

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE N. BALAYOGI**

WRIT PETITION No. 46839 of 2016

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

The State of Telangana and the authorities of the Telangana State Special Police filed this writ petition aggrieved by the order dated 27.01.2016 passed by the Andhra Pradesh Administrative Tribunal, Hyderabad, in O.A.No.2961 of 2012.

The said O.A. was filed by the first respondent herein assailing the proceedings dated 28.10.2011 of the Commandant, 7th Battalion, Andhra Pradesh Special Police, presently Telangana State Special Police, Dichpally, Nizamabad District, and the consequential rejection order dated 24.02.2012 of the Inspector General of Police, the then Andhra Pradesh Special Police Battalion, Hyderabad. He also sought a consequential direction to the authorities to reinstate him into service with all benefits. By the order under challenge, the Tribunal held that the penalty imposed upon the first respondent was based upon issues which went beyond the Charge Memo dated 14.12.2010. The Tribunal accordingly set aside the penalty imposed and remitted the matter back to the Commandant, 7th Battalion, Andhra Pradesh Special Police, presently Telangana State Special Police, Dichpally, Nizamabad District, to deal with the same afresh. Surprisingly, the Tribunal fettered the power of the Commandant, 7th Battalion, Andhra Pradesh Special Police, presently Telangana State Special Police, Dichpally, Nizamabad District, in the matter of imposing punishment upon such remand, by directing that a lesser penalty should be imposed, being one other than dismissal from service,

removal from service and compulsory retirement. Aggrieved by this order, the authorities filed this writ petition.

By order dated 03.01.2017, this Court granted interim stay of the order passed by the Tribunal.

W.V.M.P.No.415 of 2017 was filed by the first respondent to vacate the aforestated order.

Heard the learned Government Pleader for Services (Telangana) appearing for the petitioners and Sri M. Jagannatha Sarma, learned counsel for the first respondent.

Perusal of the record reflects that the Charge Memo dated 14.12.2010 did not make any mention of G.O.Ms.No.260 dated 04.09.2003. Further, by the date of issuance of the said Charge Memo, the first respondent had not remained absent over one year and that was not the substance of the charge. However, the final order dated 28.10.2011 passed by the Commandant, 7th Battalion, Andhra Pradesh Special Police, Dichpally, presently Telangana State Special Police, Nizamabad District, was on the strength of G.O.Ms.No.260 dated 04.09.2003 and recorded the finding that the first respondent was absent for more than one year.

In that view of the matter, as the Tribunal opined that the first respondent had committed an irregularity in availing leave and that the matter requires fresh consideration, we are not inclined to interfere with the action of the Tribunal in setting aside the punishment already imposed and directing the Commandant, 7th Battalion, Andhra Pradesh Special Police, presently Telangana State Special Police, Dichpally, Nizamabad District, to reconsider the matter afresh taking an overall view of all relevant facts and circumstances. However, the direction of the Tribunal that only a

lesser penalty should be imposed upon the first respondent and not the major penalties specified, cannot be countenanced. Once the matter was remanded to the disciplinary authority for consideration afresh on all aspects, it was not for the Tribunal to fetter the power of the Commandant, 7th Battalion, Andhra Pradesh Special Police, presently Telangana State Special Police, Dichpally, Nizamabad District, in the matter of imposition of punishment. This part of the order passed by the Tribunal is accordingly set aside.

The writ petition is therefore allowed in part to that extent and the order passed by the Tribunal as regards setting aside of the penalty imposed upon the first respondent and remanding the matter to the disciplinary authority for consideration afresh, shall stand confirmed. Such consideration shall be completed expeditiously and, in any event, not later than eight weeks from the date of receipt of a copy of this order. The disciplinary authority shall also deal with treatment of the period the first respondent remained out of service after imposition of the earlier punishment, in accordance with the rules. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

N. BALAYOGI, J

Date: 28.02.2017
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