

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

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WRIT PETITION No.21988 of 2012

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DATED : 12.11.2015

Between :

N. Appala Naidu, S/o. N. Satyanarayana,
Aged about 45 yrs, ADE (Operation),
APEPDCL, Ramachandrapuram,
East Godavari District.

.. Petitioner

and

The Eastern Power Distribution Company Ltd. of A.P.
Corporate Office,
P& T Colony, Seethammadhara,
Visakhapatnam-530 013,
Rep., by its Chairman and Managing Director & 2 others

.. Respondents

This court made the following :

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ORDER :

The petitioner was imposed with punishment of stoppage of two annual grade increments with cumulative effect. After exhausting the departmental remedy of appeal, the petitioner filed W.P.No.7915 of 2008. During the course of hearing, a preliminary issue was raised on the maintainability of imposing of penalty of stoppage of increments with cumulative effect being a major punishment, unless regular enquiry is conducted and detailed procedure is followed, no such punishment can be imposed. Reliance was placed on the decision of the Hon'ble Supreme Court, in ***Kulwant Singh Gill Vs Stae of Punjab***^[1],

2. This Court considered the said objection and rejected the same. This Court has also gone into the merits and held that the punishment inflicted against the petitioner cannot be said as disproportionate to the nature of allegations held proved against the petitioner. The W.A.No.730 of 2008 filed by the petitioner against the said judgment was also dismissed. After the dismissal of the Writ Appeal, petitioner filed mercy petition and the same was rejected vide memo dated 27.07.2010. Assailing the same, this writ petition is filed.

3. Learned counsel for the petitioner submits that the mercy petition could not have been dismissed by the same authority, who considered the earlier mercy petition and that it could not have been treated as a mercy petition and it ought to have been considered as a revision and ought not to have rejected the same by the Chairman and Managing Director, Eastern Power Distribution Company Ltd., (2nd respondent).

4. Learned Standing counsel representing the respondent-Board, states that the petitioner has already suffered the decision from this Court on merits and therefore, the present writ petition is not maintainable and there is no illegality in rejection of mercy petitions filed by the petitioner. According to learned Standing counsel when there is no provision of entertaining the mercy petition in the first instance, the question of filing the 2nd mercy petition also

does not arise.

5. As seen from the judgment of this Court in W.P.No.7915 of 2008, this Court has not only considered the objection in imposing the punishment on the touch stone of principle laid down by the Supreme Court in ***Kulwant Singh Gill case (supra)*** but also considered the nature of punishment imposed on petitioner, on merits and upheld the punishment. The said judgment was also affirmed by the Division Bench. Thus, once this Court affirms the punishment imposed, the question of petitioner again availing the departmental remedy would not arise. Even otherwise, there is no question of a person preferring successive mercy petitions. Mercy petition is not a right vested in the employee and therefore, the question of filing 2nd mercy petition, that too, after the decision rendered by this Court on merits does not arise. Thus, the question of preferring the mercy petition or consideration of 2nd mercy petition would not arise, more particularly when this Court has upheld the punishment imposed on the petitioner.

6. Having regard to the same, it is not necessary to go into the contention of learned counsel for the petitioner that the Chairman and Managing Director, could not have dealt with the mercy petitions, and could have treated it as the Review and Review ought to have been entertained only by the Board.

7. Having regard to the fact that punishment was already upheld by this Court, the action of petitioner in preferring mercy petitions on the same issue and again filing the writ petition alleging that the mercy petitions were not considered properly is nothing but abuse of process of Court.

8. The writ petition is liable to be dismissed and is accordingly dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand dismissed.

12th November, 2015
Rds

P.NAVEEN RAO,J

[\[1\]](#) 1991 Supp (1) SCC 504