THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

<u>Writ Petition No.23713 of 2006</u>

<u>ORDER</u>:

This writ petition, under Article 226 of the Constitution of India, by the petitioner-employee, is filed requesting to direct the respondents not to give effect to the order of punishment, dated, 02.12.2004, and the consequential order of the appellate authority, dated 03.09.2005, and the order, dated 27.07.2006, rejecting the mercy petition of the petitioner and set the same aside and pass such other orders as this Court deems fit and proper in the circumstances of the case.

2. I have heard the submissions of *Sri S.Ravindranath,* learned counsel for the petitioner, and of *Sri M.Ravindra*, learned Standing Counsel, appearing for the respondents. I have perused the material record.

3. The facts that emerge from the pleadings and the submissions of the parties, in brief, are as follows:

The petitioner was working at the relevant time as UDC in the Andhra Pradesh Eastern Power Distribution Company Limited ('APEPDCL', for brevity). He was initially appointed as LDC on 23.08.1994. He was later promoted as UDC on 28.09.1996. While so, he was issued a charge sheet with the following verbatim contents:

> **" It is reported by SE/OPn/VSP that unauthorized RJs worth of Rs.0.58 Lakhs were posted in IHC/VSP in certain monthly Services relates to ERO/West/VSP. The modus operandi is as below:**
>
> **For certain services amounts were withdrawn prior to generation of D.list by posting unauthorized RJs and for certain services current month demand was made "Zero" thus the unpaid services were not brought to D.List.**
>
> **The following are some of the services against whose fictitious RJs/Suppression of debit was found.**

92575/AKP - 16985

151218/ASM - 27151

9184/KPM - 14237

58373

From the above it is clear that the D.List of Monthly billed services is not checked either prior to release of D.List to field for operation or after receipt of operated D.Lists from field. The following are the duties prescribed to billing clerks in ERO.

(i) Ensure posting of credits through BCRC/RJE's (Approved) communicated to GRC (IHC)

(ii) Collect the list of consumers in default before issue of D.List and checks before sending to field.

(iii) Verify the action reported in the operated D.List and bring all the discrepancies to the notice of AAO/ADE/DE & Section Officer in case of incorrect receipt nos finished.

(iv) Credit reconciliation with reference to BCRC & RJs and tally distribution wise.

As in charge of section you have failed in discharging your legitimate duties, hence it can be construed that you have abetted for connivance with staff in O/GRC and O &M staff in field with a *mala fide* **intention to misappropriate APEPDCL funds and thus became a part in misappropriation to a tune of Rs.0.58 lakhs in ERO/West/VSP. The above act constitutes misconduct as per Reg.6 (XI) & (XL) of APSEB Employees Discipline & Appeal Regulations as adopted by APEPDCL & you are liable for Disciplinary action."**

The petitioner submitted a detailed explanation. However, an enquiry was ordered and an enquiry officer was appointed. After due enquiry, the Enquiry Officer submitted a report holding that the charges formulated against the petitioner are proved. The Chairman & Managing Director of the APEPDCL, who is the competent superior authority, having examined the enquiry report, came to a provisional conclusion that the punishment of 'reversion to a lower cadre' would be appropriate. Therefore, a show-cause notice was issued to the petitioner calling upon him to show cause as to why the punishment proposed shall not be imposed against him for the proved misconduct. The petitioner submitted further explanation, dated 03.09.2004. As the explanation was found unconvincing and unsatisfactory, the proceedings, dated 02.12.2004, were issued by the Chairman & Managing Director awarding a punishment of stoppage of four increments with cumulative effect. The appeal of the petitioner was dismissed by order, dated 03.09.2005, passed by the appellate authority. His mercy petition, dated 'Nil', was rejected and the rejection order was communicated to the petitioner, by a memo, dated 27.07.2006. Aggrieved thereby, the petitioner filed this writ petition.

