

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI**

-
WRIT PETITION No.26038 of 2016

ORDER: (Per Hon'ble Sri Justice Sanjay Kumar)

The State of Andhra Pradesh and the Andhra Pradesh Special Police authorities are before this Court aggrieved by the order dated 22.03.2016 passed by the Andhra Pradesh Administrative Tribunal, Hyderabad, in O.A.No.3207 of 2014. The said O.A. was filed by the first respondent herein aggrieved by the order dated 20.01.2011 passed by the Commandant, 9th Batallion, APSP, Venkatagiri, SPSR Nellore District, removing him from service on the ground of desertion.

It is an admitted fact that the first respondent abstained from duty but his justification is that he was constrained to do so owing to extended sickness. The Tribunal also did not find to the contrary so far as this aspect is concerned. The only ground on the basis of which the Tribunal interfered in the matter was that the penalty of removal from service was considered to be shockingly disproportionate to the misconduct attributed to the first respondent. The Tribunal accordingly set aside the punishment of removal of the first respondent from service and remitted the matter back to the disciplinary authority for imposing a penalty other than dismissal/removal/compulsory retirement within a timeframe.

Heard the learned Government Pleader for Services (AP) and Sri C. Srinivasa Baba, learned counsel for the first respondent.

The admitted fact is that the first respondent remained absent from duty without proper authorization or certification. There is also no dispute as to the disciplinary authority following the due procedure in terms of holding an enquiry and adhering to the norms while visiting the punishment upon the first respondent under the order dated 20.01.2011. However, as the first respondent seems to have had a valid ground to explain his absence, we find no irregularity in the

Tribunal remitting the matter to the disciplinary authority for consideration afresh.

That being said, we do not find any reason to justify the rider attached by the Tribunal that the disciplinary authority, upon re-consideration, can impose any penalty other than dismissal/removal/ compulsory retirement. It is ultimately for the disciplinary authority to decide as to the quantum of the punishment to be imposed keeping in mind the gravity of the misconduct. All the more so, when the service in question is a uniformed service where the standard of discipline would be much higher than that in a non-uniformed service. Having allowed the disciplinary authority to review the matter, the Tribunal ought not to have restricted the scope of the disciplinary authority's power, by stating that it would not be open to such authority to impose the penalty of dismissal/removal/compulsory retirement. To that extent, the order under challenge is set aside. The rest of the order shall however remain untouched and it is for the disciplinary authority to re-consider the issue in exercise of its review power and take appropriate action in the matter within six weeks from the date of receipt of a copy of this order.

The writ petition is disposed of accordingly. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

M. SEETHARAMA MURTI, J

4th August, 2016
IBL