

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

TUESDAY, THE 10TH DAY OF MARCH 2015/19TH PHALGUNA, 1936

WP(C).No. 21317 of 2009 (R)

PETITIONER(S) :

**K.S.RAJU, S/O.K.SUDHAKARAN,
SOUPARNIKA, AKGNRA 1(OLD NO.20), AVANAVANCHERY P.O.
ATTINGAL, THIRUVANANTHAPURAM DISTRICT.
(FORMERLY DISTRICT JUDGE, MOTOR ACCIDENTS CLAIMS TRIBUNAL,
THIRUVANANTHAPURAM)**

**BY DR.S.GOPAKUMARAN NAIR (SENIOR ADVOCATE)
SRI.P.SANTHALINGAM (SENIOR ADVOCATE)
ADV. SRI.S.SHARAN**

RESPONDENT(S) :

- 1. THE STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT,
SECRETARIATE, THIRUVANANTHAPURAM.**
- 2. THE REGISTRAR, (SUBORDINATE JUDICIARY),
HIGH COURT OF KERALA, ERNAKULAM.**
- 3. THE ADDL.CHIEF SECRETARY TO GOVERNMENT,
HOME (C.) DEPARTMENT, GOVERNMENT OF KERALA,
THIRUVANANTHAPURAM.**
- 4. THE PRINCIPAL SECRETARY TO GOVERNMENT,
HOME (C.) DEPARTMENT, GOVERNMENT OF KERALA,
THIRUVANANTHAPURAM.**

**R1, R3 & R4 BY SR.GOVERNMENT PLEADER SRI.SOJAN JAMES
R2 BY SRI.K.R.B.KAIMAL (SENIOR ADVOCATE)
ADV. SRI.B.UNNIKRISHNA KAIMAL**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 02-03-2015, THE COURT ON 10-03-2015 DELIVERED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1: A TRUE COPY OF ORDER NO.B4-12669/98 DATED 09.10.2000 OF THE HON'BLE HIGH COURT OF KERALA DECLARING SATISFACTORY COMPLETION OF PROBATION OF THE PETITIONER.**
- EXT.P2: A TRUE COPY OF THE SUSPENSION ORDER NO.VE.6/2001-II DATED 10.10.2001 PLACING THE PETITIONER UNDER SUSPENSION.**
- EXT.P3: A TRUE COPY OF THE JUDGMENT DATED 16.10.2001 IN O.P.NO.30922/2001 FILED BY THE PETITIONER BEFORE THE HON'BLE HIGH COURT OF KERALA.**
- EXT.P4: A TRUE COPY OF THE JUDGMENT DATED 03.12.2001 IN W.A.NO.3874/2001 FILED BY THE PETITIONER BEFORE THE HON'BLE HIGH COURT OF KERALA.**
- EXT.P5: A TRUE COPY OF THE OFFICIAL MEMORANDUM NO.VE.6/2001-II DATED 09.11.2001 ISSUED BY HON'BLE HIGH COURT OF KERALA TO THE PETITIONER.**
- EXT.P6: A TRUE COPY OF THE REPLY DATED 01.12.2001 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.**
- EXT.P7: A TRUE COPY OF THE APPEAL DATED 11.12.2001 FILED BY THE PETITIONER UNDER RULE 22 OF C.C.A.RULES, 1960 BEFORE THE HON'BLE CHIEF JUSTICE OF KERALA.**
- EXT.P8: A TRUE COPY OF THE REQUEST DATED 22.04.2002 SUBMITTED BY THE PETITIONER BEFORE THE HON'BLE CHIEF JUSTICE OF KERALA, FOR REVOCATION OF SUSPENSION UNDER PARAGRAPH 17 OF THE MANUEL ON DISCIPLINARY PROCEEDINGS.**
- EXT.P9: A TRUE COPY OF THE ORDER NO.VE.6/2001-II DATED 02.08.2002 OF THE HON'BLE HIGH COURT DISMISSING THE APPEAL AND REQUEST FOR REVOCATION OF SUSPENSION FILED BY THE PETITIONER.**
- EXT.P10: A TRUE COPY OF MEMO OF CHARGES DATED 18.02.2002 ISSUED BY THE HON'BLE HIGH COURT OF KERALA TO THE PETITIONER.**
- EXT.P11: A TRUE COPY OF THE WRITTEN STATEMENT OF DEFENCE DATED 22.04.2002 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.**

