

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M. GANGA RAO**

WRIT PETITION No.19512 OF 2017

O R D E R

(per Hon'ble Sri Justice Sanjay Kumar)

The petitioner is the applicant in O.A.No.649 of 2017 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad (*hereinafter*, 'the Tribunal'). The said O.A. was filed by him assailing the action of the police authorities in not reinstating him in service by reviewing the order of removal dated 01.07.2011 passed by the Superintendent of Police, Anantapur District, despite his acquittal in C.C.No.115 of 2013 on the file of the learned Special Judicial Magistrate of First Class, Prohibition and Excise Court, Anantapur, *vide* judgment dated 15.12.2014. By order dated 13.03.2017, the Tribunal opined that the power of review was not given to the Superintendent of Police, Anantapur, who had passed the removal order and that too after a period of nearly six years. Observing that the petitioner/applicant had not even questioned the removal order before any appellate authority, the Tribunal concluded that the O.A. was not maintainable and accordingly dismissed it.

It is an admitted fact that the petitioner was removed from service as a Home Guard *vide* order dated 01.07.2011 passed by the Superintendent of Police, Anantapur, on the strength of a report sent by the Sub-Inspector of Police, Mahila Police Station, Anantapur, stating that he was an accused in Crime No.24 of 2011, registered under Section 498-A IPC on the file of the said Mahila Police Station. The Superintendent of Police did not take

recourse to any other measures before removal of the petitioner from the rolls of the Home Guard Organization of Anantapur with immediate effect.

It appears that the petitioner, being one of the accused in Crime No.24 of 2011 on the file of Mahila Police Station, Anantapur, was tried before the learned Special Judicial Magistrate of First Class, Prohibition and Excise Court, in C.C.No.115 of 2013. By judgment dated 15.12.2014 rendered therein, the learned Magistrate held that the prosecution had utterly failed in proving the guilt of the petitioner and the other accused under Section 498-A IPC beyond reasonable doubt and accordingly acquitted them. The petitioner thereupon claims to have approached the police authorities of Anantapur District seeking reinstatement in service. He made a written representation to the Superintendent of Police, Anantapur, which was received on 28.09.2016, as is borne out by the stamp affixed thereon, by the office of the Superintendent of Police, Anantapur. No steps were taken thereupon leading to the filing of the subject O.A.

This Court is of the opinion that the approach adopted by the Tribunal in dealing with the case was extremely hidebound. It is not in dispute that the only basis for removal of the petitioner from service as a Home Guard was the registration of the crime against him under Section 498 IPC. Once this very fulcrum vanished by virtue of his acquittal in C.C.No.115 of 2013 by the competent Criminal Court, there remained no foundation to sustain his removal from service.

That apart, Sri V.Maheswar Reddy, learned counsel for the petitioner, would bring it to our notice that the Rules framed under the Andhra Pradesh Home Guards Act, 1948 stipulate a procedure to be followed by the Disciplinary Authority. He would draw our attention to Rule 7(4) of the said Rules whereunder the Commandant is empowered, for good and sufficient reasons, to impose on any Home Guard the penalties enumerated thereunder. One of the penalties prescribed is removal from service. This Rule further stipulates that no appeal shall lie against any of the punishments and in all cases of disciplinary action, a reasonable opportunity should ordinarily be given to the delinquent Home Guard to show-cause against the penalty proposed to be imposed on him, but in exceptional cases, when this course is not possible, it may be waived for special reasons to be recorded in writing. The aforestated provision makes it clear that no appeal could have been preferred by the petitioner against his removal from service. The Tribunal therefore erred in holding against him on this count. That apart, the Tribunal also lost sight of the fact that the procedure stipulated under the aforestated Rule was not followed while removing the petitioner from service. No reasons were recorded to treat his case as an exceptional one, whereby the procedure had to be waived.

Thus, on counts more than one, this Court finds that the removal of the petitioner from service under the order dated 01.07.2011 was illegal and unsustainable. It is no doubt true that after his acquittal on 15.12.2014, the petitioner has no proof to show that he approached the authorities for reinstatement till

28.09.2016. However, this delay is not fatal in itself and would not disentitle the petitioner from seeking relief.

The writ petition is accordingly allowed setting aside the order dated 13.03.2017 passed by the Tribunal in O.A.No.649 of 2017 and also the removal order dated 01.07.2011. The petitioner shall be reinstated in service as a Home Guard on the rolls of the Andhra Pradesh Home Guard Organization at Anantapur within four weeks from the date of receipt of a copy of this order.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.



SANJAY KUMAR,J

M.GANGA RAO,J

19th March, 2018

PGS