

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 4TH DAY OF AUGUST 2015/13TH SRAVANA, 1937

OP (KAT) .No. 265 of 2015 (Z)

AGAINST THE ORDER DATED 05.02.2015 IN OA 843/2013 of KERALA
ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM

PETITIONERS/RESPONDENTS IN O.A.:

1. STATE OF KERALA REPRESENTED BY ITS SECRETARY TO
GOVERNMENT, HOME (H) DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM
695001
2. THE INSPECTOR GENERAL OF POLICE, THIRUVANANTHAPURAM RANGE,
THIRUVANANTHAPURAM 695033
3. THE COMMISSIONER OF POLICE, KOLLAM CITY, KOLLAM,
KERALA 691013
4. ASSISTANT COMMISSIONER OF POLICE, KARUNAGAPALLY, KOLLAM
KERALA 690518

BY SENIOR GOVERNMENT PLEADER SRI. M. MUHAMMED SHAFI

RESPONDENT/APPLICANT IN O.A.:

S.T.BIJU, SUB INSPECTOR OF POLICE,
VALAYAM POLICE STATION, KOZHIKODE RURAL 673517

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP FOR
ADMISSION ON 04-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

O.P.(KAT) NO. 265 OF 2015

APPENDIX

PETITIONER'S EXHIBITS :

EXT. P1 : A TRUE COPY OF THE O.A. NO. 843 OF 2013
EXT. P2 : A TRUE COPY OF REPLY STATEMENT DATED 01.11.2013
EXT. P3 : A TRUE COPY OF REJOINDER DATED 21.03.2013
EXT. P4 : A TRUE COPY OF ORDER IN O.A. NO. 843/2013 DATED
05.02.2015

/TRUE COPY/

P.A. TO JUDGE

P.R. RAMACHANDRA MENON

&

BABU MATHEW P. JOSEPH, JJ.

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O.P. (KAT) No. 265 of 2015

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Dated, this the 4th day of August, 2015

JUDGMENT

Ramachandra Menon, J.

Interference made by the KAT setting aside Annexure A11 order passed by the Government on 06.02.2013 (imposing the punishment of postponement of increment for a period of one year with cumulative effect) is sought to be challenged by the Government and the Department (Police), on various grounds.

2. The sequence of events reveals that the respondent herein, who was the S.I. of Police, East Police Station, Kollam was sought to be proceeded against in connection with some delinquency in service. The incident which forms the basis of the said case happened on 28.02.2011, when three persons were found quarrelling among each other, under the influence of alcohol, near Kollam Railway Station. They were apprehended by the police at about 10.30 p.m. and brought to the police station, where a crime was registered in

connection with the offences concerned.

3. The arrested persons were taken to the District Hospital, Kollam for medical examination. At the hospital, one of the accused, by name, Deepulal, physically assaulted a Grade S.I by name Mohanan using a chair, causing serious injuries which necessitated as many as 8 stitches. The accused were brought back to the police station and another crime was registered in respect of this incident as well. Later, a complaint came to be preferred by some political functionary referring to the alleged manhandling/custodial torture of Mr. Deepulal, who was stated as the leader of a student organization. Based on the said complaint, a preliminary enquiry was caused to be conducted by the City Police Commissioner, through the Assistant Commissioner Narcotic Cell, Kollam, who submitted a report on 10.03.2011 finding that the alleged manhandling of Deepulal was correct. Based on the said report, a charge memo was issued to the respondent herein on 23.03.2011 along with statement of allegations. The respondent submitted his version in writing and thereafter, Annexure A5 report was submitted by the concerned enquiry officer finding him 'not guilty'. Based on Annexure A5 report, the Superintendent of

Police, who is stated as the disciplinary authority, exonerated the respondent as per Annexure A6 order dated 26.08.2011.

