IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

WEDNESDAY, THE 29TH DAY OF JULY 2015/7TH SRAVANA, 1937

OP(KAT).No.36 of 2015 (Z)

AGAINST THE ORDER IN OA 119/2015 of KERALA ADMINISTRATIVETRIBUNAL, THIRUVANANTHAPURAM DATED 23/01/2015

PETITIONER/APPLICANT:

R.RAJESH,
EXCISE INSPECTOR, EXCISE HEAD QUARTERS, NANDANAM
THIRUVANANTHAPURAM - 695 033.

BY ADVS. DR.K.P.SATHEESAN (SR.)
SRI.M.R.JAYAPRASAD
SRI.P.MOHANDAS (ERNAKULAM)
SRI.ANOOP.V.NAIR
SRI.S.VIBHEESHANAN
SRI.N.MANU THAMPI

RESPONDENTS/RESPONDENTS:
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1. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT
TAXES (F) DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM - 695 001.

2. THE EXCISE COMMISSIONER
EXCIE HEAD QUARTERS, NANDAVANAM
THIRUVANANTHAPURAM - 695 033.

R1&2 BY SR. GOVERNMENT PLEADER SRI.JOSEPH GEORGE

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP FOR ADMISSION ON 29-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP(KAT).No. 36 of 2015 (Z)

APPENDIX

PETITIONER'S EXHIBITS

EXHIBIT-P1-TRUE COPY OF THE ORDER DATED 23/01/2015 IN O.A 119/2015 OF THE HONOURABLE KERALA ADMINISTRATIVE TRIBUNAL.

EXHIBIT-P2-TRUE COPY OF O.A NO. 119/2015.

EXHIBIT-P3-TRUE COPY OF THE REMARKS WRITTEN BY THE 2ND RESPONDENT TO THE IST RESPONDENT DATED 19/08/2014.

EXT.P4:- TRUE COPY OF THE STATEMENT AND THE ENQUIRY REPORT DATED 20/2/08 OF THE CIRCLE INSPECTOR OF EXCISE.

EXT.P5:- TRUE COPY OF THE STATEMENT GIVENBY MR.G.VASUDEVA KURUP BEFORE THEJOINT EXCISE COMMISSIONER DT. 5/7/08.

EXT.P5(a):- TRUE COPY OF THE STATEMENT GIVEN BY MR.RAMACHANDRAN PILLAI BEFORE THE JOINT EXCISE COMMISSIONER DT. 5/7/08.

EXT.P5(b):- TRUE COPY OF THE STATEMENT GIVEN BY MR.T.J.JAYAKUMAR BEFORE THE JOINT EXCISE COMMISSIONER DT. 28/4/09.

EXT.P5(c):- TRUE COPY OF THE STATEMENT GIVEN BY MR.ABDUL MANAF BEFORE THE JOINT EXCISE COMMISSIONER DT. 5/2/09.

EXT.P6:- TRUE COPY OF THE STATEMENT GIVEN BY MR.SURESH KUMAR DT. 24/9/12.

EXT.P6(a):- TRUE COPY OF THE STATEMENT GIVEN BY MR.VINOD SIVARAM DT. 24/9/12.

EXT.P7:- TRUE COPY OF THE STATEMENT GIVEN BY MR.ABDUL MANAF DT. 22/9/12.

EXT.P8:- TRUE COPY OF THE STATEMENT GIVEN BY THE JOINT EXCISE COMMISSIONER DT. 6/10/13.

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P. R. RAMACHANDRA MENON
&
BABU MATHEW P. JOSEPH, JJ.

O.P. (KAT) No.36 of 2015

Dated this the 29th day of July, 2015

JUDGMENT

P. R. Ramachandra Menon, J.

Correctness and sustainability of the disciplinary proceedings being pursued against the petitioner herein is the subject matter of challenge in this original petition.

2. The petitioner is presently working as Excise Inspector in Thiruvananthapuram. While he was working as Excise Inspector in the Circle Office at Karunagappally, there was an instance where one Prakash was arrested on 25/02/2006 by a Preventive Officer by name, Vasudeva Kurup and his team. On coming across the fact that the aforesaid Prakash was possessing arrack, a crime was registered as Crime No.45 of 2006 of the Range Office and the arrested person was sent to judicial custody, where he was to remain for nearly 76 days. After coming out on

obtaining bail, the victim sent a complaint to the Chief Justice of this Court to enquire into the circumstances which led to his arrest and subsequent imprisonment. Pursuant to the said complaint, it was ordered to conduct re-investigation of the case by the Deputy Commissioner of Excise. After the investigation, the Joint Commissioner of Excise filed a report stating that the arrested person was not the accused and the case might be treated as undetected.

