

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

TUESDAY, THE 23RD DAY OF JUNE 2015/2ND ASHADHA, 1937

OP (KAT) .No. 76 of 2015 (Z)

AGAINST THE ORDER/JUDGMENT IN OA(EK 90/2015 of KERALA
ADMINISTRATIVETRIBUNAL, THIRUVANANTHAPURAM DATED

PETITIONER:

BIJU S.
RESERVE SUB INSPECTOR, DISTRICT ARMED RESERVE CAMP
KOLLAM 691001(UNDER ORDER OF SUSPENSION)

BY ADV. SRI.P.C.SASIDHARAN

RESPONDENTS:

1. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT
HOME DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM
PIN 695001

2. THE STATE POLICE CHIEF,
OFFICE OF THE STATE POLICE CHIEF, VAZHUTHACAUD
THIRUVANANTHAPURAM 695014.

3. THE INSPECTOR GENERAL OF POLICE,
THIRUVANANTHAPURAM RANGE, NANDAVANAM
THIRUVANANTHAPURAM 695035

4. THE DEPUTY INSPECTOR GENERAL OF POLICE,
VAZHUTHACAUD, THIRUVANANTHAPURAM 695014.

R1 -R 4 BY ADV. GOVERNMENT PLEADER

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP FOR
ADMISSION ON 23-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

OP(KAT).No. 76 of 2015 (Z)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1-TRUE COPY OF THE JUDGMENT IN O.P(KAT)154 OF 2014.

EXHIBIT P2-TRUE COPY OF THE O.A.90/2015 ALONG WITH ANNEXURES

EXHIBIT P3-TRUE COPY OF THE ORDER IN O.A(EKM) 90 OF 2015.

EXHIBIT P4- TRUE COPY OF THE ORDER ISSUED BY THE 3RD RESPONDENT DATED
07.01.2015

/TRUE COPY/

P.A. TO JUDGE

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

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O.P.(KAT) No. 76 of 2015

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Dated, this the 23rd day of June, 2015

JUDGMENT

Ramachandra Menon J.

This original petition has been filed by the petitioner seeking to set aside Ext. P4 order passed by the 3rd respondent, whereby punishment of removal from service has been ordered. Prayers raised are in the following terms :

- "i) Issue an order to set aside Exhibit P4 order issued by the 3rd respondent.
- ii) Issue and order to stay the operation and implementation of Ext. P4.
- iii) To set aside the order of the Tribunal in OP (CAT) No. 154/14 marked as Ext. P1 in the OP (CAT) so also Ext. P4 and
- iv) To issue such other writ, order or direction as this Honourable Court may deem fit and proper in the circumstances of the case.

2. Various grounds have been raised in support of the original petition, particularly that the authority concerned does not have the power, competence or jurisdiction to pass the impugned order and

further that there is clear violation of the principles of natural justice, having not served copy of the enquiry report. It is further contended that there is a bar under Rule 10 of the Kerala Police Departmental Inquiries, Punishment and Appeal Rules (herein after referred to as the Rules), virtually placing a hurdle in proceeding with disciplinary action, when a criminal case is pending in respect of the same instance.

3. The prayers are sought to be vehemently opposed from the part of the respondents pointing out that the original petition itself is not maintainable, as no order of the Tribunal is under challenge, so as to invoke the supervisory jurisdiction of this Court under Article 227 of the Constitution of India. The second prayer with reference to "OP (CAT) No. 154 of 2014" itself is a mistake, as no 'CAT' is involved and further that the order passed by the 'KAT' vide Ext. P1 is no more relevant in view of the subsequent developments.

4. The sequence of events is as follows : The petitioner joined service in the Police Department, as a Reserve Sub Inspector (Trainee) in the District Armed Reserve, pursuant to the advice given by the PSC on 20.04.2007. While continuing in service as above, he was placed under suspension w.e.f 24.01.2012 as per

