

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 2ND DAY OF DECEMBER 2015/11TH AGRAHAYANA, 1937

OP(KAT).No. 365 of 2015 (Z)

AGAINST THE ORDER/JUDGMENT IN OA NO 1429/2015 of KERALA
ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM DATED 02-09-2015

PETITIONER/APPLICANT IN O.A:

JIJU.G.RAJU AGED 33 YEARS
S/O. G. RAJU
CIVIL EXCISE OFFICER (UNDER ORDERS OF REMOVAL)
KOTTARAKKARA EXCISE RANGE OFFICE
KOTTARAKKARA, KOLLAM RESIDING AT JIJU BHAVAN
PAVITHRESWARAM (PO), KOLLAM DISTRICT

BY ADVS.SRI.M.V.THAMBAN
SRI.R.REJI
SMT.THARA THAMBAN
SRI.B.BIPIN

RESPONDENTS/RESPONDENTS IN O.A

1. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT
DEPARTMENT OF TAXES, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM 695 001
2. THE EXCISE COMMISSIONER,
OFFICE OF THE EXCISE COMMISSIONER, VAZHUTHAKADU
THIRUVANANTHAPURAM PIN 695 033
3. THE DEPUTY EXCISE COMMISSIONER
OFFICE OF THE DEPUTY EXCISE COMMISSIONER, CHINNAKADA
KOLLAM, KOLLAM DISTRICT PIN 691 001

BY SRI.ARUN BOSE
R1 BY GOVERNMENT PLEADER SMT. REKHA VASUDEVAN

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING BEEN FINALLY
HEARD ON 02-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

OP(KAT).No. 365 of 2015 (Z)

APPENDIX:

PETITIONER'S EXHIBITS:

- EXT.P1: TRUE COPY OF the MEMORANDUM OF O.A.NO.1429/2015 ON THE FILES OF the HONOURABLE KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM.
- ANNEXURE A1: TRUE COPY OF HE NOTICE NO.Q2-4802/14 DT. 04.06.2015 ISSUED BY THE 3RD RESPONDENT.
- ANNEXURE A2: TRUE COPY OF the APPLICATION UNDER RIGHT TO INFORMATION ACT BY THE APPLICANT.
- ANNEXURE A3: TRUE COPY OF THE EXPLANATION SUBMITTED BY THE APPLICANT.
- ANNEXURE A4: TRUE COPY OF THE ORDER DT.18.03.2015, ISSUED BY THE COMMANDANT, KERALA ARMED POLICE 2ND BATTALION.
- ANNEXURE A5: TRUE COPY OF HE ORDER NO.Q3-4802/14 DT. 01.08.2014 ISSUED BY THE 3RD RESPONDENT.
- ANNEXURE A6: TRUE COPY OF the ORDER NO.Q3-4802/14 DATED 14.7.2015 ISSUED BY THE 3RD RESPONDENT.
- EXT.P2: TRUE COPY OF THE ORDER DT. 02.09.2015 IN O.A.NO.1429/2015 OF THE HONOURABLE KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM.
- EXT.P3: TRUE COPY OF THE LETTER NO.28903/F2/14/TD DT. 31.03.2015 OF THE 1ST RESPONDENT.
- RESPONDENTS' EXHIBITS: NIL.

TRUE COPY

P.A. TO JUDGE.

kp/-

P.N.RAVINDRAN & ALEXANDER THOMAS, JJ.

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O.P.(KAT) No. 365 of 2015

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Dated this the 2nd day of December, 2015

JUDGMENT

P.N.Ravindran, J.

The petitioner entered service as a Civil Excise Officer in the Excise Department on 24.02.2014. Prior to his entry in service in the Excise Department, he was working as Constable in the Kerala Armed Police, II Batallion. Before the petitioner completed his probation in the category of Civil Excise Officer, the Deputy Excise Commissioner, Kollam issued Annexure A1 show cause notice dated 4.6.2015 which forms part of Ext.P1 herein, calling upon the petitioner to show cause why his appointment shall not be terminated. The petitioner submitted Annexure A3 reply dated nil. By Annexure A6 order passed on 14.7.2015, the Deputy Excise Commissioner, Kollam terminated the appointment of the petitioner on the ground that his character and antecedents are not satisfactory.

2. The petitioner thereupon filed O.A.No.1429 of 2015 before the Kerala Administrative Tribunal. A copy thereof is Ext.P1. By order passed on 2.9.2015, the Kerala Administrative Tribunal dismissed O.A.No.1429 of 2015 in limine on the ground that the petitioner has not exhausted the statutory remedy available to him and that the

Tribunal does not find any special reason to entertain the original application, by-passing the statutory remedy. The said order, a copy of which is produced as Ext.P2 is under challenge in this original petition filed under Article 227 of the Constitution of India.

3. The order impugned before the Kerala Administrative Tribunal (Annexure A6) is an order issued by the Deputy Commissioner of Excise in terms of the proviso to Rule 10 (b) (iii) of the Kerala State & Subordinate Services Rules, 1958. The order also discloses that it is one issued on the directions of the Government. The direction issued by the Government has been produced by the petitioner along with I.A.No.17450 of 2015 as Ext.P3. Ext.P2 order discloses that the Kerala Administrative Tribunal has proceeded on the basis that the probation of the petitioner was terminated and he was discharged from service. Annexure A6 order issued by the Deputy Commissioner of Excise discloses that the petitioner was found unfit to be appointed to Government service, having regard to his character and antecedents and that his appointment was terminated on that ground.

4. Neither the Kerala State & Subordinate Services Rules, 1958 nor the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 provide for an appeal from an order terminating the service of an employee on the ground that his character and antecedents are not satisfactory. Rule 35 of the Kerala Civil Services (Classification,

Control and Appeal) Rules, 1960 empowers the Government to review only original orders passed by it, on application by the party aggrieved, within a period of two months from the date of the order. Since the order which was impugned before the Kerala Administrative Tribunal was not an order issued by the Government, but by the Deputy Commissioner of Excise, that power also cannot be invoked. In such circumstances, we are of the opinion that the Kerala Administrative Tribunal erred in non suiting the petitioner on the ground that he has not exhausted the statutory remedy available to him.

We accordingly allow the original petition, set aside Ext.P2 order dated 2.9.2015 passed by the Kerala Administrative Tribunal in O.A.No.1429 of 2015 and restore O.A.No.1429 of 2015 to file. The petitioner shall produce a certified copy of this judgment before the Kerala Administrative for appropriate further action.

**P.N.RAVINDRAN
JUDGE**

**ALEXANDER THOMAS
JUDGE**

kp/-