HONOURABLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 5838 of 2006

ORDER:

The order of the appellate authority modifying the punishment of stoppage of three increments with cumulative effect besides recovery of Rs.61,428/- and to treat the period of suspension undergone by the petitioner as such, to that of stoppage of three increments without cumulative effect besides recovery of Rs.61,428/- and the period of suspension under gone by him to be treated as such, is challenged before this Court.

Brief facts are that the petitioner was issued with charge sheet with two charges, namely,

(1) That you Sri K.V. Ramana Rao, Assistant Divisional Engineer/Operation/Jadcherla in collusion or connivance with Sri C.Vijaya Kumar, Divisional Engineer/Operation/Jadcharla drew temporary advance of Rs.43928/- for purpose of Agricultural Census work at Themmajipet and incurred only Rs.9500/- and appropriated the remaining amount of Rs.34428/- for yourselves and in doing so you called Sri Chandrasekhara Reddy contractor to your office and yourself and Sri C.Vijaya Kumar threatened and forcibly obtained the signatures of Sri Chandrasekhara Reddy, by threatening him that if he did not oblige you, his agreements pertaining to other works would be cancelled.

(2) That you Sri K.V. Ramana Rao, Assistant Divisional Engineer/operation/Jadcherla drew an amount of Rs.27,000/- for the purpose of tree cutting work from 9.12.2002 to 31.12.2002

> in Polepalli of Bhoolpur Section and also entire Jadcherla Section and appropriated the said amount for yourself and produced cash receipts under the signature one contractor Sri Devender Reddy which were obtained by you by threatening Sri Devender Reddy that his name will be black listed if he did not oblige you.

In the domestic enquiry conducted by the Department, the Enquiry Officer recorded that both the charges held proved. The disciplinary authority taking into consideration the material available on record as well as explanation submitted by the petitioner to the enquiry report pursuant to the show cause notice issued to him, imposed the punishment *supra* and thereafter, on appeal being preferred by the petitioner, the appellate authority modified the same as stated hereinabove.

Learned Counsel appearing on behalf of the petitioner strenuously submitted that the findings recorded by the Enquiry Officer are not at all the findings as the disciplinary authority had given credence to the enquiry report while excluding the depositions in particular of P.Ws.6 and 7. The learned Counsel drawn the attention of this Court to the enquiry report wherein the Enquiry Officer had recorded that P.Ws, 6 and 7 had categorically deposed that the petitioner was involved in creating false bills with respect to the works mentioned in the charge sheet by ignoring specific depositions deposed during the enquiry to the contrary. Learned Counsel by placing reliance on the decisions of the Apex Court in *KULDEEP*

SINGH Vs. COMMISSIONER OF POILCE {(1999) 2 SCC 10}, ROOP SINGH NEGI Vs PUNJAB NATIONAL BANK {(2009) 2 SCC 570} and decision of the Division Bench of this Court in *K. DAVID WILSON Vs. SECRETARY TO GOVERNMENT, LAW DEPARTMENT (LEGISLATIVE AFFAIRS AND JUSTICE) HYDERABAD* {2001 (5) ALD 406 (DB)} would contend that the findings recorded by the Enquiry Officer are based on no evidence.

On the other hand, learned Counsel appearing on behalf of the respondents submitted that the findings recorded by the Enquiry Officer and the appellate authority cannot be interfered with and it is not permissible for this Court to re-appreciate the evidence on record.

Having considered the submissions advanced by the learned Counsel on either side, perused the material on record and judgments cited by the learned Counsel, the sum and substance of the law laid down by the Courts which are binding on this Court can be summarized by making reference to Paragraph 8 of the decision of the Apex Court in KULDIEP SING's case, which reads as follows:

> "The findings, recorded in a domestic enquiry, can be characterised as perverse if it is shown that such a finding is not supported by any evidence on record or is not based on the evidence adduced by the parties or no reasonable person could have come to those findings on the basis of the that evidence. This principle was laid down by this Court in State of Andhra Pradesh vs. Sree

> Rama Rao(1964 2 LLJ 150 = AIR 1963 SC 1723 = 1964 (3) SCR 25), in which the question was whether the High Court, under Article 226, could interfere with the findings recorded at the departmental enquiry. This decision was followed in Central Bank of India vs. Prakash Chand Jain, {1969 2 LLJ 377 (SC) = AIR 1969 SC 983} and Bharat Iron Works vs. Bhagubhai Balubhai Patel & Ors { 1976 Labour & Industrial Cases 4 (SC) = AIR 1976 SC 98 = 1976 (2) SCR 280 = (1976) 1 SCC 518}. In Rajinder Kumar Kindra vs. Delhi Administration through Secretary (Labour) and Others{ AIR 1984 SC 1805 = 1985 (1) SCR 866 = (1984) 4 SCC 635}, it was laid down that where the findings of misconduct are based on no legal evidence and the conclusion is one to which no reasonable man could come, the findings can be rejected as perverse. It was also laid down that where a quasi-judicial tribunal records findings based on no legal evidence and the findings are his mere ipse dixit or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated."

In the present case, the Enquiry Officer had taken into consideration all the depositions deposed during the enquiry particularly the depositions of P.Ws.6 and 7 who categorically stated that the statements made before the vigilance officer were made by them voluntarily and there were no threats against them in deposing against the petitioner, who was the charged employee. One important aspect which P.W.6 alleged to have been deposed is to the effect that the proceeds alleged to have been received by him (P.W.6)-Contractor were not form part of the Income Tax returns. The other aspect of the matter is that the very entrustment of work was contrary to the prescribed procedure of calling for tenders and thereafter entering into agreement in prescribed K2 format. The Enquiry Officer had taken into consideration all the aspects of the matter and did not believe the version of petitioner that the works are required to be executed on emergent basis and it was normally entitled him for entrustment of works without following the procedure. P.W.7 in his evidence asserted that he had entered into agreements pursuant to the entrustment of works and the same have formed part of the Income Tax returns. The Enquiry Officer came to the conclusion that the witnesses being the contractors-P.Ws.6 and 7 are trying to help the petitioner. The entire discussion with respect to conducting of evidence and coming to the conclusion on analysis of evidence thereof leaves no manner of doubt that it is not a case of no evidence. The appreciation of evidence being within the exclusive domain of Enquiry Officer and disciplinary authority, the perversity which is pleaded by the petitioner is not present in the case. Though the learned Counsel for the petitioner prays for remanding the matter to the appellate authority for fresh consideration with respect to the punishment imposed against the petitioner, considering the fact that the charge sheet came to be issued on 1.9.2003, the order of disciplinary authority being made on 16.8.2003 and further considering the fact that the petitioner had retired from service, it is not feasible to consider the request of the petitioner at this length of time.

For the foregoing discussion, the Writ Petition merits no consideration and is accordingly dismissed.

Miscellaneous petitions pending consideration if any in the Writ Petition shall stand closed in consequence. No order as to costs.

JUSTICE CHALLA KODANDA RAM

DATED 19th December, 2016.
Msnr