Annexure A3 order dated 16.10.2012 issued by the second respondent, alleging some serious misconducts. It is stated that the second respondent DGP himself ordered domestic enquiry and appointed an enquiry officer. Based on the report submitted by the enquiry officer, the second respondent issued Annexure A6 show-cause notice proposing to impose punishment of 'removal from service' on 07.02.2014; also forwarding a copy of the enquiry report (PR minutes) and seeking for explanation, if any. This made the petitioner to approach the Tribunal by filing O.A. No. 132 of 2014, contending that the proceedings were per se wrong and illegal in all respects, having no power to initiate or pursue the proceedings against the petitioner, the second respondent not being a disciplinary authority. Such other contentions were also raised with reference to non-service of a copy of the enquiry report before arriving at the guilt and also with reference to the scope of Rule 10 of the Rules mentioned already. The Tribunal declined interference stating that the alleged cause of action was premature and that the petitioner, if at all aggrieved, had to move the statutory authority at the first instance. The said order passed by the Tribunal was challenged by filing O.P. (KAT) No. 154 of 2014. When the matter came up for consideration of the Bench before

this Court, it was submitted by the learned Government Pleader that Annexure A7 show cause notice (Annexure A6 herein) was proposed to be withdrawn. The said submission was recorded and the Original Petition was disposed of as per Ext. P1 judgment, permitting the concerned respondent to proceed with further steps in accordance with law. The case of the petitioner is that, after passing Ext. P1 judgment, the petitioner was served with Annexure A9 show-cause notice issued by the 3rd respondent (Inspector General), simply accepting the enquiry report holding that the charges levelled against the petitioner were proved and proposing to impose the punishment of removal from service. A copy of the 'PR minutes' also forwarded to him, seeking for explanation if any, although a copy of the 'PR minutes' was already forwarded to him along with the earlier show-cause notice issued by the second respondent, vide Annexure A6.

5. Petitioner submitted Annexure A10 reply, pointing out the facts and figures and also seeking for certified copies of the proceedings/documents so as to enable him to explain the position further. The petitioner simultaneously sought to challenge the proceedings by approaching the Tribunal by filing O.A. No. 90 of 2015 (Ernakulam), mainly placing reliance on the grounds

mentioned hereinbefore. This time as well, the Tribunal observed that it was for the applicant to raise all the contentions before the competent authority and that there was no reason to doubt that the said contentions would not be considered by the competent authority; more so, by virtue of the duty cast upon in this regard, to have passed a speaking order. It was accordingly, that interference was declined with regard to Annexure A9 show cause notice. In the due course, the petitioner was served with Ext. P4 order dated 07.01.2015, whereby the proposal as contained in Annexure A9 was confirmed and the petitioner was ordered to be removed from service. This in turn is under challenge in this original petition.

6. Heard Sri. P.C. Sasidharan, the learned counsel appearing for the petitioner and Sri. C. S. Manilal, the learned senior Government Pleader appearing for the respondents.

7. The learned counsel for the petitioner points out that the authority who has issued the show-cause to the petitioner is not the disciplinary authority and that the higher authority could not have initiated or continued to proceed against the petitioner by virtue of the Scheme and mandate of the Rules, particularly Rule 16.

8. Reliance sought to be placed on the decision rendered by a learned single Judge of this Court in this regard in **Gopalakrishna Pillai Vs. State of Kerala [1981 KLT 687]** is sought to be rebutted by the learned Government Pleader pointing out that circumstances involved in the present case are entirely different. In the above case, disciplinary action was taken against a Head constable, whose disciplinary authority was the Superintendent of Police, and that the Inspector General who issued the impugned proceedings was never the disciplinary authority or appellate authority. There is also an observation/remark by the learned single Judge to the effect that, had there been a case that the Inspector General had called for the records and passed the order, the position would have been something different. In the instant case, the proceedings have been issued by the Inspector General by virtue of the fact that he was holding the charge of the D.I.G and further that the I.G's role is clearly mentioned in the relevant Rules, which hence is not a similar situation as considered by the Single Bench in **1981 KLT 687** (cited supra). We do not find it necessary to go into these aspects, for the reasons discussed below.

