**HON'BLE SRI JUSTICE SURESH KUMAR KAIT**
**AND**
**HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI**

**WRIT PETITION No.2075 of 2018**

**ORDER: (Oral)**

***(Per Hon'ble Sri Justice Suresh Kumar Kait)***

Vide the present petition, the petitioners have challenged the order dated 29th June 2016 passed by the A.P. Administrative Tribunal, in O.A.No.9354 of 2012, whereby, the application filed under Section 19 of the Administrative Tribunals Act, 1985 by the respondent herein, has been allowed. Consequently, impugned G.O.Ms.No.244, dated 23rd August 2012, was set aside.

2. The present petition is filed on the ground that the inquiry officer in her analysis and assessment, has observed that since all the indicators show that the fake proceedings were done by outsiders, possibly with the connivance of ZP office staff, the focus of inquiry should be primarily on ZP office. Based on the findings of the inquiry officer, orders were issued in G.O.Rt.No.1627, PR&RD (Vig.IA) Department, dated 07.11.2009, appointing Sri C.Sankara Reddy, Additional Commissioner, office of CPR&RE, Hyderabad for conducting inquiry into the functioning of ZP, Karimnagar at that time, involving the role of the then CEO, ZP, Karimnagar. He submitted his inquiry report on 14th May 2010. After examining the same, vide Memo 48, dated 09.02.2011, the ENC, PR was requested to issue instructions to all the concerned regarding fixing responsibility on higher officials instead of blaming the lower officials in future to avoid recurrence of such incidents.

3. Learned Government Pleader appearing on behalf of petitioners submits that after examining the representations submitted by the Non-Engineering officials on the findings of the inquiry officer of Commissioner of inquiries, it was provisionally decided to impose the penalty of 20% cut in pension permanently on them. Accordingly, a show cause notice was issued to the respondent, the then Accounts Officer on the proposed penalty, vide Memo No.13916/Vig.IA/2007-51, PR&RD (Vig.IA) Department, dated 30.07.2011, directing him to show cause as to why a penalty of 20% cut in pension permanently should not be imposed on him under Rule 9 of the A.P. Revised Pension Rules, 1980. It is further submitted that in respect of Sri P.Mallaiah, DAO and Sri V.Satyanarayana, DAO (both retired), vide Memo No.52, dated 30.07.2011, the Finance Department was requested to take further action with regard to imposing the penalty proposed, by following due procedure, as the DAOs belong to Finance Department.

4. Learned Government Pleader further submits that after submission of explanation by the respondent herein on 16th September 2011 and after examining the same, the concurrence of the Andhra Pradesh Public Service Commission was sought vide Letter No.62, dated 30th April 2012 on the decision of the Government to impose the penalty of withholding 20% of pension permanently. The Andhra Pradesh Public Service Commission, in their letter dated 10th May 2012, concurred with the proposal of the Government. Accordingly, vide G.O.Ms.No.244, PR&RD (Vig.IA) Department, dated 23rd August 2012, a penalty of 20% cut in pension permanently was imposed on the respondent. Therefore,

the learned Tribunal should not have interfered with such decision taken by the competent authority.

5. It is to be noted that while the respondent was working as Deputy Chief Executive Officer, ZP, Karimnagar, the District Collector, Karimnagar, vide his letter dated 4th October 2007, brought to the notice of the 1st petitioner, the irregularities committed by 21 Engineering and Non-Engineering officials among others, and recommended to initiate disciplinary action against them for their involvement in the issuance of fake administrative sanctions and execution of the works and making payments. Among the above 21 officers, 1 to 18 are Engineering personnel, 19 (respondent herein) was working as Deputy Chief Executive Officer, ZP, Karimnagar and incharge Accounts Officer, whereas, the other two charged officers figured at Serial Nos.20 and 21 belong to Finance Department. The Government placed 18 officers out of the 21 Engineering and Non-Engineering personnel except the persons at Serial Nos.12, 20 and 21, who were retired, under suspension vide G.O.Rt.Nos.1559 to 1576, PR&RD (Vig.IA) Department, dated 15.11.2007 and subsequently reinstated into service pending finalization of disciplinary proceedings. The Government issued Charge Memo No.13916/Vig.IA/2007-27, PR&RD (Vig.IA) Department, dated 27.12.2007, along with Annexures I and II against the respondent herein with the following three Articles of Charge :

