

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

WRIT PETITION No.31576 OF 2014

ORDER

(per Hon'ble Sri Justice Sanjay Kumar)

The Government of Telangana and its officers in the Police Department filed this writ petition aggrieved by the order dated 20.06.2014 passed by the Andhra Pradesh Administrative Tribunal, Hyderabad (*hereinafter*, 'the Tribunal'), in O.A.No.8708 of 2013. The said O.A. was filed by a Police Constable, the first respondent herein, assailing the proceedings dated 19.11.2013 of the Superintendent of Police, Khammam, imposing upon him the punishment of reduction in the time scale of pay to the minimum pay for a period of three years with effect on future increments and pension. By the order under challenge, the Tribunal set aside the impugned proceedings and remanded the matter back to the Disciplinary Authority for entrusting the same to another Enquiry Officer to conduct a regular departmental enquiry from the stage of filing of the written statement of defence by the first respondent-applicant, strictly in accordance with the procedure prescribed in the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 (for brevity, 'the Rules of 1991'). Liberty was granted to the Disciplinary Authority to pass appropriate orders on the enquiry report submitted afresh. Pending the departmental enquiry, the Tribunal directed the authorities to consider the case of the first respondent-applicant for promotion to the post of Head Constable, as he had already completed his pre-promotional training, without prejudice to the right of the Disciplinary Authority to impose penalty in the promoted post also, if he was ultimately found guilty. Aggrieved by these directions, the authorities filed this writ petition.

Interim suspension of the order under challenge was granted by this Court on 24.10.2014 for a period of two weeks and it was extended thereafter from time to time till 05.12.2014, when it was extended until final orders.

Heard the learned Government Pleader for Services, Telangana, and Sri M.Surender Rao, learned senior counsel appearing for Sri Madiraju Srinivasa Rao, learned counsel for the first respondent-applicant.

The first respondent-applicant entered uniformed service as a Police Constable in the year 1984. He was dismissed from service without enquiry while he was working at Chinthoor Police Station on the allegation that he was instrumental in illegal trading of ganja along with another constable. He questioned the said order before the Tribunal in O.A.No.9002 of 2001 but met with failure. Aggrieved thereby, he filed W.P.No.14617 of 2003 before this Court. The said writ petition was allowed on 09.03.2005 directing the authorities to reinstate him in service with full pay and allowances, while granting liberty to initiate an enquiry into the allegations leveled against him and other constable. The Special Leave Petition filed by the authorities before the Supreme Court against the said order was dismissed on 27.07.2009. He was thereafter reinstated in service and orders were issued on 12.01.2010, treating the period 27.11.2001 to 29.04.2009 as on duty.

The Superintendent of Police, Khammam, then issued Charge Memo dated 22.01.2010 framing one charge against the first respondent-applicant, which reads as under:

‘ARTICLE-I

That Sri S.Srinivasa Rao, PC 2313 (Old No.1332) of Wazeedu PS while working at Chinthoor PS of Khammam district has exhibited gross misconduct and highly reprehensible behavior and illegal

activities in smuggling of Ganja from Chinthoor and transported to Delhi in the month of May, 2001 with the assistance of Sri Haripodu, R/o MC 79 (V), Malkangiri district or Orissa State who is a ganja smuggler and violated Rule 3 of Andhra Pradesh Civil Services (Conduct) Rules, 1964.'

He submitted his explanation thereto on 15.02.2010. Dissatisfied therewith, the authorities initiated a regular enquiry under Rule 24 of the Rules of 1991 against both the constables. The Assistant Superintendent of Police, Bhadrachalam, Khammam District, was appointed as an Enquiry Officer, under proceedings dated 25.02.2010, to hold the enquiry under Rule 20 of the Rules of 1991, but no Presenting Officer was nominated to present the case on behalf of the Disciplinary Authority. It appears that the Enquiry Officer himself acted as a Presenting Officer also. He thereafter submitted enquiry report dated 03.04.2012 holding the charge proved. Memo dated 15.10.2012 was issued by the Superintendent of Police, Khammam, forwarding the enquiry report to the first respondent-applicant and calling for his representation, if any, in relation thereto. The first respondent-applicant submitted his explanation and it was received on 26.11.2012 but, unimpressed by the same, the Superintendent of Police, Khammam, issued the impugned proceedings dated 19.11.2013 visiting him with a major penalty as stated *supra*.

The first respondent-applicant contended before the Tribunal that the procedure prescribed under Rule 20 of the Rules of 1991 had not been followed and thereby, the enquiry stood vitiated. Accepting this contention, the Tribunal granted him relief as aforestated.

It is not in dispute that no Presenting Officer was appointed by the Disciplinary Authority. Rule 20(5)(b) of the Rules of 1991 empowers the Disciplinary Authority to either hold the enquiry itself or, if it considers it

necessary, to appoint an Enquiry Officer for holding the enquiry into the charges leveled against the Government servant. The Rule also postulates that the Disciplinary Authority must appoint a Government servant or a retired Government servant or a legal practitioner as a Presenting Officer in the case to support the articles of charge. Therefore, when the Disciplinary Authority did not resort to hold the enquiry itself, in the present case, and appointed the Assistant Superintendent of Police, Bhadrachalam, as the Enquiry Officer, it necessarily had to appoint a Presenting Officer.

In the light of its failure to do so, it appears that the Enquiry Officer himself donned dual roles and also acted as the Presenting Officer. This is clear from the examination of P.W.3, which was extracted by the Tribunal in its order. The re-examination of this witness was done by the Enquiry Officer himself and he practically cross-examined the witness by putting it to him that he was deliberately retracting from the statement recorded earlier so as to protect the charged officers i.e., the first respondent-applicant and the other constable. Significantly, P.W.3 was the person who allegedly supplied ganja to these constables. Given the tone and tenor of the questioning of this witness by the Enquiry Officer, there can be no doubt that he could not have been unbiased in his dealing with the case thereafter, having put such strong suggestions to the witness against the interest of the first respondent-applicant.

Though this was the second round of disciplinary proceedings, the authorities utterly failed in following the prescribed procedure in terms of Rule 20 of the Rules of 1991 and the basic principles of natural justice. On the strength of this tainted enquiry, the Superintendent of Police, Khammam, could not have proceeded against the first respondent-

applicant and visited him with a major penalty. The order passed by the Tribunal holding to this effect therefore does not brook interference, be it on facts or in law.

The writ petition is devoid of merit and is accordingly dismissed. Interim suspension granted on 05.12.2014 shall stand vacated. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR,J

M.GANGA RAO,J

25th APRIL, 2018
PGS