4. In the course of subsequent developments, the respondent came to be transferred to the Kuttiadi Police Station (Kozhikkode district), which is within jurisdiction of the D.I.G, Kannur. While working there, he was served with Annexure A9 proceedings issued by the I.G. of Police, Thiruvananthapuram, placing the respondent under suspension, pending further enquiry. This was sought to be challenged by the respondent by filing O.A. No. 89 of 2012, mainly contending that he was being proceeded against for the second time, in respect of the very same instance/misconduct, in spite of the fact that he had already been exonerated as per Annexure A6 order and that the said order had not undergone any change and still in existence. Denial of opportunity of hearing was also projected as a substantial ground to interfere with Annexure A9. The stand of the Department/Government was that, Annexure A9 proceedings were issued by the Inspector General, based on the instructions/directions given by the Government, as referred to in the said proceedings. It was also contended that, based on the

subsequent complaint/report, the matter was considered by the Government, who found it extremely necessary to proceed with further steps making a further enquiry and to proceed against the respondent, in view of his active involvement in connection with the custodial torture. Reliance was also sought to be placed on the mandate of Rule 36A of the Kerala Police Departmental Inquiries, Punishments and Appeal Rules [herein after referred to as the 'Rules']. After hearing both the sides, the Tribunal observed that there was no dispute with regard to the contention raised by the State that the Government was having the power and competence to conduct further enquiry in terms of Rule 36A of the Rules. But it was clearly held that, an opportunity of hearing was necessarily to be given before setting aside the order exonerating respondents and to proceed with fresh enquiry. The Rule itself was extracted in paragraph 4 of Annexure A10 order passed by the Tribunal, whereby Annexure A9 order passed by the I.G was set aside, making it clear that it will not affect the powers of the Government to review Annexure A6 i.e. the order exonerating the respondents and to proceed with further steps in accordance with law.

5. Pursuant to the said direction, a notice of hearing was issued by the Government to the respondent and he was heard accordingly. It was thereafter, that Annexure A11 order came to be passed on 06.02.2013, whereby a finding was arrived at; that the respondent was guilty. Considering the gravity of proven charges, he was inflicted with the punishment of postponement of next increment for one year, with commutative effect. This in turn was challenged by the respondent by filing O.A. No. 843 of 2013. After hearing both the sides, Annexure A11 order was set aside by the Tribunal, observing that, though it was open for the Government to conduct a fresh enquiry, such a course was not pursued and that the Government simply relied on the preliminary enquiry report and such other materials available on record to arrive at the finding of guilt, directly imposing the punishment, which was found as not correct or sustainable. This made the Government/Department to approach this Court by filing the present Original Petition.

6. Heard the learned Government Pleader at length, particularly with reference to the relevant provisions of law.

7. After hearing, this Court finds that the interference made by the Tribunal is obviously for not pursuing the proper course and procedure so as to arrive at the guilt of the delinquent employee, especially in a case where he was already exonerated by the disciplinary authority at an earlier instance. There is no dispute with regard to the factual sequence till Annexure A10 order was passed in O.A. 89 of 2012. The point to be considered is whether there is any flaw in the course of further proceedings, after passing Annexure A10.

8. It has to be borne in mind that, based on the orders passed by Government as referred to in Annexure A9 order issued by the I.G., a fresh enquiry was ordered by the I.G. and the respondent was placed under suspension. It was the said order that was intercepted by the Tribunal by passing Annexure A10, holding that no opportunity of hearing was given to the respondent/applicant before taking a decision by the Government to conduct a fresh enquiry. When Annexure A9 was set aside, which is based on the Governmental instruction as referred to therein, the proceedings could have been commenced and continued by the Government/appropriate authority from that

stage. In other words, the purpose of issuance of notice by the Government to the respondent ought to have been with reference to the need to conduct a 'fresh enquiry', after setting aside Annexure A6 order, whereby the respondent was exonerated from the charges. If the Government found that fresh enquiry was necessary, and was convinced of the facts and figures, no such enquiry could have been ordered afresh, before setting aside Annexure A6 order exonerating the respondent. Annexure A11 does not reveal that Annexure A6 order exonerating the respondent was set aside by the Government and the said order still stands. Similarly, Annexure A9 proceedings were issued by the Inspector General of Police, based on the instructions issued by the Government as per letter dated 12.12.2011 (presumably at item No. 3). The said order passed by the Government was not specifically challenged/set aside by the Tribunal, while passing Annexure A10 verdict, wherein challenge was only against Annexure A9 order i.e. the consequential order passed pursuant to the direction given by the Government. The learned Government Pleader points out that, by virtue of the mandate under Rule 36A of the Rules, no fresh enquiry is contemplated in view of the nature of

punishment imposed, which only refers to reduction of increment with commutative effect for a period of one year, which is a punishment under Rule 15 (i) (g). Enquiry is contemplated under Rule 36A (1) (ii) of the Rules, only if it is proposed to impose any of the penalties specified in items (i) to (m) of Rule 15 warranting enquiry under Rule 17 of the Rules, which is not the position involved herein.