- EXT.P12: A TRUE COPY OF THE MEMO OF CHARGES NO.VE.4/2002-II DATED 22.04.2003 ISSUED BY THE HON'BLE HIGH COURT OF KERALA TO THE PETITIONER.**
- EXT.P13: A TRUE COPY OF THE WRITTEN STATEMENT OF DEFENCE DATED 19.05.2003 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.**
- EXT.P14: A TRUE COPY OF THE REQUEST DATED 04.07.2003 FILED BY THE PETITIONER BEFORE THE THEN INQUIRING AUTHORITY JUSTICE G.SASHIDARAN REQUESTING TO GIVE A COPY OF COMPLAINT.**
- EXT.P15: ORIGINAL OF THE DECLARATION OF ATTENDANCE DATED 01.06.2009 GIVEN BY DEFENCE WITNESS B.GOPINATHAN NAIR.**
- EXT.P16: ORIGINAL OF THE DECLARATION OF ATTENDANCE DATED 01.06.2009 OF DEFENCE WITNESS A.GOPALAKRISHNAN.**
- EXT.P17: A TRUE COPY OF THE FIRST SCHEDULE OF DEFENCE WITNESSES DATED 28.05.2005 FILED BY THE PETITIONER BEFORE THE INQUIRING AUTHORITY IN VE.6/2001 AND VE.4/2002.**
- EXT.P18: A TRUE COPY OF THE LIST OF DEFENCE DOCUMENTS SUBMITTED BY THE PETITIONER BEFORE THE INQUIRING AUTHORITY IN VE.6/2001 AND VE.4/2002.**
- EXT.P19: A TRUE COPY OF THE WRITTEN BRIEF DATED 22.08.2005 FILED BY THE PETITIONER BEFORE THE INQUIRING AUTHORITY IN VE.6/2001 AND VE.4/2002.**
- EXT.P20: A TRUE COPY OF THE ENQUIRY REPORT DATED 16.03.2006 OF THE INQUIRING AUTHORITY IN VE.6/2001 AND VE.4/2002-II.**
- EXT.P21: A TRUE COPY OF THE OFFICIAL MEMORANDUM NO.VE.6/2001 & 4/2002/II DATED 25.03.2006 ISSUED BY THE HON'BLE HIGH COURT OF KERALA TO THE PETITIONER.**
- EXT.P22: A TRUE COPY OF THE REPRESENTATION DATED 02.05.2005 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.**
- EXT.P23: A TRUE COPY OF DISMISSAL ORDER NO.GO(MS) NO.113/2007/HOME. DATED 26.05.2007 ISSUED BY THE GOVT. OF KERALA TO THE PETITIONER.**
- EXT.P24: A TRUE COPY OF THE REVIEW PETITION DATED 17.07.2007 FILED BY THE PETITIONER UNDER RULE 35 OF C.C.A.RULES, 1960 BEFORE THE ADDL.CHIEF SECRETARY TO GOVT. HOME (C) DEPARTMENT, GOVERNMENT OF KERALA.**

- EXT.P25: A TRUE COPY OF THE 1ST REMINDER DATED 18.01.2008
SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.
- EXT.P25(A): A TRUE COPY OF THE POSTAL RECEIPT OF THE 1ST REMINDER.
- EXT.P25(B): A TRUE COPY OF ACKNOWLEDGEMENT CARD OF THE 1ST
REMINDER.
- EXT.P26: A TRUE COPY OF 2ND REMINDER DATED 26.03.2008 SUBMITTED
BY THE PETITIONER BEFORE THE 3RD RESPONDENT.
- EXT.P26(A): A TRUE COPY OF THE ACKNOWLEDGMENT CARD OF THE 2ND
REMINDER.
- EXT.P27: A TRUE COPY OF THE PROCEEDINGS DATED 23.04.2005 OF THE
INQUIRY IN THE DISCIPLINARY PROCEEDINGS (VE 6/2001/II &
NO.VE 4/2002/II).
- EXT.P28: A TRUE COPY OF THE REQUEST DATED 07.05.2005 SUBMITTED BY
THE PETITIONER BEFORE THE INQUIRING AUTHORITY FOR
ISSUING CERTIFICATE OF ATTENDANCE FOR CLAIMING T.A.
- EXT.P29: A TRUE COPY OF THE RECEIPT DATED 26.08.2009 ISSUED FROM
THE HOME DEPARTMENT, GOVERNMENT OF KERALA.
- EXT.P30: A TRUE COPY OF THE ORDER NO.G.O.(MS)NO.188/2009/HOME
DATED 25.11.2009 OF THE HOME (C) DEPARTMENT, GOVERNMENT
OF KERALA.
- EXT.P31: A TRUE COPY OF THE ORDER DATED 04.11.2011 IN
W.P.(C).NO.405/2011 OF THE HON'BLE SUPREME COURT OF INDIA.
- EXT.P32: A TRUE COPY OF OFFICIAL MEMORANDUM NO.D391499/2014
DATED 15.10.2014 ISSUED FROM THE HON'BLE HIGH COURT OF
KERALA BY THE REGISTRAR, SUBORDINATE JUDICIARY.

