

**DALAM MAHKAMAH RAYUAN MALAYSIA**  
**(BIDANG KUASA RAYUAN)**  
**RAYUAN SIVIL NO: J-02-71-1998**

**ANTARA**

**AH MOI (K/P NO. 491206-01-5072)**  
**wakil peribadi harta pusaka**  
**Ponnan a/l Subramaniam (simati)**

... **PERAYU**

**DENGAN**

**TENAGA NASIONAL BERHAD**

... **RESPONDEN**

(Dalam Perkara Guaman No. 22-575-1987  
Dalam Mahkamah Tinggi Malaya Di Johor Bahru

Antara

Ponnan a/l Subramaniam

... **Plaintif**

Dengan

Tenaga Nasional Berhad

... **Defendan)**

Koram: Denis Ong Jiew Fook, JCA  
Hashim B. Dato' Hj. Yusoff, JCA  
Arifin Jaka, JCA

## **GROUND OF JUDGMENT**

1. The Appellant appealed against the decision of the High Court of Johor Bahru which had dismissed his application for declaratory reliefs against the Respondent's decision to dismiss him from their service. Before the hearing of this appeal the appellant, Ponnann a/l Subramaniam had since died on 22/06/2001 and he was substituted by his widow, Ah Moi, to be his personal representative in this appeal by order of this court dated 18/08/2003.
  
2. We had unanimously allowed the appeal and now give our reasons for doing so.

### **Background Facts**

3. The Appellant was working as a Junior Technician with the Respondent. It was not disputed that he has instrumental in the unauthorized supply of electricity to 6 squatter houses at Lot 188, Batu 51/2, Jalan Tebrau, Pontian, Johor Bahru. He was then given a show cause letter on 6/01/83, to which the Appellant admitted his guilt with his letter of explanation (see AR page 22). Thereafter, a disciplinary proceeding (the first disciplinary proceeding) was held against him on 17/07/84. The Appellant was present throughout the proceeding and he admitted his guilt and asked questions (see AR page 65). Subsequently by letter dated 17/11/84 (see AR 752) the Disciplinary Board ordered the Appellant to be reduced in rank from Junior Technician to "Buruh Am" (general labourer) effective from

01/12/84, with a final warning of dismissal, if there be a repetition by him. It is a matter of dispute that the Appellant refused to do the work of a sweeper/general labourer. It was the Respondent's contention that since the Appellant absented himself from work since 13/04/85, the District Disciplinary Committee (the second disciplinary proceeding) initiated action against the Appellant resulting in his dismissal from service effective from 13/04/85. The Appellant then applied to the High Court for declaratory reliefs but it was subsequently dismissed. Hence this appeal.

### **The Appeal**

4. Learned counsel for the Appellant submitted that he was only relying on the grounds as per his Petition of Appeal i.e. ground 14 and 16. He abandoned the other grounds. (See AR Vol. 1, pages 4 – 5).

### **Ground 14**

5. Under this ground, it was argued for the Appellant that there were two disciplinary proceedings against him. The first proceeding resulted in a reduction of his rank from a Junior Technician to a "Buruh Am" (general labourer), while the second disciplinary proceeding ended with the Appellant's dismissal from service.
6. The main grouse of the Appellant is that he was prejudiced because he was not present at the hearing of the 2<sup>nd</sup> disciplinary proceeding. Moreover the Respondent's official, Pn. Khalidah's (SD2) presence at

the said proceeding had prejudiced the Appellant as she was the one who framed the charge against him.

