

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

MONDAY, THE 7TH DAY OF DECEMBER 2015/16TH AGRAHAYANA, 1937

OP(KAT).No. 356 of 2015 (Z)

AGAINST THE ORDER IN OA 608/2015 OF THE KERALA ADMINISTRATIVE
TRIBUNAL, THIRUVANANTHAPURAM DATED 29-09-2015

PETITIONER(S)/4TH RESPONDENT:

N.NISSARUDEEN, FORESTER, FOREST RANGE OFFICE, ANCHAL
KOLLAM -691 310.

BY ADVS.SRI.AUGUSTINE JOSEPH
SRI.K.S.ROCKEY
SRI.TONY AUGUSTINE
SRI.GEORGE RENOV

RESPONDENT(S)/APPLICANTS AND RESPONDENTS 1 TO 3:

1. P.K.RAJENDRAN, S/O.P.KRISHNAN, AGED 53 YEARS
DEPUTY RANGE FOREST OFFICER, KARIMUTTY FOREST STATION
CHINNAR WILD LIFE SANCTUARY, MARAYOOR P.O, PIN-685 620
RESIDING AT AYALAZHIKATHU VEEDU, CHENGAMANADU P.O
KOTTARAKKARA, KOLLAM, KERALA-691 557.
2. C. MURALI, S/O. K.CHELLAPPAN PILLAI, AGED 52 YEARS
DEPUTY RANGE FOREST OFFICER (GRADE), KULATHUPUZHA SECTION,
ANCHAL RANGE, PIN-691310, RESIDING AT ANJANA, PUTHUR P.O,
KOTTARAKKARA, KOLLAM, KERALA - 691 507.
3. V. PADMAKUMAR, S/O.V.VASUDEVAN PILLAI, AGED 51 YEARS
DEPUTY RANGE FOREST OFFICER (GRADE), FOREST RANGE OFFICER,
ANCHAL, PIN-691310, RESIDING AT MAKAM, TEMPLE NAGAR-46
KOTTARAKKARA, KOLLAM, KERALA - 691 506.
4. C. RAJUKUTTY, S/O.UNNUNNI CHACKO, AGED 53 YEARS
DEPUTY RANGE FOREST OFFICER (GRADE), PATHANAPURAM RANGE,
PATHANAPURAM P.O., PIN-689695, RESIDING AT KALLUVETTAMKUZHI
VEEDU, KUNNICODE, PIN - 691 508.
5. STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT
FOREST AND WILDLIFE DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM-695001
6. THE ADDITIONAL PRINCIPAL CHIEF CONSERVATOR OF FORESTS
(ADMINISTRATION), FOREST HEADQUARTERS, VAZHUTHACAUD
THIRUVANANTHAPURAM - 695 014.

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7. CHIEF CONSERVATOR OF FORESTS, SOUTHERN CIRCLE, VANASREE
COMPLEX, CHINNAKKADA, KOLLAM, KERALA - 691 001.

R1-R4 BY ADV. SRI.S.P.ARAVINDAKSHAN PILLAY

R1-R4 BY ADV. SMT.N.SANTHA

R1-R4 BY ADV. SRI.K.A.BALAN

R1-R4 BY ADV. SRI.V.VARGHESE

R1-R4 BY ADV. SRI.PETER JOSE CHRISTO

R1-R4 BY ADV. SRI.S.A.ANAND

R1-R4 BY ADV. SMT.L.ANNAPOORNA

R5-R7 BY SENIOR GOVERNMENT PLEADER SMT.REKHA VASUDEVAN

THIS OP (KAT) HAVING COME UP FOR ADMISSION ON 07-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

BKA/-

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P1 COPY OF THE MEMORANDUM OF ORIGINAL APPLICATION

ANNEXURE A1: COPY OF THE RELEVANT EXTRACT OF THE FINAL SENIORITY LIST OF FOREST GUARDS AS ON 01.01.1998 IN THE SOUTHERN CIRCLE OF THE FOREST DEPARTMENT PUBLISHED AS PER ORDER NO.Q.E2-12834/96 DATED 10.12.1999.

ANNEXURE A2: COPY OF THE JUDGMENT DATED 12.01.2007 OF THE HIGH COURT OF KERALA IN WP(C) NO.59/2007.

ANNEXURE A3: COPY OF THE REPRESENTATION FILED BY THE 4TH RESPONDENT BEFORE THE 3RD RESPONDENT.

ANNEXURE A4: COPY OF THE REPRESENTATION DATED 01.02.2006 FILED BY THE 4TH RESPONDENT BEFORE THE 3RD RESPONDENT.

