

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

WRIT PETITION No.11820 OF 2018

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

This writ petition was filed by the Government of India and the authorities of the Sardar Vallabhai Patel National Police Academy (*hereinafter*, 'the Academy'), Hyderabad, aggrieved by the order dated 12.03.2018 passed by the Central Administrative Tribunal, Hyderabad Bench, in O.A.No.021/00208/2016. The said O.A. was filed by the respondent herein assailing the order dated 02.02.2016 passed by the Director of the Academy, the Appellate Authority, confirming the punishment of compulsory retirement from service imposed upon him by the Deputy Director (Administration)-cum-Disciplinary Authority of the Academy *vide* order dated 03.12.2015. By the order under challenge, the Tribunal opined that the punishment imposed and the confirmation thereof stood vitiated owing to non-compliance with the procedure prescribed under the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The authorities were accordingly directed to reinstate the respondent/applicant in service with all consequential benefits within a time frame.

Sri K.Lakshman, learned Assistant Solicitor General for India, appearing for the petitioners, does not dispute that though Memorandum of Charges dated 19.12.2013 was issued to the respondent/applicant, whereunder it was proposed to examine three witnesses in proof of the charges leveled against him, the said witnesses were never examined, be it in the first enquiry or the second enquiry. Thereupon, the Disciplinary

Authority straight away disagreed with the nil enquiry report submitted by the enquiry officer and proceeded to impose the punishment of compulsory retirement from service, which stood confirmed in appeal.

We are of the opinion that when there was no enquiry worth its name, in as much as no witnesses were examined, the question of the Disciplinary Authority disagreeing with the findings of the enquiry officer would not arise. There necessarily has to be some material in the enquiry on the strength of which the enquiry officer could take an opinion which the Disciplinary Authority could thereafter disagree therewith. As no witnesses were ever examined during the enquiry, the enquiry itself stood vitiated on that ground warranting a fresh enquiry. Merely because the second enquiry also came to naught, it did not mean that the Disciplinary Authority could dispense with the requirement of an enquiry and proceed to disagree with the nil enquiry report and impose punishment.

On the above analysis, we see no error in the order of the Tribunal, setting aside the order dated 03.12.2015 of the Disciplinary Authority and the order dated 02.02.2016 of the Appellate Authority, and the same is accordingly confirmed. However, this order shall not preclude the petitioners from initiating an enquiry afresh in accordance with the due procedure and thereafter taking appropriate disciplinary action, if warranted, against the respondent/applicant. The period that the respondent/applicant remained out of service pursuant to the compulsory retirement order dated 03.12.2015 till the date of his reinstatement in service pursuant to the order passed by the Tribunal shall be subject to further orders to be passed by the Disciplinary Authority after the fresh enquiry, if any.

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

Pending miscellaneous petitions, if any, shall also stand dismissed.

No order as to costs.

SANJAY KUMAR,J

M. GANGA RAO, J

Date: 02.05.2018

Note:-

Issue CC in one week.

(B/o)

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