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

C.K. ABDUL REHIM, J.

W.P.(c) No. 21317 OF 2009

DATED THIS THE 10th DAY OF MARCH, 2015.

J U D G M E N T

The petitioner, who was a District Judge dismissed from service by virtue of Ext.P23 order of the 1st respondent-State Government, is challenging in this writ petition, Ext.P2 order of suspension issued by the High Court, the consequential disciplinary proceedings initiated against him and the order through which he was dismissed from service.

2. The petitioner entered service in the subordinate judiciary of the State as a Munsiff, in the year 1983, pursuant to selection made by the Kerala Public Service Commission in a special recruitment conducted for Scheduled Castes and Scheduled Tribes candidates. He was promoted as Sub Judge in the year 1989 and subsequently as District Judge in the year 1998. Satisfactory completion of his probation in the cadre of District Judge was declared in the year 2000. While working as the Motor Accidents

Claims Tribunal (MACT), Thiruvananthapuram, the petitioner was suspended from service with effect from 10-10-2001, by virtue of Ext.P2 order issued by the High Court. An attempt of the petitioner to challenge Ext.P2 in a writ petition before this court failed, since the case was dismissed in limine through Ext.P3 judgment, which was confirmed by a Division Bench in a Writ Appeal as per Ext.P4 judgment. A preliminary inquiry was conducted against the petitioner through the Registrar (Vigilance), High Court of Kerala. Based on the report of the enquiry Ext.P5 show cause notice was issued to the petitioner, intimating proposal for initiating disciplinary action under Rule 15 of the Kerala Civil Services (Classification, Control & Appeal) Rules, 1960, (herein after referred as CCA Rules for short) and calling for his explanations, if any. The petitioner submitted detailed reply to Ext.P5 notice, as per Ext.P6. An appeal against the order of suspension was preferred before the Hon'ble Chief Justice as provided under Rule 22 of CCA Rules. Another application for

revocation of suspension was also filed under provisions of the Manual of Disciplinary Proceedings. Both the appeal as well as the request for revocation of suspension were declined through Ext.P9 proceedings issued by the High Court. Thereafter the petitioner was issued with detailed 'Memo of Charges' containing 'statement of allegations' as per Ext.P10, to which the petitioner filed written statement of defence as evidenced from Ext.P11. During pendency of the said proceedings, another 'Memo of Charge' enclosing detailed 'statement of allegations' was issued against the petitioner as per Ext.P12. The petitioner again submitted detailed written statement of defence as per Ext.P13. A Hon'ble Judge of this court was appointed as inquiring authority and a detailed enquiry was conducted by appointing a District Judge as the Presenting Officer. The inquiring authority was changed pursuant to retirement of the learned Judge appointed. A newly appointed Judge as inquiring authority had conducted the inquiry after examination of various witnesses and by marking of

documents. The petitioner had adduced evidence by examining witnesses and marking of various documents. The petitioner was given liberty to submit written proof if any, and on that basis Ext.P19 was submitted before the inquiring authority. On completion of the inquiry, a detailed report as per Ext.P20 was submitted to the High Court, holding the petitioner fully guilty of charge No.(i) and partially guilty of charge No.(iv) & (v) in Ext.P10 memo dated 18-10-2002 and also partially guilty of charge No.(ii) in Ext.P12 memo dated 22-04-2003. Through the enquiry report it was recommended for dismissal of the petitioner from service, considering the grave nature of the allegation proved against him and holding that the petitioner does not deserve to hold any office connected with administration of justice. Based on the report of enquiry the High Court had issued Ext.P21 show cause proposing punishment of dismissal from service, to which the petitioner had filed Ext.P22 representation. But the High Court made recommendations to the State Government to impose the

punishment of dismissal from service, based on which the Government have issued Ext.P23 proceedings awarding penalty of dismissal from service of the petitioner, with effect from the date of his suspension, i.e., from 10-10-2001, as per Rule 11 (i) & (viii) of the CCA Rules.

