

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

WRIT PETITION NO.1384 OF 2016

ORDER

(Per Hon'ble Sri Justice Sanjay Kumar)

The State of Telangana and its officials in the Home Guards Department filed this writ petition aggrieved by the order dated 09.04.2015 passed by the Andhra Pradesh Administrative Tribunal, Hyderabad (*hereinafter*, 'the Tribunal'), in O.A.No.5904 of 2014. The said O.A. was filed by the first respondent herein assailing the order dated 19.09.2014 of the Commandant, Home Guards, Hyderabad City, removing him from the rolls of the Home Guards Organization with immediate effect. He also sought a consequential direction to the authorities to re-induct him in duty as a Home Guard with all consequential benefits. By the order under challenge, the Tribunal allowed the O.A. opining that it was covered by its earlier orders, as the order of removal suffered from violation of the principles of natural justice. The Tribunal adverted to the fact that this Court had held that a Home Guard was entitled to a reasonable opportunity before being removed from service and as such procedure had not been followed in the instant case, the order of removal passed against the first respondent-applicant was set aside. The authorities were however given liberty to conduct an enquiry afresh and pass orders after giving him a reasonable opportunity.

By order dated 22.01.2016, this Court granted interim suspension of the order under challenge. W.V.M.P.No.640 of 2016 was filed by the first respondent-applicant to vacate the said order.

Heard the learned Government Pleader for Services, State of Telangana, and Dr.K.Lakshmi Narasimha, learned counsel for the first respondent-applicant.

As comprehensive arguments were advanced by both sides, the matter is amenable to final disposal at this stage.

The first respondent-applicant was appointed as a Home Guard on 08.10.2003. He was served with a show-cause notice on 25.07.2014 asking him to submit his explanation with regard to a report dated 23.07.2014 of the RI Unit-I, which recorded that he was found collecting mamools (bribes) from Hukka Centers, Bar & Restaurants, Pubs, Lodges, etc., at Banjara Hills, Hyderabad. The first respondent-applicant submitted explanation dated 31.07.2014 denying the charge. Thereupon, the Commandant, Home Guards, Hyderabad City, passed the impugned order dated 19.09.2014 removing the name of the first respondent-applicant from the rolls of the Home Guards Organization with immediate effect. Perusal of this order reflects that as many as five items find mention in the reference portion thereof. Verbatim, they read as under:

- '1) Report No. 73/Jt. CP/SB Camp/2014, Dated 17-07-2014 of Jt. CP, S.B. City addressed to CP, Hyderabad.
- 2) Report No. 282/RI.I/HGs.Hyd/2014, Dated 23-07-2014 of RI-I.
- 3) This Office SCN No. 673/B/HGs.Hyd/2014, Dated 25-7-2014.
- 3) Explanation dated 31-7-2014 of Sri G. Rangaiah, HG 3063.
- 4) This office Proceedings of Committee of Home Guards Organization, dated 17-09-2014.'

It is not in dispute that neither the report which found mention in the show-cause notice nor the proceedings which were looked into by the authorities before passing the order of removal, mentioned in the reference portion thereof, were shared with the first respondent-applicant.

Learned Government Pleader placed before us copies of the documents dated 17.07.2014 and 23.07.2014, mentioned at items 1 and 2 in the reference. The Joint Commissioner of Police, Special Branch, Hyderabad, addressed the letter dated 17.07.2014 to the Commissioner of Police, Hyderabad City, stating to the effect that enquiries had revealed that the

first respondent-applicant was collecting mamools from persons running a gambling unit near Jubilee Hills Check-post. He was also stated to be collecting mamools from Hukka Centers, Bar & Restaurants, Pubs, Guest Houses, Lodges, etc. The Joint Commissioner therefore requested that disciplinary action should be initiated against him. Letter dated 23.07.2014 was addressed by the RI Unit-I, Home Guards Organization, Hyderabad City, to the Commandant, Home Guards, on the same lines. The aforesaid documents were not supplied to the first respondent-applicant. Nor were any persons involved in the enquiries against the first respondent-applicant examined or allowed to be cross-examined by the first respondent-applicant.

The issue is whether this would amount to a reasonable opportunity in keeping with the principles of natural justice and Rule 7(4) of the Madras Home Guards Rules, 1949 (for brevity, 'the Rules of 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.'

It is not the case of the authorities that this is an exceptional case where it was not possible to give an opportunity to the first respondent-applicant. That being so, they were bound to follow the procedure stipulated in Rule 7(4) *supra* and give him a reasonable opportunity to show cause against the penalty proposed to be imposed on him. It was not sufficient to merely put him on notice about the bald charge against him without disclosing what was the material gathered against him. Unless such material is shared with him, the first respondent-applicant cannot take effective steps to rebut the charge levelled against him. Enquiries conducted behind the back of the first respondent-applicant, which were not even known to him, were relied upon so as to remove him from service. This procedure clearly violated the principles of natural justice and did not satisfy the requirement of a reasonable opportunity postulated under Rule 7(4) of the Rules of 1949.

On the above analysis, this Court finds that the authorities did not follow the due procedure while dealing with the case of the first respondent-

applicant and no error was committed by the Tribunal in holding to this effect and setting aside the order of removal from service.

The writ petition is accordingly dismissed reiterating the liberty granted to the authorities to initiate proceedings afresh, if warranted, against the first respondent-applicant in accordance with the due procedure and in the light of the observations made hereinabove. Interim order dated 22.01.2016 shall stand vacated. Pending miscellaneous petitions shall also stand dismissed. No order as to costs.

20th APRIL, 2018
Sw



SANJAY KUMAR, J

M. GANGA RAO, J