the orders of the Chief Engineer (HRM) and to readmit him in service.

The Chairman & Managing Director had meticulously examined the appeal petition of Sri.TX.Joseph and the remarks of the Chief Engineer (HRM) and observed that in the appeal petition Sri.TX.Joseph himself admitted that he failed to rejoin duty, due to some unavoidable circumstances without seeking any sanction from his employer, which itself established that he had wilfully absented from the KSEBL. But on the other hand the KSEBL has given sufficient time and opportunity to correct himself and to join duty. But he wilfully rejected the opportunities given by the KSEBL and continued abroad. As such he has no interest and loyalty to safeguard the interest of the KSEBL. The Public service is

not a place where a person can join and quit upon his whims and fancies. Based on the above views and observations the Chairman & Managing Director declined his appeal petition vide order read as 7th above by confirming the orders of the Chief Engineer (HRM).

Subsequently Sri.TX.Joseph submitted a review petition read as 8th above before the Director Board of KSEBL on 20.11.2017 with a request to reconsider his case on the ground of natural justice and to permit him to rejoin in service. The Chairman & Managing Director had examined the above review petition also in detail observed that no new averments /arguments other than those contained in the appeal petition were not adduced by Sri.TX.Joseph, also observed that the review petition was a time barred one as per regulation 38 of KSEB CC&A Regulation 1969. Accordingly the review petition submitted by Sri.TX.Joseph was declined vide letter read as 9th above.

Against the above orders of the Disciplinary Authority and Appellate Authority Sri.TX.Joseph, Senior Assistant (removed from service) filed a Writ Petition before the Hon'ble High Court of Kerala vide WP(C).No.11636/2018 with a prayer to issue instructions to review the decision of the Chairman and Managing Director. The Hon'ble High Court as per the Judgment read as 10th above disposed the Writ Petition with a direction to the Director Board of KSEBL to reconsider the petitioner's appeal and take a decision as to whether any modifications to Expt.P9 and Expt.P10 (Orders of the Chairman & Managing Director dated 18.07.2017 and 19.01.2018 respectively) would be warranted advertent to his specific contention that he had rejoined in service after his initial spell of LWA and the afore exercise shall be completed by the KSEBL after affording an opportunity being heard to the petitioner either physically or through video conferencing and after allowing him to produce all documents in substantiation of his contentions; thus culminating in an appropriate decision

thereon as expeditiously as possible but not later than 15.03.2021. In compliance to the judgment of the Hon'ble High Court a personal hearing was arranged with Sri.TX.Joseph on 25.02.2021 through video-conferencing since he is out of station. Sri.TX.Joseph submitted an argument note through e-mail on 26.02.2021 read as 11th above.

In the argument note, Sri.TX.Joseph contented that he was on LWA for 10 years for the period from 25.02.2006 to 25.02.2016 and reported duty before the Chief Engineer (HRM) on 17.02.2016 which was 7 days before the expiry of his sanctioned leave and he was reported for duty at Electrical Section, Thengana with effect from 25.02.2016 and KSEBL had remitted an amount of Rs.62073/- into his bank account for the period from 25.02.2016 to 10.04.2016. He further stated that after rejoining duty, an application for LWA for one more year to join spouse was submitted on 27.02.2016 and no intimation regarding either the acceptance or rejection of his request was given by the authorities. Hence he left the country on 11.04.2016 on presumption that leave would be granted in due course. As per the then existing rules, decision regarding non-gazetted employee's leave application should be taken within 3 weeks from the date of submission of the request. Sri.TX.Joseph further stated that upon receipt of the Show Cause Notice he personally reported before the Chief Engineer (HRM) on 16.12.2016 and requested to allow him to join duty and not to remove him from service. But the Chief Engineer (HRM) removed him from service without taking account of his request. The above action of the Chief Engineer (HRM) is violation of section 53(6) of the Manual Of Disciplinary Proceedings of Government Employees wherein it is stipulated that "no absentee who returns to duty will be denied readmission to duty, unless he has been or is due to be placed under suspension pending disciplinary proceedings, or final orders have already been issued dismissing or removing him from service". Hence he requested to the Director Board of KSEBL to review the earlier orders of

Chairman & Managing Director on considering the above arguments and averments raised by him in the argument note and review petition.