> "***<u>ARTICLE OF CHARGE-I</u>*** **:**
> *That Sri M.K.Chaturvedi, Dy.CEO and I/c Accounts Officer, Zilla Parishad, Karimnagar, has failed to ensure to dispatch the sanctioned proceedings and communicate the list of*

*sanctioned works to the Executing Agencies concerned. Thus he has failed in discharging his legitimate duties as a result it led to fake proceedings scam.*

***ARTICLE OF CHARGE-II :***

*That Sri M.K.Chaturvedi, Dy.CEO and I/c Accounts Officer, Zilla Parishad, Karimnagar, has failed in getting ratification of the works which were sanctioned pending approval from the General Body of the Zilla Parishad. Thus he has deviated the rules.*

***ARTICLE OF CHARGE-III :***

*That Sri M.K.Chaturvedi, Dy.CEO and I/c Accounts Officer, Zilla Parishad, Karimnagar, released the final bills of the following work bills, which were executed on fake administrative sanction proceeding, without examining the administrative sanction proceedings. He has scrutinized work bills without verifying the irregularities committed by the Executing Agencies. Thus he has derelicted his duties as such huge loss caused to the exchequer.*

| S.No. | Name of the work | Name of the Grant | Estimated cost | Amount paid | Rema -rks |
|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 |
| 1. | C/o Culvert and Formation Road from Rangaraopet to Athmakur at Rangaraopet (V) Metpalli (M) | SSFC | 4.98 | 4.98 | |
| 2. | C/o School Compound wall to UPS at Vittampet, H/o.Metlachinthapur (V) Metpalli (M) | SSFC | 2.00 | 2.00 | |
| 3. | S/R to Formation Road, Paidichinthalapally to Khanampalli at Paidchinthalapally (V), Dharmaram (M) | SSFC | 1.98 | 1.98 | |
| 4. | S/R to Formation Road, Kanakampally to Paidichinthalapally, at Kanampally (V), Dharmaram (M) | SSFC | 1.98 | 1.98 | |

"

6. The respondent submitted his statement of defence on 21st January 2008, denying the charges. After examining the written statements of defence submitted by the charged officers including the respondent herein, the Government have entrusted the matters to Smt.Chandana Khan, IAS, Commissioner of Inquiries, General Administration Department for conducting common inquiry, vide G.O.Rt.Nos.886 and 887, dated 16th June 2008 and G.O.Rt.No.639 PR & RD (Vig.IA) Department, dated 21.03.2009 against the Engineering personnel and three Non-Engineering personnel including the respondent herein. The inquiring authority, after conducting inquiry, submitted her inquiry report vide D.O. Letter No.1074/COI-CK/2008, dated 23rd June 2009. It is pertinent to mention here, the operative portion of the inquiry report pertaining to the final findings, which reads thus;

> "*If finally, it is a question of engineering fake administrative sanctions for engineering works, the charges are not established against the Cos except C.O.19, C.O.20 and C.O.21. If it is a question of non-grounding of works against fake administrative sanctions and claiming the bill, the same is also not proved as the works were grounded. My final conclusion is that the charges could not be established against the C.Os (C.O.1 TO C.O.18). Further, there is need for the Panchayat Raj department to take into consideration the report of the Chief Engineer, PR in this regard and institute a separate inquiry into the functioning of ZP, Karimnagar at that time, involving the role of the then CEO in the matter.*"

7. The Government, after accepting the findings of the inquiry officer, dropped further action against charged officer Nos.1 to 18 vide G.O.Rt.Nos.1609 to 1626, PR&RD (Vig.IA) department, dated

07.11.2009. In respect of the remaining three Non-Engineering charged officer Nos.19 to 21 including the respondent herein, a show cause notice was issued while communicating the copy of the inquiry report, vide Memo Nos.43 to 45, dated 07.11.2009, calling upon them to submit their representations, if any, on the findings of the inquiry officer as contemplated under Rule 21(2) of APCS (CC&A) Rules, 1991. After examining the representations submitted by the three Non-Engineering officials including the respondent herein on the findings of the inquiry officer, the Government, having provisionally decided to impose the penalty of 20% cut in pension permanently, issued show cause notice to the respondent vide Memo No.13916/Vig.IA/2007-51, PR&RD (Vig.IA) Department, dated 30th July 2011. The respondent submitted his explanation on 16th September 2011.