7. The charge dated 07/10/85 against the Appellant reads:-

*“Satu Laporan telah diterima memaklumkan bahawa tuan telah didapati tidak hadir bekerja dari 13-4-1985 sehingga sekarang tanpa apa-apa kenyataan dan kebenaran cuti daripada Ketua Jabatan tuan. Oleh itu tuan telah melakukan satu kesalahan di bawah Kaedah 21, Kaedah-Kaedah 1983.*

*Tuan adalah dengan ini diminta memberi jawapan kepada pertuduhan yang dikemukakan dengan memberi sebab-sebab mengapa tindakan tatatertib untuk tuan dibuang kerja tidak sepatutnya diambil terhadap tuan. Tuan diberi tempoh 14 hari dari tarikh surat ini diterima untuk mengemukakan hujjah-hujjah tuan. Sekiranya tuan tidak memberi sebarang jawapan dalam tempoh masa yang ditetapkan itu, tuan akan dianggap sebagai tidak hendak membela diri dan perkara ini akan terus diputuskan di atas keterangan-keterangan yang ada sekarang ini sahaja.”*

8. Learned counsel for the Respondent in his reply argued that it was the Appellant himself who refused to accept the show cause letter/charge which was sent by registered post, although he was just living on the other side of the road of the local office of the Respondent. Even when the show cause letter was finally served

personally by the Respondent's security guard (SD 4) the Appellant still did not offer any explanation as required within the stipulated time of 14 days. The show cause letter also stated that if the Appellant failed to respond, the Disciplinary Committee may proceed to hear and if necessary dismiss him, which they eventually did in this case.

### **Ground 16**

9. Learned Counsel for the Appellant submitted that the Appellant's dismissal was void as the Respondent had failed to comply with their own Rules and Regulations, [the **ELECTRICITY ACT 1949** (Revised 1973)] in particular rule 22.1, rule 24 and rule 32.1 of Chapter III – Conduct and Discipline Index.

Rule 22.1 provides:-

*“Where the conduct of a Board employee appears to merit dismissal or reduction in rank a full report shall be made on the matter, through the proper channels, to the Responsible Authority, if he agrees that there is a prima facie case for dismissal or reduction in rank, shall instruct that the grounds upon which such action is being contemplated be communicated to the employee who shall be required to submit a written explanation of his conduct with such reasons as he may wish to advance in mitigation thereof; such written evidence to be sent to the Responsible Authority through the correct channels within ten days of the origination of the*

*communication informing the employee of the proposed disciplinary action to be taken against him.”*

Rule 24.1 reads:-

*“Where disciplinary action is contemplated against an L & M. G. employee of less than 10 years service, the Responsible Authority will ensure that the employee is given every opportunity to exculpate himself but it may prove to be impossible to secure from such an employee any written grounds for exculpation and personal interrogation of the offender and witnesses may prove the only satisfactory solution.”*

Rule 32.1 reads:-

**“DISMISSAL NOTICES**

When an employee is dismissed from the service of the Board the notice of dismissal together with the grounds therefore shall be communicated to him in writing and if necessary by registered post.”

10. Although he conceded that no grounds were given by the Disciplinary Board in compliance with rule 32.1, the Learned Counsel for the Respondent however argued that the learned High Court Judge did not cover the issue under rule 32.1. because the matter was not raised in submission.

## **Court's Decision**

11. A disciplinary proceeding is quasi-criminal in nature and therefore strict compliance of its procedural rules and regulations need to be observed.
12. Regarding ground 14, we are of the view that there is no merit in the argument raised by the Appellant's Counsel. As found by the learned trial Judge, the Appellant's absence at the 2<sup>nd</sup> disciplinary proceeding was due to his own misdoing by deliberately refusing to accept the show cause letter posted to him by the Respondent. In fact the learned Judge found that the Respondent had taken all reasonable steps to give the Appellant every opportunity to explain regarding his misconduct of authorized supply of electricity to 6 squatter houses.
13. On the issue of SD2's presence at the disciplinary proceeding, we find that Khalidah bt. Haron (SD2) was the Respondent's official who framed the charge with a view to dismissing the Appellant. But she was also in the enquiry room when the Disciplinary proceeding was conducted on 17/07/1984 (see AR Vol. 3 page 58).
14. In **Rohana bte Ariffin and Anor v University Sains Malaysia (1989) 1 MLJ 487** it was, inter alia held:-

“(1) *The proceedings before the disciplinary authority were contrary to natural justice owing to the presence of the*

*registrar of the respondent university, the complainant in the case of both the applicants, during the disciplinary authority's deliberations. In this case the registrar was very far from being a mere nominal complainant and had shown active partisanship in the proceedings before the disciplinary authority."*

