

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC
OF SRI LANKA

In the matter of an application for Writ of
Certiorari under Article 140 of the Constitution of
the Democratic Socialist Republic of Sri Lanka.

Kaluappuhennadige Sudath Chandana
6/8 Nissanka Mawatha Wehera, Kurunegala.

Petitioner

C.A/WRIT/App/No.219/2008

VS

1. Ceylon Electricity Board
No.50, Sir Chittampalam A Gardinar
Mawatha, Colombo 2.

And five (05) others.

Respondents

BEFORE : S.SRISKANDARAJAH, J.

COUNSEL : Philip Chandrarathne,
for the Petitioner.

Yureshe de Silva SC
for the Respondents.

Argued on : 18.12.2010 & 14.2.2011

Decided on : 11.07.2011

S.Sriskandarajah, J.

The Petitioner joined the 1st Respondents service as a Meter Reader grade II on 29th October 1992. The Petitioner submitted that on 27th of January 2005 the Petitioner was on duty in the area of Yanthampalawa and Uhumiya and visited the premises owned by A.M.Jayathuhamy, Arangala Watta, Yanthampalawa, Uhumiya to record

the meter reading on his motor bicycle. After taking the meter reading, and as he was about to leave the premises, he was attacked by a dog. He submitted that he was bitten at his right thigh, and when he fell on the ground he knocked his left knee. He further submitted that anti rabies vaccine was administered on the same day at the Teaching Hospital Kurunegala. He lodged a police complaint at the Weerambagedara Police Station on 4.2.2005 giving details of this incident. The Petitioner continued to work until 7.02.2005 while taking treatment from a native Doctor for his left knee. He consulted a Doctor in Apollo Hospital and informed the 6th Respondent on 8.2.2005 over the telephone that he would be undergoing a surgery. The Operation notes of the Apollo hospital marked P4 bear the date 05.02.2005 and the bill paid to the Apollo Hospital marked P5 bears the date 08.02.2005. The Petitioner explained that as he consulted the Doctor on the 5th February 2005 the operation note was issued embodying that date. But the Respondents produced the operation notes submitted by the Petitioner to the 5th Respondent where the date 05.02.2005 was altered to 08.02.2005. The Respondents further submitted that the copy of the Police complaint tendered to the office of the 1st Respondent by the Petitioner regarding this incident also has alteration on the dates namely the date of complaint and the date of incident. As such a charge sheet dated 30.01.2007 was issued on the Petitioner, the charges are as follows:

- (a) Failure to inform the supervisory officer the accident occurred on 27.01.2005.
- (b) Altering dates in the Police report in respect of the above
- (c) Altering the dates of the letter dated 5.02.2005 of the consultant Doctor of the Apollo Hospital about the surgery.
- (d) Altering the dates of medical leave recommended by Apollo Hospital in paragraph 7 of the medical certificate No J2 No 0091
- (e) Misleading the officers of the 1st Respondent by acting as charged in a,b,c, and d.
- (f) Attempting to obtain favours from the 1st Respondent by acting as charged above.

- (g) Attempting to obtain monies from the 1st Respondent unduly acting as charged above
- (h) The loss of confidence of the 1st Respondent in the Petitioner by acting as charged above.

Inquiry against the Petitioner on the above charges commenced on 23.03.2007 and concluded on 4.09.2007. After the conclusion of the inquiry the disciplinary order was made on 18.12.2007 The Petitioner was found guilty of all the charges and he was demoted to Grade I and transferred to DGM Sabaragamuwa. The Petitioner did not complain that he was not given a fair hearing nor he has no complain in the manner in which the inquiry was conducted but his complaint is on the finding of the inquiring officer on the facts. This is a judicial review proceedings and not an appeal therefore this court can only look into the legality of the order. This court cannot look into the correctness of the order and substitute or interfere in the decision of the inquiring officer which was based purely on questions of facts. The Petitioner has exercised his right of appeal and made an appeal to the Chairmen of the Appeal Board of the 1st Respondent.

The learned Counsel of the Petitioner in the course of the argument submitted that the decision made by the inquiring officer is not in accordance with the Rules of Disciplinary Procedure of the Ceylon Electricity Board. He contended that Rule 10.5 of the Disciplinary Procedure provides:, In the Disciplinary Order the Disciplinary Authority will state specifically in respect of each charge whether he finds guilty or not guilty. But in the instant case the disciplinary order does not contain such a finding. The Petitioner was found guilty of all the charges therefore the failure to state that he is guilty of each charge is not a material irregularity and this failure would not have caused any prejudice to the Petitioner.

For the above reason this court dismiss the Petitioner's application without costs.