4. In this setting of events, the case of the petitioner and the submissions made on his behalf, in brief, are as follows:

The 1st respondent has adopted the APSEB Discipline and Appeal Regulations framed under Section 79(c) of the Indian Electricity Supply Act. They govern the service conditions including disciplinary matters. The disciplinary action against the petitioner is taken under the said Regulations. The said Regulations have not been notified by the appropriate Government in the Official Gazette. Hence, the 1st respondent cannot take shelter under Section 13 (B) of the Industrial Employment (Standing Orders) Act, 1946. The 1st respondent is not exempted from the application of the Act of 1946. The whole disciplinary action initiated and punishment imposed is without sanction of law. The enquiry conducted is an empty formality; and, principles of natural justice are violated. The final orders of punishment, dated, 02.12.2004, have been issued by the Chairman & Managing Director, who has no jurisdiction to do so as according to Regulation 7(a), the Competent Authority to impose penalty is Assistant Accounts Officer, as at the relevant time, the petitioner worked in the Electricity Revenue Office(ERO). The petitioner, who worked as a UDC at the relevant time, was under the category of Accounts Service and his post is under class/category III. The Regulation 7A stipulates competent and disciplinary authorities. In the case of UDC, where the proposed punishment is withholding of increments, it is the Assistant Accounts Officer who has got the jurisdiction to impose the punishment. In the instant case, the punishment was imposed by the Chairman & Managing Director, who is an appellate authority. Thus, the petitioner has been denied a valuable right of statutory appeal as the Chairman & Managing Director imposed the punishment while acting as Disciplinary Authority. Under the Regulations, superior authority can also exercise the power of the original authority, subject to discretion. This discretion has to be used by the superior authority in a sparing manner and such power is to be used only in rarest of rare cases. The superior authority has to record strong reasons as to why he is exercising such power, more particularly, when a valuable right of appeal is being robbed off. For imposing punishment, no special reasons are recorded. Such exercise of power by the Chairman & Managing Director is biased, vindictive and arbitrary. The consumption charges have been paid in total by the consumers and there is no financial loss to the Corporation. The explanation to the charge sheet and the defence of the petitioner were not properly considered by the Enquiry Officer. The appeal was summarily rejected by the same Chairman & Managing Director by acting as an appellate authority and such a course caused enormous prejudice to the petitioner. The petitioner's mercy petition was also rejected on 27.07.2006 though the punishment imposed was shockingly disproportionate to the allegedly proved charge. The proposed punishment was not placed before the Concurrence Committee. According to the proviso to Regulation 10(2), the order of punishment is illegal and void.

5. Per contra, the case of the respondents, in brief, is this:

On the detection of the fraud, a case in Crime No.171 under Sections 477A, 418, 420 read with 120B of Indian Penal Code has been registered against the petitioner and others by the Station House Officer, II Town Police Station, Visakhapatnam. After formulating the charge, an Enquiry Officer was appointed to conduct a detailed enquiry. The petitioner failed to discharge his legitimate duties. He connived with the staff in Operation/General Revenue Circle and Operation & Maintenance staff in the field with a *mala fide* intention to misappropriate funds of the Company and became a participant in the misappropriation to a tune of Rs.0.58 lakhs in ERO Office/West, Visakhapatnam. The Enquiry Officer held that the charge is proved. Considering the seriousness of the charge proved, initially, a punishment of "Reversion to the lower cadre" was proposed. However, later, a punishment of "stoppage of four increments with cumulative effect" was imposed by taking a lenient view. His appeal was rejected. His mercy petition was also rejected. No prejudice was shown to have been caused for following the APSEB Revised Conduct Regulations and Discipline & Appeal Regulations, as adopted by APEPDCL, which are governing all the employees including the petitioner, working in the APEPDCL. After exhausting all the remedies available to him, as per the Regulations, which were binding upon him, the petitioner cannot contend that the action taken is contrary to the Rules and Regulations governing his case. Prior to constitution of the Andhra Pradesh State Electricity Board, on 01.04.1959, the functions of generation, transmission and distribution of electrical energy were under the Electricity Department, as a part of Public Works Department of the Government of Andhra Pradesh. On constitution of the State Electricity Board under Section 5 of Electricity (Supply) Act, 1948, the functions of generation, transmission and distribution of electrical energy were transferred to the State Electricity Board. To man the posts in Andhra Pradesh State Electricity Board, the employees of the Government of Andhra Pradesh working in Electricity Department were taken on deputation. This is a common proceeding against a set of employees consisting of 40 members in which an Assistant Accounts Officer (AAO) is the highest officer for whom the Chairman & Managing Director (CMD) is the competent authority to impose the penalty of dismissal from service. As such, the Chairman & Managing Director is the competent Disciplinary Authority in the instant case, but not the Assistant Accounts Officer as contended by the petitioner. Even according to the petitioner's submission, as per Regulation

7 (e) of APSEB Discipline & Appeal Regulations as adopted by APEPDCL, powers vested in an authority may be exercised by a superior authority in its discretion. The contention that the consumers paid the total amount due and, therefore, there is no financial loss to the Company is not true. The realization of the amounts took place only after the scam is detected; but, not on account of the efforts of the petitioner. The charges framed against the petitioner are proved. The Appellate Authority for the orders passed by the Chairman & Managing Director (i.e., Disciplinary Authority) is the APEPDCL. The Board consists of the Directors and Chairman & Managing Director of APEPDCL. As per the APSEB Discipline & Appeal Regulations as adopted by APEPDCL, the punishment of withholding of increments with cumulative effect will not come under major penalty. Hence, the writ petition is devoid of merit and is liable to be dismissed.