9. The learned counsel for the petitioner also submits that by virtue of the law declared by the Apex Court in **Managing Director ECIL Hyderabad and Ors. Vs. B. Karunakar & Ors. [(1993) 4 SCC 727]**, a copy of the enquiry report had to be given well in advance, enabling the delinquent employee to prove his innocence, before a finding was arrived at on guilt. In the instant case, copy of the enquiry report (PR minutes) forwarded along with Annexure A9 show cause notice were served, after accepting the report and as such, it is stated as wrong and illegal in all respects. This is sought to be rebutted by the learned Government Pleader, pointing out that a copy of enquiry report was served to the petitioner well in advance along with Annexure A6, when the earlier show-cause notice was issued by the second respondent. Though the said show cause notice was subsequently withdrawn (as evident from Ext. P1 judgment), the fact remains that copy of the enquiry report was well served to the petitioner at the time of serving Annexure A6. The Apex Court has also observed that, non-service of copy of the enquiry report by itself will not vitiate the enquiry and it is for the delinquent employee to establish the prejudice that has been caused. In the instant case no prejudice has been caused and as such, version of the

petitioner is not liable to be entertained, submits the learned senior Government Pleader. The learned Government Pleader further points out that Ext. P3 order passed by the Tribunal in O.A. No. 90 of 2015 has not been subjected to challenge by the petitioner and this being the position, the impugned proceedings are not liable to be intercepted invoking the supervisory jurisdiction available under Article 227 of the Constitution of India.

10. After hearing both the sides and after perusing the materials on record, this Court finds that, interference was declined by the Tribunal while passing Ext. P3 order, referring to the statutory remedies available to the petitioner, before exhausting which, the proceedings were not liable to be entertained by the Tribunal, by virtue of the Bar under Section 20 of the Administrative Tribunal Act. There is a contention for the respondents, as given in the statement filed by the second respondent, followed by subsequent counter affidavit filed by the very same respondent, that the petitioner, if at all aggrieved is entitled to file an appeal as provided under Rule 16 before the appellate authority; apart from the right for review as provided under Rule 36A of the very same Rules, before the Government. After pursuing the said course, if the petitioner is still aggrieved, he

can approach the Tribunal and before exhausting such course and without having any order from the Tribunal, the matter is not liable to be entertained by this Court under Article 227 of the Constitution of India, submits the learned Government Pleader. This Court finds considerable force in the said submission. But the question to be considered is whether the petitioner is to be relegated to file appeal before the second respondent and whether that will be an effective remedy ?

11. It remains a fact that, finding of guilt has been arrived at by the competent authority; while passing Ext. P4. It has been found as correct and sustainable and a counter affidavit has been filed in this regard by the second respondent himself, virtually seeking to sustain the said proceedings. Since the second respondent/appellate authority has filed a counter affidavit seeking to sustain the proceedings passed by the disciplinary authority, no fruitful purpose will be served, if any appeal is to be preferred before the said authority, by way of Rule 16. However, by virtue of the course open with reference to Rule 36A before the Government, this Court finds it fit and proper to permit the petitioner to move the Government by way of review, in respect of the impugned order i.e. Ext. P4, to have the redressal of the

grievance.

12. Yet another aspect to be noted is that the challenge raised by the petitioner before the Tribunal was against Anenxure A9 show cause notice. Anenxure A10 reply was also produced before the Tribunal. The O.A was finalised by the Tribunal as per Exhibit P3 order dated '22.01.2015'. But by that time, the proceedings forming the subject matter of challenge in respect of the show cause notice had already culminated in Ext.P4 order passed by the competent authority on 07.01.2015. Passing of the final order by the concerned authority on 07.01.2015 was very much known to the respondents herein. It is reasonably presumed that the said fact was omitted to be brought to the notice of the Tribunal. The learned counsel for the petitioner has got a case that Ext. P4 order was served to the petitioner only subsequently, after passing the impugned order. Had the petitioner been aware of the proceedings, he would have caused the original application to be amended challenging Ext. P4 as well.

In the above circumstances, this Court finds that the matter requires to be considered by the Government invoking the power of review as provided under Rule 36A of the relevant Rules. The petitioner is set at liberty to move the first respondent by filing a

review petition as aforesaid within 'three weeks' from date of receipt of a copy of this judgment. If the same is done within the said time, it shall be considered on merits and a speaking order shall be passed affording an opportunity of hearing to the petitioner. All the contentions are left open.

The Original Petition is disposed of.

sd/-

**P. R. RAMACHANDRA MENON,
JUDGE.**

sd/-

**BABU MATHEW P. JOSEPH,
JUDGE**

kmd