ANNEXURE A5: COPY OF THE LETTER NO.QE2-12834/96 DATED 08.12.1999 OF THE 3RD RESPONDENT.

ANNEXURE A6: COPY OF THE FILED APPEAL DATED 14.01.2013 FILED BY THE 4TH RESPONDENT BEFORE THE GOVERNMENT.

ANNEXURE A7: COPY OF THE ORDER DATED 03.09.2013 IN OA NO. 2576/2012 OF THE TRIBUNAL.

ANNEXURE A8: COPY OF THE GO(Rt) NO.280/2014/F&WLD DATED 24.06.2014.

EXT.P2 COPY OF THE REPLY STATEMENT FILED BY THE PETITIONER/ 4TH RESPONDENT.

ANNEXURE R4(a): COPY OF ADVICE MEMO ISSUED BY THE KPSC, KOLLAM DISTRICT DATED 12.09.1991.

ANNEXURE R4(b): COPY OF POSTING ORDER ISSUED BY THE DIVISIONAL FOREST OFFICER, PUNALUR DATED 20.09.1991.

ANNEXURE R4(c): COPY OF SERVICE ORDER NO.29/93 DATED 25.05.93 OF CONSERVATOR OF FOREST SOUTHERN CIRCLE, KOLLAM.

ANNEXURE R4(d): COPY OF SERVICE ORDER NO.73/99 DATED 08.12.99 OF CONSERVATOR OF FOREST SOUTHERN CIRCLE, KOLLAM

ANNEXURE R4(e): COPY OF SERVICE ORDER NO.21/97 DATED 13.05.97 OF CONSERVATOR OF FOREST SOUTHERN CIRCLE, KOLLAM.

ANNEXURE R4(f): COPY OF THE REJECTING ORDER DATED 08.12.99 OF THE REPRESENTATION AS AGAINST THE PROVISIONAL SENIORITY LIST 06.05.1998.

ANNEXURE R4(g): COPY OF THE REPRESENTATION DATED 02.12.02 BEFORE THE CONSERVATOR OF FOREST SOUTHERN CIRCLE, KOLLAM THROUGH PROPER CHANNEL

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ANNEXURE R4(h): COPY OF THE REPRESENTATION DATED 01.02.06
BEFORE THE CONSERVATOR OF FOREST SOUTHERN CIRCLE, KOLLAM
THROUGH PROPER CHANNEL

ANNEXURE R4(i): COPY OF THE JUDGEMENT OF THIS COURT IN
WP(C) NO.59/2007 DATED 12.01.2007.

ANNEXURE R4(j): COPY OF THE CONTEMPT PETITION FILED BEFORE
THIS COURT AS CONT. CASE (C) NO.1015/2007

ANNEXURE R4(k): COPY OF THE AFFIDAVIT DATED 31.07.2007
FILED BY THE RESPONDENTS IN CO(C) NO.1015/2007

ANNEXURE R4(l): COPY OF THE PROVISIONAL SENIORITY LIST
PREPARED BY THE DIVISIONAL FOREST OFFICER DATED
11.01.2008.

ANNEXURE R4(m): COPY OF THE FINAL SENIORITY LIST OF FOREST
GUARDS DATED 24.04.12 ALONG WITH ORDER NO.Q.E1-9690/2005.

EXT.P3 COPY OF THE ORDER DATED 29.09.2015 IN O.A.NO.608/2015.

RESPONDENT'(S) EXHIBITS: NIL

//TRUE COPY//

PA TO JUDGE

bka/-

**K. SURENDRA MOHAN,
&
SHAJI P. CHALY, JJ.**

O.P. (KAT) No. 356 of 2015

Dated this the 7th day of December, 2015

J U D G M E N T

K. Surendra Mohan, J.

The petitioner, the 4th respondent in OA No.608/2015 of the Kerala Administrative Tribunal, Thiruvananthapuram, has filed this Original Petition, challenging the final order passed by the Tribunal, evidenced by Ext.P3. As per Ext.P3 impugned order, Annexure A8, that forms part of Ext.P1, has been set aside and the matter is remitted back to the Government for fresh consideration. It has further been directed that a fresh decision shall be taken after hearing the applicants as well as all the affected parties and the 4th respondent (the petitioner herein) within a period of five months from the date of receipt of a copy of the order.