3. Aggrieved by Ext.P23 order the petitioner had approached the State Government in a Review Petition filed on 17-07-2007, as per Ext.P24. Despite two reminders submitted on 18-01-2008 and on 26-03-2008, the Government failed to consider the Review Petitions. Therefore the petitioner had approached this court in the above writ petition. During pendency of the above writ petition this court, through an order passed on 24-08-2009 in IA No.9641/2009 directed the competent authority to pass final orders on Ext.P24 Review Petition, within a time limit stipulated. Pursuant to the said order the Review Petition was considered by the Government and it was rejected through Ext.P30 proceedings issued on 25-11-2009. The petitioner is challenging Ext.P30 order of

rejection of the Review Petition also, by virtue of amendment brought in this writ petition.

4. Suspension of the petitioner from service was based on allegations of corruption, official misconduct and objectionable behaviour. In Ext.P5 report of preliminary inquiry submitted by the Registrar (Vigilance) it is mentioned that, a complaint was received by the High Court containing allegations that the petitioner was receiving huge amounts as bribe for passing Awards in accident claim cases. A person named Sri.Radhakrishnan and the Driver of the petitioner were working as agents of the petitioner for collecting money and that the award amounts were depending upon the amount of bribe paid to the petitioner. While the confidential enquiry ordered by the High Court through the Vigilance Cell was pending, another petition was received from one Smt. Omana who is the claimant in OP (MV) No.87/1995 before the MACT, Thiruvananthapuram. The claim was instituted seeking compensation on account of death of her husband in a

motor accident. It is stated in the complaint that the claim was settled with the Insurance Company for an amount of Rs.4,25,000/- and she was under the impression that an Award will be passed based on the settlement pursuant to the 'settlement memo' filed before the Tribunal. But the case was adjourned without passing the Award and in the meanwhile she was approached by a person who claimed to be from the Tribunal and demanded for payment of a sum of Rs.50,000/- to the petitioner for passing of Award in her case. Eventhough she expressed her inability to pay the amount, she was told that, unless the amount is paid no Award would be passed in her case. When she contacted her counsel and passed the above information, the counsel assured that an Award will follow in terms of the settlement memo. But the person who had contacted her continued in touch with her repeating the demands. Ultimately she told that in case he persist upon the demand, the matter would be complained to higher authorities. But after a few days she received communication from her counsel intimating

that her claim was dismissed on the basis that she had failed to attend the court on 21-07-2001, and that the Tribunal had issued necessary intimations to initiate revenue recovery proceedings for realizing court fee payable on the claim petition.

5. While conducting enquiry by the Registrar (Vigilance) an Advocate Clerk, Sri. K.S. Jose gave statement that in a particular case, OP (MV) No.1590/2000, he had occasion to give Rs.25,000/- directly to the petitioner. According to him, he went to the chamber of the petitioner for making payment of the amount and as per the instructions given by the petitioner the 'Duffadar' had received the amount. He disclosed that in some cases the petitioner received his share of the award amount after the award is passed. According to him the 'Duffadar' of the petitioner had received amounts upto Rs.2,000/- depending upon the amount awarded.

6. Another witness, one Sri. Balakrishna Pillai, who is a retired Commandant of the CISF, gave statement to the

Registrar to the effect that, a case instituted with respect to the death of his son-in-law was pending before the MACT, Thiruvananthapuram as OP (MV) No.76/2000. Evidence in that case was taken on 29-05-2001. But on 06-06-2001 at about 1.30 p.m. a person named Sri.Radhakrishnan approached him and told that unless he assures payment of 10% of the Award amount to the Judge, no Award would be passed in his case. When Sri.Balakrishna Pillai expressed his inability to pay the amount, the said person had promised to make arrangements to meet the petitioner. On 11-06-2001, as instructed by Sri. Radhakrishnan, they met at a Hotel near Medical College, Thiruvananthapuram and talked over the matter for about an hour. The person named Radhakrishnan told, unless a sum of Rs.4,00,000 is paid to the petitioner no Award would be passed in the case. When Sri. Balakrishna Pillai expressed his disinclination to pay the amount he was taken to the house of the petitioner. Sri Balakrishna Pillai expressed his difficulty and inability to pay the amount before the petitioner and made request that

the case may be disposed of at the earliest. At that time the petitioner assured that an Award will be passed within 5 days. But the person named Sri.Radhakrishnan again approached him and repeated the demands. But Sri. Balakrishna Pillai expressed his displeasure and reluctance. Then he was further requested to meet Sri.Radhakrishnan on 17-06-2001 at Hotel Aryanivas. It was informed that Sri. Balakrishna Pillai would be given a concession that he need to pay only Rs.2,00,000/- in cash and the balance amount of Rs.2,50,000/- can be paid in cheque, will be returned at the time of collection of the award amount on payment of Rs.2,50,000/- in cash. Despite Sri. Balakrishna Pillai informed that he is unwilling to pay any amount and he need not be contacted again for the said purpose, the person named Sri. Radhakrishnan contacted him on several occasions thereafter.