3. The petitioner contends that he was never figured anywhere in the enquiry and the same was more oriented against the involvement of Sri.Vasudeva Kurup, Preventive Officer and another Preventive Officer by name, Vikraman Nair. In course of further steps, memo of charges were issued to the Preventive Officer on 11/07/2008. Subsequently, a Final Report was filed by the Joint Excise Commissioner in respect of the memo on 10/03/2010. The Preventive Officer who arrested the complainant by name, Prakash was also served with a memo of charges on 14/02/2011. It was nearly 'eight years' after the date of the

alleged occurrence, that the petitioner was served with memo of charges vide Annexure-A11 on 09/05/2014.

4. Detailed objection was preferred by the petitioner pointing out the facts and figures and disputing his involvement in any manner. The attempt was allegedly to deny promotion to the petitioner, for which he was eligible and which had become due to be effected within a short while. However, without any regard to the objections raised by the petitioner, an enquiry officer was appointed in connection with the disciplinary proceedings on 31/12/2014. Initiation and continuation of the proceedings as per Annexures-A11 and A13 and the attempt to deny promotion to the petitioner, to the post of Circle Inspector of Excise, were sought to be challenged in O.A. No.119 of 2015 before the Kerala Administrative Tribunal. The Tribunal arrived at a finding that the grievance projected in the O.A. was rather premature and hence, interference was declined and the O.A. was dismissed as per Ext.P1 order, holding that if at all the petitioner was aggrieved in any manner with regard to

the alleged denial of promotion to him, it was all the more open for him to work out his remedy by way of appropriate proceedings. The said verdict is sought to be challenged by filing the present original petition.

5. A counter affidavit has been filed on behalf of the first respondent and the petitioner has filed a reply affidavit as well. Heard Sri.K.P.Satheesan, the learned counsel appearing for the petitioner and Sri.Joseph George, the learned Senior Government Pleader appearing for the respondents.

6. The learned counsel for the petitioner points out that there is absolutely no rhyme or reason in initiating or continuing the disciplinary proceedings against him; that too after eight years of the alleged occurrence of the incident on 25/02/2006. Reliance is sought to be placed on the decision rendered by the Apex Court in State of **Andhra Pradesh v. N. Radhakrishnan (AIR 1998 SC 1833)**, where the disciplinary proceedings initiated after a lapse of nearly 'ten' years were intercepted. The petitioner is not connected in

any manner, so as to rope him in to the present proceedings and there was no complaint against him at any point of time. It was only to block the legitimate chance of the petitioner to get promoted to the post of Circle Inspector, that the persons who were behind the curtain made use of the opportunity by trying to connect the petitioner as well, with the alleged criminal case which is falsely registered at the instance of Prakash, due to animosity to Sri.Vasudeva Kurup, Preventive Officer and the another Preventive Officer, by name Sri.R.K.Vikraman Nair.

7. The version of the petitioner is sought to be rebutted by the Senior Government Pleader with reference to the specific averment raised in the counter affidavit filed on behalf of the first respondent. It is stated that, in the course of enquiry made by the Vigilance Department, involvement of the petitioner was brought to light. The version of the said respondent as contained in paragraphs 3 and 4 is to the following effect:

> "3. It is hereby submitted that the petitioner

was working as Excise Inspector, Excise Circle Office, Karunagappally during 2006. On 25/02/2006, he was in charge of the said office. The Excise Driver Sri.Abdul Manaf, Preventive Officer Sri. G. Vasudevakurup, Sri. R. Gopinath, Preventive Officer, Sri. Ramachandran Pillai, Preventive Officer, Sri.T.J.Jaya Kumar Civil Excise Officer gave statement to Vigilance and Anti Corruption Bureau to the effect that the case was detected in the presence of the petitioner. In the enquiry conducted by the Vigilance and Anti Corruption Bureau, the presence of the petitioner in the place of occurrence and the role of the petitioner was proved. It is revealed that the petitioner accompanied the patrolling party by himself. Hence disciplinary action was initiated against the petitioner by the first respondent.