8. Thereafter, the Government obtained advice from APPSC by addressing Letter No.62, dated 30th April 2012 on the decision to impose the penalty of 20% cut in pension permanently against the respondent. The APPSC, vide Letter dated 10th May 2012, concurred with the proposal of the Government. Accordingly, the Government issued G.O.Ms.No.244, PR&RD (Vig.IA) Department, dated 23rd August 2012, imposing the penalty of 20% cut in pension permanently against the respondent, the then in-charge Accounts Officer, ZPP, Karimnagar and the retired Deputy Chief Executive Officer, Warangal.

9. It is not in dispute that a common inquiry in terms of Rule 20 of APCS (CC&A) Rules was conducted by Smt. Chandana Khan, IAS,

Member, Commissioner of Inquiries, General Administrative Department and submitted her report vide D.O.Letter No.1074/COI-CK/2008, dated 23rd June 2009. As per the findings of the inquiry officer, charges were not established against the charged officers, except charged officer Nos. 19 to 21. The inquiry officer advised that there was need for the Panchayat Raj department to take into consideration the report of the Chief Engineer, Panchayat Raj and institute a separate inquiry into the functioning of ZP, Karimnagar at that time, with regard to the role of the then CEO in the matter. This would further strengthen the contention of the respondent that there was no definite and clear finding of guilt recorded against him, who was charged officer No.19 in the common inquiry. Thus, there is ambiguity in the findings of the inquiry officer, as to whether the Articles of Charge that were framed against the respondent herein, were proved or not. In case, the inquiry officer, on the basis of the material evidence on record, had come to the conclusion that the Articles of charge framed against the respondent and two others figured as charged officer Nos.19 to 21 were proved, there was no need or necessity to advice the Panchayat Raj department to institute a separate inquiry into the functioning of the ZP, Karimnagar. Basing on the findings recorded by the inquiry officer, which are ambiguous, not clear and definite, the Government issued show cause notice while communicating the copy of the inquiry report as required under Rule 21(2) of APCS(CC&A) Rules as early as on 7th November 2009. In the inquiry report, it was stated that the executing agencies went ahead and executed certain works based on fake proceedings and effected payments also despite the clear instruction of the then CEO, ZP, Karimnagar District towards meeting their nefarious designs with *malafide* intentions. The inquiry officer finally gave clean chit to the ZPP, particularly, the then Chief Executive Officer. Inspite of the above inquiry report submitted by the Additional Commissioner of Panchayat Raj, dated 12th May 2010, the 1st petitioner/Government, without considering the said report, had issued the impugned order dated 23rd August 2012, imposing the penalty of 20% cut in pension permanently against the respondent.

10. In the case of **State of A.P. v. Chitra Venkat Rao**[1], while dealing with the penalties imposed by way of departmental proceedings, the Hon'ble Supreme Court has held as under:

> *"Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusions on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever arrived at that conclusion.*
>
> *The department authorities are, if the inquiry is otherwise properly held, the sole Judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the Court."*

[1] 1975 (2) SCC 557

11. Therefore, we are of the view that the action of the petitioners in issuing the impugned G.O.Ms.No.244, Panchayat Raj and Rural Development (Vig.IA) Department, dated 23rd August 2012, imposing on the respondent, the penalty of 20% cut in pension permanently, inspite of the fact that there was no definite finding in the report of the inquiry officer, dated 23rd June 2009 against the respondent herein and inspite of the finding of the inquiry officer who submitted the report on 12th May 2010, giving a clean chit to the functioning of ZPP while blaming the Engineering personnel, is quite illegal and unsustainable under law.

12. In view of the facts recorded above and on perusal of the order passed by the learned Tribunal, we find no illegality or perversity therein. Accordingly, we hereby confirm the same.

13. Finding no substance in the petition filed by the petitioners herein, the writ petition is dismissed with no order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

**SURESH KUMAR KAIT, J**

**ABHINAND KUMAR SHAVILI, J**

26th February, 2018

ajr