

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION NO.4442 OF 2018

ORDER:

This writ petition is filed seeking a writ of Mandamus to call for the records relating to and connected with the impugned proceedings bearing DO.No.9860, dated 08.09.2017, of the 2nd respondent in removing the petitioner from the rolls of Home Guards Organization, Hyderabad City, and to quash or set aside the same as being illegal, arbitrary and violative of Article 21 of the Constitution of India, apart from violative of principles of natural justice, and sought a consequential direction to the respondents to reinstate the petitioner in the rolls of Home Guards Organization, Hyderabad City, with all consequential benefits.

Heard Sri Jakkamsetti Ravindra, learned counsel for the petitioner, and the Special Government Pleader for Services (Home) appearing for the respondents.

It has been contended by the petitioner that he was appointed as a Home Guard on 28.04.2011 and ever since his appointment, he has been discharging his duties to the best satisfaction of his superiors and every one concerned. The petitioner further contends that while he was discharging Traffic Regulation duties during September, 2017, the respondents have passed the impugned removal orders dated 08.09.2017 on the ground that he has collected Rs.300/- from one of the vehicles passing through Chaderghat cause way. The petitioner also contends that the allegation leveled against him is that he has collected Rs.300/- illegally from a driver who was driving Tata Ace vehicle, but no opportunity was given to him to defend himself and no enquiry was conducted, and straight away the removal orders were passed after issuing the show cause notice.

Learned counsel for the petitioner submits that in the impugned removal order dated 08.09.2017, it was vaguely alleged that while the petitioner was performing duties from 0800 hours to 1400 hours, he has collected Rs.300/- from one driver, who was driving Tata Ace vehicle, but however, the date on which such an incident has taken place is not mentioned in the order. Learned counsel further points out that non-mentioning of the date of incident in the impugned order itself shows that the impugned removal orders are passed without application of mind. Learned counsel also contends that similar issue, as to whether the respondents are required to conduct enquiry while passing the orders of removal, fell for consideration before this Court in W.P.No.28875 of 2010 and batch of cases, wherein this Court *vide* order dated 07.09.2011 upheld the orders passed by the Tribunal by dismissing the writ petitions preferred by the State with the following observations:

“Section 4(3) of the Act empowers the prescribed authority to suspend, dismiss, remove any HG subject to such conditions as may be prescribed. Rule 7(4) of the Rules contemplates a show cause notice only with regard to the penalty proposed to be imposed. No such show cause notice or prior opportunity is contemplated under the Act for the Rules before a HG is removed. But, having regard to the language used in Rule 7(4) of the Rules that the show cause notice should be to afford a reasonable opportunity before passing an order of penalty, and having regard to the ratio in *Dr. RashLal Yadav* we are inclined to read Rule 7(4) of the Rules as mandating a show cause notice containing the charges/imputations or instances of misconduct so as to give a reasonable opportunity to the delinquent HG to meet the charges and effectively plead defence for exoneration. A show cause notice merely indicating the penalty to be imposed would not answer the test of fairness in administrative action. Any notice calling upon to submit explanation only against penalty imposed would certainly not comply with the principles of natural justice. An order of authority exercising

judicial or quasi-judicial functions passed in violation of principles of natural justice is procedurally ultra vires and suffers from a jurisdictional error (Ravi S.Naik v Sanjay Bandekar AIR 1994 SC 1558). Therefore, in all the cases only where a show cause notice is issued as a post-decisional exercise and without a reasonable opportunity to the delinquent HG at a pre-decisional stage would certainly violate the principles of natural justice. In that view of the matter, in the other group of writ petitions, we do not find any error in the orders of learned Tribunal.

Whether the issue of show cause notice containing charges/imputations and the instances of misconduct should be followed by an enquiry as contemplated under Article 311(2) of the Constitution of India is an issue which was not argued before the Tribunal or before us. Therefore, we leave the question open to be decided in an appropriate case.”

Learned counsel for the petitioner further contends that admittedly in the instant case, the respondents have not conducted any enquiry nor given any opportunity to the petitioner before passing the impugned removal orders, and therefore, contends that appropriate orders be passed in the writ petition by setting the orders of removal dated 08.09.2017 holding it as arbitrary and illegal.

Learned Government Pleader for the respondents had submitted that the case of the petitioner would be considered in terms of the law held by this Court in the judgment referred supra and appropriate orders would be passed.

In view of the rival submissions made by the learned counsel for respective parties, this Court is of the considered view that the impugned removal orders dated 08.09.2017 are liable to be set aside, as the same were passed without giving any opportunity to the petitioner and without conducting any enquiry.

Accordingly, the writ petition is allowed setting aside the impugned removal orders dated 08.09.2017 and directing the respondents to reinstate the petitioner into service with all consequential benefits. No costs.

Consequently, miscellaneous petitions pending, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

Dated: 6th February, 2019
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