6. The graveman of the charge formulated reflects that at the relevant time the petitioner, while working as UDC, was in-charge of maintenance of high value services in Electricity Revenue Office/West, Visakhapatnam, and that at that time, unauthorized Revenue Journal entries worth Rs.0.58 Lakhs were posted in IHC (in house computer)/VSP in respect of certain monthly services related to the said Electricity Revenue Office. The *modus operandi* is that for such services, amounts were withdrawn prior to generation of D.List (defaulters' list) by posting unauthorized Revenue Journal entries and for certain other services, current month demand was made "Zero" and thus, unpaid services were not brought to D.List and the D.List of Monthly billed services is not checked either prior to release of D.List to the field for operation or after receipt of operated D.Lists from field, though the following are the prescribed duties of the billing clerks in the Electricity Revenue Office:

(i) Ensuring posting of credits through BCRC/RJE's (Approved) communicated to GRC (IHC)

(ii) Collection of the list of consumers in default before issue of D.List and checking before sending to field.
(iii) Verifying the action reported in the operated D.List and bringing all the discrepancies to the notice of AAO/ADE/DE & Section Officer in case of incorrect receipt no's furnished.
(iv) Credit reconciliation with reference to BCRC & RJs and tallying distribution wise.

Thus, according to the charge, the petitioner failed to discharge his legitimate duties and connived with the staff of the General Revenue Circle (GRC) and Operation & Maintenance staff in field with a *mala fide* intention to misappropriate the funds of APEPDCL and abetted certain acts of the staff in the office of the GRC and staff of Operation & Maintenance and became a participant in the misappropriation of a sum to a tune of Rs.0.58 Lakhs in the Electricity Revenue Office. Be that as it may.

7. In his explanation, the petitioner stated as follows: "(i) The service Nos.92575/Akkayapalem, 151218/Asilmetta and 9184/Kancharapalem have been originally billed under Bi-monthly billing system and subsequently they were transferred to High Value section in the month of May 2000. (ii) The bills under High value section are generated every month as per the readings furnished by the Field Asst. Engineers and the Electricity Bills are issued every month to the consumers. (iii) Since the above services are transferred from Bi-Monthly to High value, the amounts paid by the consumers used to go to Bi-monthly section also. Hence, there was confusion, whether the dealing assistant who looked after the Bi-Monthly seat has taken into account or not. (iv) The petitioner used to send the Journal Entries after getting the signatures of the Junior Accounts Officer and Asst. Accounts Officer to the General Revenue Section (Computer section) for posting the same into concerned records. But he never gave the Fictitious Journal Entries in respect of the above services."

7.1 The petitioner also furnished the Service wise particulars as follows:

1. <u>Service No.151218/Asilmetta Section</u>.

The above service was transferred from Bi-monthly section to High Value section. It is submitted that an amount of Rs.70.084 is available as closing balance as on 12/2000. Out of the above amount it was intimated by the Junior Accounts Officer, Seethammadhara section who is looking after Bi-monthly services of Asilmetta, that an amount of Rs.28,157/- (Rupees Twenty Eight thousand, one hundred and fifty seven only) has been paid by the consumer vide BCRC No.146412/dated 24.05.2000 and BCRC No.96348 Dt.14-07-2000 in the Bi-monthly billing system. Hence there was balance of Rs.41927 against the above service.

The fact of payment of Rs.28157/- was intimated to the GRC for making necessary entries in the Consumer Ledger. The staff of GRC instead of exhibiting the Closing Balance of Rs.41927/- have shown as Rs.14776/- by making unauthorized entry for Rs.27151/-. Further, it is submitted that the D Lists generated by the GRC are communicated to the field Engineers which were not returned in time. Hence, there is no possibility for checking the D' lists. However the said amounts were noticed and necessary notices were issued to the consumers for payment of the said amounts and the service was got disconnected immediately. However the arrears were collected in full vide BCRC No.97269, Dated 27-11-2002.