4. It is alleged by the accused Sri.R.Prakash, that he was falsely implicated in the crime due to animosity of Sri.K.Vikraman Nair, Preventive Officer against him. The Joint Excise Commissioner, Excise Intelligence and Investigation Bureau, Thiruvananthapuram conducted the investigation and reported that the case was a fabricated one and the accused Sri.R.Prakash has no connection with the thondy item (Arrack). Hence Memo of Charges was given to Sri. G. Vasudeva Kurup, the detecting officer who caused Sri. R. Prakesh to be remanded in judicial custody for 76 days and also against the mahazar witness Sri.T.J.Jayakumar and Ramachandran Pillai. Later the conspiracy of the Excise Officials of Karunagappally Excise Circle Office was brought to light by the Vigilance and Anti Corruption Bureau and recommended to take stringent action against the delinquent officials

> who were responsible for the vexatious arrest of Sr. R. Prakash. The report of Vigilance and Anti Corruption Bureau revealed the connivance and participation of the petitioner in the framing of the false case against the said R. Prakash."

8. The first respondent has stated in the said counter affidavit that, initiation of disciplinary proceedings against the petitioner is based on the report of the Vigilance and Anti Corruption Bureau as recommended by them, which prima facie has been found to be correct. It is also added by the learned Government Pleader that the delay in taking the disciplinary action was only because of the proceedings at various stages and different levels; particularly with the involvement of the Vigilance Department, however, adding that the domestic enquiry in the case of the petitioner herein will be completed at the earliest and at any rate within three months.

9. In the above circumstances, particularly in view of the disputed question of facts, the matter requires to be finalised with respect to the actual facts and figures, which exercise cannot be pursued by this Court under Article 227

of the Constitution of India. If the petitioner is having any connection with the alleged occurrence, it has to be established and if he is innocent, his innocence requires to be proved at the earliest. The extent of delay involved in initiating the proceedings is also a question which is to be considered by the competent authority, with respect to the prejudice in the collection of necessary data, production and adducing of evidence and such other relevant aspects. This Court does not express any opinion in this regard and the same is the matter which is to be considered by the competent authorities in accordance with law. This Court finds it fit and proper to have the matter disposed of, directing the first respondent to cause the enquiry to be completed and finalised within 'three months' in accordance with law taking the proceedings to a logical conclusion.

10. With regard to the promotion and adverse circumstances likely to be resulted, as contended by the petitioner, it is relevant to note that when the matter came up for consideration on 17/03/2015, this Court passed an

interim order to the effect that, if the petitioner was in the zone of consideration and if the DPC was to meet to consider the eligible candidates for promotion, the petitioner would also be considered following the “sealed cover procedure”. The above interim order reads as follows:

> “Read orders minuted on 23/02/2015 and 04/03/2015.
>
> Today the learned Senior Government Pleader submits, on instructions, that Prakash the person against whom occurrence report was registered under the Abkari Laws, is charge-sheeted and he is enlarged on bail and the criminal case is pending. While the submission on behalf of the petitioner on 23/02/2015 that the said Prakash has been convicted may not be correct, for the time being, we are unable to see that there could be any foundation for further proceedings against the petitioner, unless the Government says as to what it really intends in the situation in hand. Let a counter affidavit through the competent officer be placed on behalf of the establishment.
>
> If the petitioner is in the zone of consideration and if the DPC meets to consider candidates for promotion, the petitioner would also be considered following sealed cover procedure.
>
> Post on 30/03/2015.

Hand over to both sides."

11. The learned counsel for the petitioner points out that the report stated as filed by the Vigilance Department is not correct and that the same is not in tune with the statements given by various persons from whom they were taken. It is stated that no involvement of the petitioner has been made out; more so since he was having absolutely no connection with the affairs of the Range Office where the crime was registered and that he was working in the Circle Office as on 25/02/2006. The learned counsel also points out that the reports of all the departmental authorities including that of the Circle Inspector and the Joint Excise Commissioner stand in favour of the petitioner, to the effect that he had absolutely no connection or involvement with the arrest of the complainant by name Prakash. This, however, is a matter to be looked into by the competent authority.

12. In the above circumstances, once the disciplinary proceedings come to an end, the interim order passed by

this Court on 17/03/2015 shall be given effect to and the right of the petitioner to get promoted to the post in question shall be considered and finalised in accordance with law passing appropriate orders in this regard. All the issues with regard to the merits, including the question of 'delay' are left open to be considered by the competent authority.

Original petition stands disposed of.

Sd/-
P. R. RAMACHANDRA MENON
JUDGE

Sd/-
BABU MATHEW P. JOSEPH
JUDGE

kns/-

//TRUE COPY//

P.A. TO JUDGE