The Chairman & Managing Director has examined the above arguments and averments, made by Sri.T.X.Joseph along with connected file and documents observed that the arguments made by Sri.T.X.Joseph is the same version of arguments raised by him in the appeal petition that have been already examined and disposed by the Disciplinary Authority and Appellate Authority. In the argument note he argued that the registered notice for personal hearing on 12.01.2017 was delivered to him on 13.01.2017 and the same was informed to the Chief Engineer (HRM) with a request to re-schedule the personal hearing. But without taking on account the above request he was terminated from service with the statement that: he is not interested to continue in service of KSEBL. The above argument was examined in detail along with available records and found that the review petitioner purposefully mislead the actual fact of the case for the reason that hearing notice was issued to him through Executive Engineer, Electrical Division, Changanacherry on 5.01.2017 and the same was sent to him through his e-mail address on 10.01.2017 itself, since he was out of station and was residing abroad. In response to the above, he sent a letter dated 11.01.2017 to the Chief Engineer (HRM) by stating that he could not attend the hearing as he was out of state due to the family emergency and would return back by the end of January. A copy of the above letter was attached by him along with the argument note and review petition. The above letter itself is a documentary evidence to establish that he has received the memo for hearing well before the date of hearing. Hence the averment raised by him in this regard is totally false. It is remarkably noted that another personal hearing had been allowed to him by the Executive Engineer, Electrical Division, Changanacherry on 07.07.2016 with a direction to attend the hearing, failing which his chance would be forfeited. But he was reluctant to obey the direction issued by the KSEBL and

not attended the hearing. The above facts itself revealed that the KSEBL had given sufficient time and opportunity to correct himself and co-operate with disciplinary proceedings. But on the other hand he was staying abroad all these period without availing any leave or sanction of his employer by mocking the orders and directions issued by his employer. As per Rule 65 of Part-1 KSR leave cannot be claimed as a matter of right and that when exigencies of the Public Service so require discretion to refuse or revoke leave of any description, is reserved to the authority empowered to grant it. In the instant case his leave application for extension of LWA for one year was declined by the KSEB Ltd on the strength of existing Rules and orders in force. Being an obedient and loyal servant of KSEB Ltd instead of obeying the orders of KSEB Ltd, he left India by mocking the Orders of KSEB Ltd by criticizing the procedures followed by KSEB Ltd with flimsy reasons. As stated above he was given two opportunities by the KSEB Ltd to attend the personal hearing and he had not turn up for the directions issued by the KSEB Ltd by raising premature reasons. Being the aggrieved person, he himself has to initiate steps for redressing his grievances by making suitable representation to the Chief Engineer (HRM) and suggested a convenient date for personal hearing in the midst of 1st & 2nd hearing scheduled by the KSEB Ltd. But no such attempt had been made by him to redress his grievances. Therefore the arguments made by him in this regard are not at all legally tenable and liable to be dismissed.

Subsequent argument is that when he received Show Cause Notice by proposing the punishment of removal, he personally reported before the Chief Engineer (HRM) on 16.12.2016 and requested to allow him to rejoin duty. But his request was not considered by the Chief Engineer (HRM). He argued that the above decision of Chief Engineer (HRM) is against Service Rules in vogue by citing Para.53 (6) of Manual of Disciplinary Proceedings. On close scrutiny of the above arguments made by Sri.TX.Joseph along with connected files and

documents provided by him, observed that no documentary evidence was adduced by him to substantiate the above contention other than the copy of the visiting sheet dated 16.12.2016 of the Visiting Register maintained in the Reception of Vidyuthi Bhavanam which was collected by him through Right to Information Act and in the sheet his name was seen entered as Serial No.18. The above document couldn't be taken as prime evidence and valid document in order to substantiate that he had visited Chief Engineer (HRM) on 16.12.2016. Copies of written request and other relevant documents submitted before the Chief Engineer (HRM) to express his willingness to rejoin duty was not adduced by him to substantiate his claim. Hence the argument made by him is not at all convincing and hard to believe, hence liable to be declined. Another argument of the review petitioner is that he had submitted an application for LWA for one more year on 27.02.2016. Even after repeated enquiries no intimation of either acceptance or rejection of his request was intimated to him which is against the rule as the decision regarding non-gazetted employees leave should be taken within three weeks from the date of submission of the request. In this context it is to be noted that his leave application dated 28.02.2016 was declined by the KSEB Ltd and the same was intimated to him on 08.04.2016 before he left the country which itself revealed that a decision on his leave application had been taken within a reasonable time period and intimated the same to him and he received the rejection letter of Chief Engineer (HRM) with proper acknowledgment.

