

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

WRIT PETITION No.12539 OF 2007

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

The authorities in the Fire Department of the State of Andhra Pradesh are the petitioners. They filed this writ petition aggrieved by the order dated 05.10.2005 passed by the Andhra Pradesh Administrative Tribunal, Hyderabad, in O.A.No.11170 of 2002. The said O.A. was filed by the respondent herein, a Driver Operator in the service of the Divisional Fire Officer, Anantapur Division, Anantapur District, challenging the proceedings dated 19.10.2002 issued by the Additional Director of Fire Services, Andhra Pradesh, Hyderabad, holding additional charge of the post of Regional Fire Officer, Southern Region, Anantapur, dismissing him from service and the consequential proceedings dated 15.11.2002 of the Regional Fire Officer, Southern Region, Anantapur, whereby the period of his absence from duty was treated as '*dies non*'. By the order dated 05.10.2005, the Tribunal disposed of the O.A. setting aside the impugned proceedings and remanding the matter back to the authorities with a direction to proceed further strictly in accordance with Rule 21 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 (for short, 'the Rules of 1991').

By order dated 25.06.2007, this Court granted interim suspension of the order under challenge. I.A.No.1 of 2018 was filed by the respondent-applicant to vacate the said interim order.

Heard the learned Government Pleader for Services, State of Andhra Pradesh, and Sri Gopala Rao Gandrakota, learned counsel for the respondent-applicant.

The respondent-applicant was subjected to disciplinary proceedings pursuant to Articles of Charge dated 07.08.2000, whereunder as many as five charges were framed against him. By report dated 15.12.2000, the Enquiry Officer, viz., the Divisional Fire Officer, Anantapur Division, held that three of them were not proved while one was partly proved and the other was wholly proved. The Regional Fire Officer, Southern Region, Anantapur, however remitted the matter back to the Enquiry Officer *vide* Memo dated 11.01.2001. Thereafter, revised enquiry report dated 09.05.2002 was submitted by the Enquiry Officer holding that the first four charges were amply proved and the fifth charge was partly proved. The respondent-applicant was thereupon visited with the punishment of dismissal from service *vide* proceedings dated 19.10.2002. By the consequential proceedings dated 15.11.2002, the period of his absence was directed to be treated as '*dies non*'.

The Tribunal found that the Enquiry Officer did not hold a fresh enquiry upon the matter being remitted back to him. It observed that on the very same evidence, the Enquiry Officer initially held that some of the charges were not proved but when the Regional Fire Officer, Southern Region, Anantapur, sent the matter back to him, he straight away reversed his earlier opinion and submitted the second enquiry report dated 09.05.2002 holding to the contrary. The Tribunal found fault with the action of the Enquiry Officer in not following the procedure prescribed under Rule 21 of the Rules of 1991 before submitting the second enquiry report and accordingly set aside the impugned proceedings and remitted the matter back to the authorities to proceed further strictly in accordance with Rule 21 of the Rules of 1991.

The learned Government Pleader for Services fairly concedes that no fresh enquiry was conducted by the Enquiry Officer prior to the second enquiry report dated 09.05.2002.

That being so, it is manifest that the Enquiry Officer did not follow the procedure prescribed under the Rules of 1991 and no error whatsoever can be said to have been committed by the Tribunal in holding against the dismissal proceedings based on the said second enquiry report. In fact, we are at a loss to understand as to why the authorities thought it appropriate to file this writ petition and secure interim suspension of the order under challenge. By doing so, they practically stalled the re-enquiry which was directed by the Tribunal while reserving liberty to them to follow the procedure prescribed under Rule 21 of the Rules of 1991. In the light of these circumstances, we seriously doubt as to whether any purpose would be served by the authorities now trying to initiate further enquiry under Rule 21 of the Rules of 1991 at this late stage. However, it is for the authorities to take a call on this issue and initiate further action, if warranted.

Subject to the above observations, the writ petition is dismissed.

Interim order dated 25.06.2007 shall stand vacated. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

M. GANGA RAO, J

Date: 01.10.2018
IBL