

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

WRIT PETITION No.26287 OF 2014

ORDER

(per Hon'ble Sri Justice Sanjay Kumar)

The Government of Telangana and its officials in the Police Department filed this writ petition aggrieved by the order dated 17.04.2014 passed by the Andhra Pradesh Administrative Tribunal, Hyderabad (*hereinafter*, 'the Tribunal'), in O.A.No.2801 of 2014. The said O.A. was preferred by the first respondent herein assailing the order dated 03.10.2006 issued by the Superintendent of Police, Nalgonda, removing him from the rolls of the Home Guard Organization with immediate effect. Further, he sought a declaration that he was entitled to reinstatement as a Home Guard in Nalgonda District with all consequential benefits. By the order under challenge, the Tribunal followed its earlier order dated 25.04.2013 passed in O.A.No.1493 of 2013 and batch and allowed the O.A. The impugned proceedings dated 03.10.2006 were set aside and the authorities were directed to reinstate the first respondent-applicant in service forthwith. Aggrieved by this direction, the authorities filed this writ petition.

By order dated 08.09.2014, this Court granted interim suspension of the order under challenge. WVMP No.1857 of 2017 was filed by the first respondent-applicant to vacate the said order. Comprehensive arguments having been advanced by the learned Government Pleader for Services, State of Telangana, and Sri P.Narasimha, learned counsel for the first respondent-applicant, the matter is amenable to final disposal.

The first respondent-applicant was appointed as a Home Guard in Nalgonda District in October, 2004. He was removed from service under

the impugned order dated 03.10.2006 by the Superintendent of Police, Nalgonda District, on the ground that he was involved in the theft of a motor cycle at Devarakonda and a criminal case was registered against him. Admittedly, no show-cause notice was issued to him prior to such removal and he was not afforded any opportunity of hearing. The failure on the part of the authorities to issue a show-cause notice to the first respondent-applicant and afford him a reasonable opportunity of hearing falls foul of Rule 7(4) of the Madras Home Guards Rules, 1949, framed under the Madras Home Guards Act, 1948, applicable in the State of Telangana. This Rule reads as under:

‘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 the above Rule, a Division Bench of this Court in THE STATE OF ANDHRA PRADESH V/ s. P.PRASAD RAO¹ 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. When the Rule itself prescribed issuance of a show-cause notice so as to provide a reasonable opportunity to the Home Guard concerned, the Bench opined that any breach thereof must lead to the invalidation of the order of punishment. 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 case was also 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 order of removal set aside by the Tribunal, *vide* the order under challenge, deserved to be so set aside.

On the above analysis, this Court finds no error having been committed by the Tribunal in setting aside the order dated 03.10.2006 removing the name of the first respondent-applicant from the rolls of the

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

Home Guards Organization. The further direction to reinstate him in service, in consequence, also does not warrant interference.

The writ petition is devoid of merit and is accordingly dismissed. Interim order dated 08.09.2014 shall stand vacated. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR,J

25th APRIL, 2018
PGS

M.GANGA RAO,J