Sri.T.X.Joseph left the country knowing the fact that his leave application was declined by the KSEB Ltd. The above fact itself establishes that he left the country without getting prior sanction from his employer. The reasons adduced by him for unauthorized absence are quite frivolous in nature and does not stand in the way of law. Even though KSEB Ltd has given sufficient time and

continued abroad. As such he has no loyalty and integrity to safeguard the interest of the KSEB Ltd. He had approached the Hon'ble High Court by concealing all the facts regarding the opportunities given by the KSEB Ltd, with a malafide intention to get a favorable Verdict from the Hon'ble Court. But the Hon'ble High Court have disposed the WP[C] filed by him with a direction to the Director Board of KSEBL to consider his appeal and take a decision as to whether any modification to Ext.P9 and P10 (Orders of the Chairman & Managing Director dated 18.07.2017 and 19.01.2018 respectively) would be warranted diverting to his specific contentions that he had re-joined duty after the expiry of 1st spell of LWA. It is true that he had joined duty after the expiry of LWA for 10 years. As per the Rules and orders prevailing then the maximum period of LWA granted to an employee of KSEB Limited is limited to 10 years and he had already availed the same. But after re-joining duty he had left India and willfully absented from duty for more than one year without availing any kind of leave or sanction from KSEB Ltd. As unauthorized absence and absconding from office is a clear case of insubordination and misconduct, he was departmentally proceeded by invoking relevant provisions of KSEB CCA Regulation & Manual Of Disciplinary Proceedings. Subsequently he was removed after observing all the formalities prevailing in KSEB Ltd. Hence none of the arguments made by him is not at all convincing for worthwhile consideration.

However the Chairman & Managing Director after examining the entire history of the case along with arguments raised by Sri.T.X.Joseph and in the light of the judgment in W.P.(C)No.11636/2018 filed by Sri.T.X.Joseph, ordered to place a comprehensive note regarding the subject matter before the Board of Directors by highlighting all the aspects of the case for taking a decision in this regard. Accordingly, a detailed note read as 12th above by highlighting the entire history of the case was placed before the Board of Directors of KSEB Ltd.

Having examined the review petition filed by Sri.Joseph.T.X in detail by the Board of Directors in its 56th meeting held on 17.03.2021 vide Agenda Item No.19-03/2021, resolved not to review the orders of the Chairman & Managing Director dated 18.07.2017(Ext. P9), in the light of the judgment of the Hon'ble High Court in WP(C) No:11636/2018 filed by Sri.T.X.Joseph, Senior Assistant (Removed from service).

Orders are issued accordingly in compliance with the judgment of Hon'ble High Court of Kerala read as 10th above.

By Order of the Director Board,

Sd/-
G.LEKHA
COMPANY SECRETARY (I/C)

To

Sri.Joseph.T.X (Regd.Post with A/D)
C/o,Minimol Xavier
Odettil House, I.E.Nagar.P.O.
Changanacherry, Kottayam District.
PIN-686 106 (E-mail:teexjoseph@yahoo.co.in)

Copy to:

1. The Chief Engineer (HRM), KSEBL.
2. The Deputy Chief Engineer, Electrical Circle, Kottayam.
3. The Executive Engineer, Electrical Division, Changanacherry.
4. The LLO, O/o Standing Counsel, KSEBL.PH Bldg, Kochi.
5. The Senior Law Officer, O/o the LA&DED, KSEBL.
6. TA to the Chairman & Managing Director, KSEBL.
7. TA to the Director (D, IT&HRM), KSEBL.
8. TA to the Director (Plg & Safety), KSEBL.
9. TA to the Director (Trans & SO), KSEBL.
10. TA to the Director (Generation- Civil), KSEBL Ltd.
11. TA to the Director (Generation- Ele. & SCM), KSEBL.
12. PA to the Director (Finance), KSEBL.
13. Senior CA to Secretary(Administration).

Forwarded/ by Order


Senior Assistant

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Baj/5/20