2. The petitioner is working as a Forest Guard

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under the 7th respondent. The petitioner joined service on 30.09.1991 as a Forest Guard in the Forest & Wild Life Department after being recruited and advised for such appointment by the Kerala Public Service Commission. According to the petitioner, he was recruited for the Kollam District. The petitioner is aggrieved by the seniority assigned to him in the final seniority list, that has to be published. According to the petitioner, respondents 1 to 4 or persons, who had obtained transfer to Kollam District, are not entitled to restoration of their seniority. It is contended that, upon an inter district transfer, the incumbents would forfeit their seniority position and would join as the junior most in the district, to which, they are transferred. However, while preparing the final seniority list, seniority has been assigned to respondents 1 to 4, without taking note of the fact that they are persons, who had obtained inter district transfers. The above, according to the petitioner, has affected his seniority position and promotions. He had,

therefore, approached this Court by filing WP(C) No.59/2007. Later on, he had approached the Kerala Administrative Tribunal (KAT) by filing OA No.2576/2012. The said OA was disposed of by Annexure A7 order, directing his grievance to be considered. Accordingly, the Government considered the matter and has issued Annexure A8 order, setting aside the the seniority list and directing the 7th respondent to consider the objections of the affected parties and to recast the seniority position. Annexure A8 order was the subject matter of challenge before the KAT in OA No.608/2015 at the instance of respondents 1 to 4. The petitioner herein was the 4th respondent in the said OA. It was after considering the objections of the respective parties that, Ext.P3 order has been passed. The KAT has found that since Annexure A8 was passed without hearing respondents 1 to 4, who are the affected parties, there was violation of the principles of natural justice. In view of the above, Annexure A8 has been set aside and the Government has been directed to

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reconsider the matter within a period of five months.

3. According to Adv. Augustine Joseph, who appears for the petitioner, though the petitioner had started objecting to the seniority list from the year 2003 onwards, it was with great difficulty and pursuant to the orders passed by this Court as well as the KAT that the matter was considered by the Government and Annexure A8 order was issued. Annexure A8 order has taken care to provide that further action in the matter shall be taken by the 7th respondent only after issuing notice to and hearing all the affected parties. In view of the above, the interests of respondents 1 to 4 are properly safeguarded. They would be provided with an opportunity of being heard before every decision is taken. Therefore, according to the learned counsel, it was unnecessary for them to have been heard before passing Annexure A8. The direction of the KAT, if allowed to remain in force, would only delay matters, without any justification.

4. According to Adv. S.P. Aravindakshan Pillai, the

learned counsel for respondents 1 to 4, the final seniority list was published in 1999. The petitioner had not objected to the same, within the time stipulated. He had also not preferred any appeal against the same, within the time limit. Reliance is placed on the reference in Annexure A8 order to point out that the petitioner had submitted a representation only on 15.06.2011. As per Annexure A8, the settled seniority position, that was prevailing from the year 1999 onwards, has been upset. Respondents 1 to 4 were, therefore, aggrieved by Annexure A8. It was only appropriate that they were also heard, before Annexure A8, that has prejudicially affected them, was issued. It is to rectify the above defect that, the matter has been remitted back by the KAT. The counsel further points out that in Annexure A7 order of the KAT, pursuant to which Annexure A8 order was issued, it was specifically provided that all affected parties should be heard. For all the above reasons, according to the learned counsel, there are absolutely no

grounds to interfere with Ext.P3 order, as sought for by the petitioner.

5. Heard.

6. What is to be noticed in the first place is that, Ext.P3 order of the KAT has only directed the Government to reconsider the matter and pass afresh orders after hearing the petitioner as well as respondents 1 to 4 and any other persons, who are likely to be affected. The order has been issued, finding that Annexure A8 was issued, in violation of the principles of natural justice. We do not find that, the said order requires any interference under Article 227 of the Constitution of India. As rightly pointed out by the counsel for respondents 1 to 4, as per Annexure A8 order, the Government had set aside a seniority list, that was in operation from 1999 onwards, causing serious prejudice to the persons, who are seniors to the petitioner, in the said seniority list. We notice that, as per Annexure A7 order, the KAT had directed that all the affected persons

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to be heard, before the order, that was directed to be passed, was passed. However, it appears that, the affected parties were not heard. Therefore, the order is in violation of the direction of the KAT also. Since the Government has set aside the seniority list, the same could only have been done after all affected parties were heard. We find no infirmity in the order of the KAT, directing that a fresh decision be taken after hearing all the affected parties. We notice that, the KAT has also stipulated a period of five months as the time, within which, fresh orders are to be passed. Therefore, we are not satisfied that any interference with Ext.P3 is called for under Article 227 of the Constitution of India.

For the above reasons, this Original Petition is dismissed.

Sd/-
K. SURENDRA MOHAN
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE