

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

WRIT PETITION Nos.19455,19811 AND 26715 OF 2014

COMMON ORDER
(*per* Hon'ble Sri Justice Sanjay Kumar)

The Government of Telangana and its officials in the Police Department filed these three writ petitions aggrieved by the individual orders passed by the Andhra Pradesh Administrative Tribunal, Hyderabad, in the O.As. filed by the first respondents in these writ petitions.

O.A.No.1802 of 2014 was filed by the first respondent in W.P.No.19455 of 2014 which was allowed by the Tribunal *vide* order dated 05.03.2014. O.A.No.1277 of 2014 was filed by the first respondent in W.P.No.19811 of 2014 and was allowed by order dated 20.02.2014. O.A.No.1003 of 2014 was filed by the first respondent in W.P.No.26715 of 2014 and the Tribunal allowed it by order dated 12.02.2014.

Interim suspension of the orders under challenge was granted by separate orders in all three cases. WVMs were filed by the first respondents-applicants in each of the cases to vacate the said orders.

Heard the learned Government Pleader for Services, Telangana, and Sri S.Gopal Rao, learned counsel for the first respondents-applicants in the three cases. Comprehensive arguments having been advanced by both sides, the matters are amenable to final disposal at this stage.

The applicants in the three O.As. were appointed as Home Guards in the State of Telangana. They were removed from the rolls of the Home Guards Organization on the ground of unauthorized absence from duty. Admittedly, the orders of removal were passed by the Competent Authority without affording them any opportunity of hearing. No show cause notice was issued to them calling for their explanation as to their

unauthorized absence before their names were removed from the rolls. Aggrieved thereby, they filed the subject O.As. before the Tribunal. It may however be noted that there was enormous delay on their part in seeking redressal of their grievance. O.A.No.1802 of 2014, relatable to W.P.No.19455 of 2014, was filed in January/February, 2014, against the order of removal dated 19.06.2009. O.A.No.1277 of 2014, relatable to W.P.No.19811 of 2014, was filed in February, 2014, assailing the order of removal dated 05.03.2001. O.A.No.1003 of 2014, relatable to W.P.No.26715 of 2014, was filed in January/February, 2014 challenging the order of removal dated 05.05.2003. The O.As. were entertained by the Tribunal after condonation of delay but the fact remains that there was substantial delay on the part of the first respondents-applicants in approaching the Tribunal.

That being said, this Court must also take note of the fact that the orders of removal passed against the first respondents-applicants were in utter violation of the procedure prescribed under Rule 7(4) of the Madras Home Guards Rules, 1949, framed under the Madras Home Guards Act, 1948, applicable in the State of Telangana.

'Rule 7 of the said Rules deals with 'Discipline' and reads as under:

7. Discipline:—(1) The Commandant shall comply with all orders in regard to the training of Home Guards and their use in aid of the Police issued by the Commissioner of Police or the District Superintendent of Police concerned, as the case may be.

(2) A Home Guard shall perform such duties and functions as may be assigned to him and shall obey every order of his superior officers.

(3) For the purposes of administration and discipline, the Home Guards shall, subject to the provisions of sub-rule (5), be under the control of their Commandant and, in his absence, of the Adjutant or the other staff officers, if any, appointed to assist the Commandant:

Provided that, if a contingent of Home Guards is acting in conjunction with a police force, they shall be subject to the control of the Senior Police Officer present who shall be not below the rank of Inspector.

(4) The Commandant may, for good and sufficient reasons, impose on any Home Guard any of the following penalties :—

- (a) reprimand ;
- (b) extra duty ;
- (c) withholding of payment of duty allowance ;
- (d) suspension ;
- (e) reduction of rank ;
- (f) removal ; and
- (g) dismissal.

No appeal shall lie against any of these punishments. In all the cases of disciplinary action, a reasonable opportunity shall 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.

(5) The Commissioner of Police in the Presidency-town and the District Superintendent of Police concerned elsewhere may, for good and sufficient reasons, direct the suspension, removal, or dismissal of a Home Guard from his office.

(6) The superintendence of the Home Guards shall be vested in the Inspector-General of Police and shall be exercised by him through the Commissioner of Police in the Presidency-town and through the Special Officer for the Special Armed Police Units and the District Superintendent of Police concerned elsewhere.'

Considering Rule 7(4) in THE STATE OF ANDHRA PRADESH V/ s. P.PRASAD RAO¹, a Division Bench of this Court observed that every order imposing a penalty upon a Home Guard should be preceded by 'reasonable opportunity' and the delinquent Home Guard should be asked to show cause why the penalty should not be imposed upon him/her. As the Rule itself prescribed issue of a show cause notice to provide a reasonable opportunity to the Home Guard, the Bench opined that any breach thereof would invalidate the order of punishment.

¹ W.P.Nos.28875 and 29382 of 2010 and batch dated 07.09.2011

Earlier, taking note of the aforestated judgment of this Court, the Tribunal disposed of O.A.No.1493 of 2013 and batch by order dated 25.04.2013. The present batch of three cases were thereafter allowed by the Tribunal following its earlier order in O.A.No.1493 of 2013 and batch.

In these circumstances, there can be no doubt that the orders of removal set aside by the Tribunal, *vide* the orders under challenge, deserved to be so set aside. However, the Tribunal did not make it clear therein as to whether reinstatement in service of the first respondents-applicants was to be with consequential benefits or not. Be it noted that the first respondents-applicants prayed for this relief in their O.As. specifically, but the Tribunal left the issue unanswered. Keeping in mind the delay on the part of the respondents-applicants in approaching the Tribunal, we are of the opinion that they cannot be given any such benefits at this late stage. The directions of the Tribunal to reinstate them in service would therefore mean that they would be reinstated in service without any benefits in relation to their past service, including seniority, continuity of service and attendant benefits. Subject to the above clarification, we find no grounds to interfere in the matter.

The writ petitions are devoid of merit and are accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR,J

M.GANGA RAO,J

20th APRIL, 2018

PGS