Hence, there is no financial loss to the APEPDCL.

2. <u>Service No.92575/Akkayyapalem section</u>.

The amount of Rs.16985/- stood as closing balance against the above Service. The staff of GRC have made fictitious entry as if paid by the Consumer and made the Closing Balance as 'Nil' without any intimation from the ERO/West/Visakhapatnam. Afterwards, it was noticed and the said amount was paid by the consumer vide BCRC No.20450, dated 14-04-2001.
Hence there is no financial loss to the APEPDCL.

3. Service No.9184/Kancharapalem

An amount of Rs.14237/- stood as closing balance against the above service. The staff of the GRC made fictitious entry as if paid by the Consumer and made the Closing Balance as 'nil' without any intimation from the ERO/West/Visakhapatnam. Afterwards it was noticed and the said amount was paid by the consumer on 12.04.2001 i.e., for Rs.4913/- vide BCRC No.24808 and Rs.9324/-.
Hence, there is no financial loss to the APEPDCL.

7.3 The petitioner also submitted as follows:

Previously there was only one JAO. He and one LDC used to look after above 1000 High value of services. Subsequently, the JAO by name D.Thimmayya Sastry got promoted as AAO and was transferred to Corporate Office; and, the LDC, K.Anuradha, was transferred to Central Office in General transfers. At that time above 800 Bi-monthly services are transferred to High Value section. The petitioner is the only person looking after the above 1800 services under High Value Section and which is naturally very difficult to deal with all aspects without any assistance. He has no *mala fide* interests to cause any loss to the APEPDCL by any *mala fide* means and ways. He never colluded with any staff of GRC or O&M of field for causing loss to the APEPDCL. Eventually there is no loss to the APEPDCL as the amounts stated to be outstanding have been noticed and collected. He is honest, hardworking and sincere in attending to his duties. He never neglected his duties and responsibilities. He worked as a committed soldier duly abiding by the rules and regulations of APEPDCL. He is one of the loyal servants of the company.

8. The Enquiry Officer after duly conducting enquiry recorded the following findings in his enquiry report:

i) The scam has taken place during the period 1997 to 2001 in ERO/West/Visakhapatnam, ERO/East/Visakhapatnam and in GRC/ Visakhapatnam. P.V.Ramana Murthy has been working as U.D.Clerk and was in charge of maintenance of High Value services during the above period in ERO/West, Visakhapatnam, where a scam worth of Rs.0.58 Lakhs has taken place on account of adoption of bogus RJs, entering wrong BCRC in the D. List, suppression of the debits by changing the Closing Balances in order to not to get them into D List and non reviewing of the D. list before release and after receipt.

ii) The petitioner has not denied the charge that the RJ scam has taken place. The Accused Officer has stated that certain services from Bi-Monthly billing have been transferred to High Value for which he is the concerned officer. Therefore on transfer of services as above he is expected to take care of all Debits and Credits and connected revenue matters, in respect of all the said services for which he is in charge. But he failed to do this job. He himself has admitted that the amounts were yet paid in Bi-monthly section even after their transfer to his seat for monthly billing.

iii) He stated that he used to send the approved Journal Entries to GRC. He did not mention anywhere that he has confirmed the figures which ever he has furnished to GRC after incorporation by GRC in the records. Thus he has failed in his duties in as much as he has not confirmed the Journal Entry figures in the records to the extent he furnished the approved figures.

iv) On review of the entire position as above, it is seen that the Individual has not been able to answer the charges framed against him with any degree of conviction or substantiated his defence with factual data; and these are grave irregularities. The above acts of P.V.Ramana Murthy, UDC, constitute “Misconduct” as per Reg. 6 (XL) of APSEB Employees Discipline & Appeal Regulations and he is liable for disciplinary action.”

The said findings are based on appreciation of facts and evidence including the official records. Undoubtedly, the realization of the amounts has taken place only after the scam is detected, but not before.

9. I have given earnest consideration to the facts and the submissions. I have carefully perused the material record.

10. On a consideration of the entire material on record, the Enquiry Officer recorded a finding that the charges are proved. The petitioner's appeal was dismissed and his mercy petition was also rejected.