15. In view of the above, we find that there was a breach of the rules of natural justice by Khalidah's presence at the Disciplinary proceedings against the Appellant.
16. Regarding ground 16 i.e. the non-compliance of rule 32.1, as stated earlier, the learned counsel for the Respondent had conceded that no grounds were given by the Disciplinary Board. This would be a contravention of rule 25.1 and rule 25.2 of the NEB Rules and Regulations.
17. Learned Counsel for the Respondent submitted that the NEB Staff Rules and Regulations" of which Chapter III (The NEB Rules) are strictly in-house rules for their administrative purposes only and have no statutory force of law. We disagree. The NEB Rules were made under the Electricity Act 1949 by virtue of Section 89A which provides that:-

*"89A. Disciplinary Rules.*

*The Board may, with the approval of the Minister, make disciplinary rules to provide for the discipline of officers*

*and servants of the Board and such rules may provide for*

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- (a) The interdiction with a reduction in salary or in other remuneration or without salary or other remuneration;*
- (b) The procedure for disciplinary proceeding;*
- (c) The composition of the sub-committee for the purposes of section 12A;*
- (d) The composition of the Board when an appeal is considered pursuant to section 12 (8);*
- (e) The procedure for making representations by the person against whom disciplinary proceedings are being taken; and*
- (f) The creation of disciplinary offences and punishments therefore and such punishments may extend to dismissal or reduction in rank;”*

18. In fact the Respondent made their charge against the Appellant based on these NEB Rules and thereafter dismissed him also under these Rules. The Respondent cannot now say, that these Rules

have no force of law because they were made under pursuant to the Electricity Act.

19. The Respondent's letter dated 26/05/1986 informing the Appellant of his dismissal from service with immediate effect did not provide any grounds for the dismissal (see AR Vol. 3 page 754). The Appellant's letter to the Respondent dated 5<sup>th</sup> June 1986 clearly stated that the Appellant was not given the opportunity to appeal against the punishment of reduction in rank and that he was not informed about the charges and the grounds why he was given notice to quit. (see AR Vol. 3 page 768). In spite of the Appellant's letter, the Respondent still did not give him the grounds asked for but merely informed him by letter dated 1 October 1987 that after considering the matter as a whole, the Board confirmed the punishment of dismissal against the Appellant with effect from 13 April 1985 (see AR Vol. 3 page 772).
  
20. As was held in **Rohana's case** supra, inter alia:-

*“(2) It is a well-established principle of administrative law that anything that restricts or appears to restrict the defendant's ability to present his case may be held to be a breach of procedural fairness and is thereby susceptible to judicial review. In this case the disciplinary authority had refused to accede to the requests of the applicants' solicitors and counsel for pre-trial discovery. This was tantamount to denying the applicants their right to make written representations. The right to be heard necessarily means the right to know the case against oneself.”*

21. The duty to give reasons was lucidly explained by the Federal Court in the case of **MPPP v Syarikat Bekerjasama Serbaguna Sungai Gelugor (1999) 3 MLJ at page 61(d)**.
22. We hold that the non-compliance by the Respondent of rule 32.1 of the NEB Rules and the failure to give the Appellant the reasons for his dismissal clearly are in breach of the rules of natural justice.
23. For the above reasons, we allowed this appeal with costs here and below.
24. Damages are to be assessed by the Senior Assistant Registrar of the High Court. Deposit is to be returned to the Appellant.

Signed.  
**(DATO' HASHIM BIN DATO' HJ. YUSOFF)**  
Judge  
Court of Appeal, Malaysia

Date: 15<sup>th</sup> June 2009

Counsel for the Appellant: Mr. Alex Charles  
Counsel for the Respondent: Mr. S. Patmanathan

Cases Referred To:

- (1) Rohana bte Ariffin and Anor v University Sains Malaysia  
(1989) 1 MLJ 487
- (2) MPPP v Syarikat Bekerjasama Serbaguna Sungai Gelugor  
(1999) 3 MLJ at page 61(d).