9. Prima facie, we find considerable force in the said submission. But the fact remains that the authority of the Government, while invoking the power under Rule 36A , is virtually enabling the Government to follow different courses mentioned therein (a) either to confirm, set aside, modify the order (b) impose any penalty or set aside, reduce, confirm or enhance the penalty imposed by the order (c) remit the case to the authority who made the order or to any other authority directing such further action or inquiry as they consider proper in the circumstances of the case; or (d) pass such other orders as they deem fit. By virtue of the first proviso, it is stipulated that an order imposing punishment or enhancing penalty, shall not be passed unless the person concerned has been given an opportunity of making any

representation, which he may wish to make against such order. Coming to the instant case, there is no dispute to the factual position that the respondent was exonerated as per Annexure A6 order dated 26.08.2011 and as such, it is not discernible, whether any opportunity to make representation was given to the respondent with regard to the order imposing the penalty.

10. The learned Government Pleader however points out that, during the course of hearing, the guilt was virtually admitted by the respondent to the extent as referred to in Annexure A11 order itself, particularly in paragraph 3. The observation to the extent as discernible from A11 and culmination of the proceedings as given in paragraph 3 to 5 are extracted below, for convenience of reference :

"3. Sri. S. T. Biju, Sub Inspector of Police was head in person on 05.10.2012 by Government. At the time of hearing, Sri. S.T. Biju, Sub Inspector of Police denied all the allegations levelled against him. The preliminary enquiry by the Assistant Commissioner of Police, Narcotic Cell and the statement of Smt. Sujatha, Head Nurse of District Hospital, Kollam clearly revealed that Sri. S.T. Biju Sub Inspector of Polcie has misused his official power by falsely making a statement that he

recorded statement of Shri. K.P. Mohanan, ASI at 1.30 AM at District Hospital Kollam, while Shri. K.P. Mohanan ASI reported at Male Surgical ward, District Hospital, Kollam at 2.45 A.M. This allegation had been agreed by the petitioner at the time of hearing.

4. The multiple contusion found on the body of Sri. T. Deepulal and others on 02.03.2011 which had not been found on 01.03.2011 by the Assistant Surgeon, District Hospital, Kollam clearly reveals that Sri. Deepulal and others ere brutally assaulted in police custody. This clearly reveals the official misuse and custodial harassment on the part of Sri. S.T. Biju, Sub Inspector of Police deserves stringent disciplinary action.

5. Government have examined the matter in detail and based on the gravity of the proven charges, Sri. S.T. Biju, Sub Inspector of Police is hereby awarded a punishment of postponement of next increment for one year with cumulative effect. "

11. The sum and substance of the above discussion is that the power and authority of the State to set aside, modify or impose punishment, differing with the view taken by the disciplinary authority stands accepted by the Tribunal, with reference to Rule 36A of the Rule. But the way in which the proceedings were finalized alone stands deprecated. As referred to herein before, it

appears that the Government had taken a decision to conduct 'fresh enquiry' and the Inspector General was instructed accordingly, who in turn issued Annexure A9, which was set aside by the Tribunal as per Annexure A10 order in O.A. No. 89 of 2012 for not complying with the Principles of natural justice, before deciding to conduct a fresh enquiry. The Government was not a party to the proceedings before the Tribunal in the earlier round of litigation i.e. on filing O.A No. 89 of 2012. The order set aside by the Tribunal was only Annexure A9. As such, the decision already taken by the Government to conduct a fresh enquiry still stands and the matter requires to be reconsidered by the Government i.e in conformity with the relevant Rule and this right of the Government has been reserved by the Tribunal, as borne by the last sentence of paragraph 6 of the Order dated 05.02.2015 in O.A. No. 843 of 2013, whereby it has been categorically stated that this will not affect the powers of the Government, if so advised, to initiate and conclude appropriate proceedings against the applicant, in accordance with law.

In the above circumstances, this Court does not find it necessary to entertain the O.P. It stands dismissed accordingly,

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without prejudice to the right of the Government to proceed with further steps in accordance with law, as already ordered by the Tribunal.

sd/-

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

sd/-

**BABU MATHEW P. JOSEPH,
JUDGE**

kmd