11. In the decision in **Union of India v. P. Gunasekaran[1],** the Supreme Court dealt with the scope of interference of this Court under Articles 226 or 227 of the Constitution of India and held, *inter alia*, as under:

> **"In disciplinary proceedings High Court is not and cannot act as a second court of first appeal and that the High Court, in exercise of its powers Under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence and that the High Court can only see whether:**
>
> **(a) the enquiry is held by a competent authority;**
>
> **(b) the enquiry is held according to the procedure prescribed in that behalf;**
>
> **(c) there is violation of the principles of natural justice in conducting the proceedings;**
>
> **(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;**
>
> **(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;**
>
> **(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;**
>
> **(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;**
>
> **(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;**
>
> **(i) the finding of fact is based on no evidence."**

[1] (2015) 2 SCC 610

Under Article 226/227 of the Constitution of India, the High Court shall not:

(i). re-appreciate the evidence;

(ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii). go into the adequacy of the evidence;

(iv). go into the reliability of the evidence;

(v). interfere, if there be some legal evidence on which findings can be based.

(vi). correct the error of fact however grave it may appear to be;

(vii). go into the proportionality of punishment unless it shocks its conscience."

As per the settled legal position, this Court while exercising jurisdiction under Article 226/227 of the Constitution of India shall not re-appreciate the evidence and interfere with the conclusions in the enquiry, in case, the enquiry was conducted in accordance with the principles of natural justice. Further, this Court shall not go into the adequacy or the reliability of the evidence and shall not interfere with the findings if there is some legal evidence, which supports the findings. In that view of the matter, the contention of the petitioner that the findings of the Enquiry Officer and the appellate authority that the charges are proved are liable to be set aside, need not be countenanced.

12. Though a contention was raised by the petitioner for the first time before this Court that the Regulations have not been notified by the appropriate Government in the Official Gazette, as required under Section 13(B) of the Act of 1946, and that therefore, the enquiry is vitiated and the penalty is liable to be set aside and that the enquiry conducted under Regulation 10 of the Discipline and Appeal Regulations is an empty formality, what is to be noted is that the said contentions do not merit consideration for the following reasons: 'Prior to constitution of APSEB, the functions of generation, transformation and distribution of electric energy were under the Electricity Department, which is part of Public Works Department, Government of Andhra Pradesh. However, after constitution of State Electricity Board under Section 5 of the Electricity Act, 1948, the said functions were transferred to the State Electricity Board. The employees of the Government of Andhra Pradesh working in the Electricity Department were taken on deputation into various posts in APSEB. Later, after the formation of APEPDCL, the APSEB revised conduct and Appeal Regulations were adopted by the said APEPDCL. The said regulations are governing all the employees working in APEPDCL. Therefore, this Court has no hesitation to find that the petitioner is governed by the said Regulations. Further, the enquiry was conducted by strict adherence to the principles of natural justice.'

13. Coming to the aspect that the Vice Chairman & Managing Director, while acting as a Disciplinary Authority imposed the penalty and that the said Chairman & Managing Director is also the appellate authority and that in view of the said fact the petitioner lost his right of appeal, it is to be noted that as per the Regulation 7(c) of the Regulations, which are adopted by the APEPDCL, the powers vested in any authority may be exercised by a superior authority in its discretion. Therefore, the learned Chairman & Managing Director being a superior authority is certainly empowered to exercise the powers of the Disciplinary Authority. In the case on hand, a set of 40 employees were subjected to disciplinary proceedings by a common proceeding. One of such officers was the Assistant Accounts Officer. In so far as the said officer, the Chairman & Managing Director is the competent authority to impose penalty, he being an Officer superior to him. As such, the Chairman & Managing Director in exercise of his discretion performed the functions of the Disciplinary Authority and imposed the penalty against the petitioner. Therefore, the Chairman & Managing Director cannot be faulted for exercising such discretion and powers vested in him as a Superior.

14. Turning to the quantum and adequacy or otherwise of punishment, having regard to the facts and circumstances and the gravity of the charge held proved, though a punishment of 'reversion to lower cadre' was initially proposed in the show-cause notice, eventually, a lenient view was taken and the punishment of stoppage of four increments with cumulative effect was awarded. In the well considered view of this Court, the penalty imposed cannot be considered as unjust and unfair as the petitioner being the Clerk in the ERO was holding an office of trust and confidence, which requires absolute integrity.

15. Viewed thus, this Court finds that there is no merit in the writ petition and the writ petition is liable to be dismissed.

16. Accordingly, the Writ Petition is dismissed.

Pending miscellaneous petitions, if any, shall stand closed.

There shall be no order as to costs.

M. SEETHARAMA MURTI, J

12th April, 2017
RAR