7. Another witness, Smt. Omana gave statement before the Registrar (Vigilance) to the effect that, a person has approached her demanding that unless she pays a sum

of Rs.50,000/- to the petitioner her claim would be dismissed. According to her the counsel had intimated that the claim was settled for a sum of Rs.4,25,000/- and an Award would be passed soon. A counsel practising in the court having standing over 15 years named Adv. Gracemma Thomas gave a statement before the Vigilance enquiry to the effect that the petitioner being the presiding officer of MACT demands and receives amounts for passing Awards in cases before him. She had revealed proof of certain cases where awards were passed disproportionately based on extraneous considerations. According to her wherever the claimant refuses to pay any amount of bribe, the Awards would be passed only $\frac{1}{4}$ of the deserving amounts. She pointed out that the petitioner had a Stenographer named Smt. Fathima and his 'Duffadar' who were acting as privies to these clandestine dealings.

8. After conducting a detailed enquiry based on each of the complaints as mentioned above, the Registrar (Vigilance) had arrived at a conclusion that the petitioner

receives money for passing awards in claim cases and he is in the habit of asking women, who are petitioners before him, to visit him to his house. The inquiry report reveals that the petitioner has engaged a private Stenographer in his house at his own expenses. It was also mentioned that there are sufficient indications to conclude that Smt. Fathima, the official Stenographer and the 'Duffadar' attached to the petitioner as well as his Driver and a person names Sri. Radhakrishnan were involved in the nefarious activities of the petitioner.

9. Based on the findings in the report of preliminary inquiry, Ext.P10 'Memo of Charges' was issued accusing the petitioner with the following charges;

“(i) That you Sri. K.S.Raju, while working as Presiding Officer, Motor Accidents Claims Tribunal, Thiruvananthapuram used to demand and receive money for passing awards in Motor Accidents Claims Tribunal cases.

(ii) That you Sri. K.S.Raju while working as Presiding Officer, Motor Accidents Claims Tribunal, Thiruvananthapuram were in the habit of asking women, where women are the petitioners before your court to visit you at your house.

(iii) That you did not conduct sitting of the court properly.

(iv) That you Sri.K.S.Raju while working as the Presiding Officer, Motor Accidents Claims Tribunal, Thiruvananthapuram, engaged a private stenographer at your house, at your own expense and

(v) That there are sufficient indications that Smt.Fathima (Official Stenographer), Duffedar attached to the learned Judge, his driver and a person by name Sri.Radhakrishnan were rendering help to you in your notorious activities."

10. The petitioner submitted detailed written explanations to Ext.P7 Memo of Charges. Meanwhile, the High Court received another petition, dated 28-02-2002 from one Dr. J. Sivanandan Nair, Thiruvananthapuram containing allegations of corruption against the petitioner, stating that the petitioner had demanded a sum of Rs.1,00,000/- as bribe through his agent named Sri.Radhakrishnan for disposing OP (MV) No.178/1997, in a manner favourable to the claimant, who is closely related to the complainant. The High Court had ordered an enquiry into the allegations through its Vigilance Cell. The Registrar (Vigilance) conducted an enquiry and submitted a report stating that OP (MV) No.178/1997 was finally heard and

posted for judgment to 27-02-2001. But the case was posted on several occasions thereafter and the evidence was re-opened on 02-06-2001. One witness was examined as RW1 on that date and the case was again taken for judgment. But again the case was posted for hearing on 27-09-2001 and adjourned thereafter on several occasions. The pronouncement of Award in the said case was deliberately delayed. The complainant, Dr. J. Sivanandan Nair, Thiruvananthapuram disclosed that a person named Radhakrishnan approached him and demanded for payment of Rs.1,00,000/- for the Judge, for getting a handsome award. He was told that, if he refuses to pay the amount, the award would not be more than Rs.5,00,000/-. According to the complainant, the person who met him to gave complete details of the case. Inquiry revealed that the said person had further approached another relative of the deceased in the same case and repeated the demand. Both of them gave statement to the enquiry officer that the matter was informed to the counsel appearing for the

claimant. The counsel also confirmed that such an information was conveyed to him and he stated that he firmly believes that the award was deliberately delayed only because his claimants were not willing to meet demand of bribe. During inquiry the Registrar (Vigilance) had unearthed similar other cases where pronouncement of judgments were delayed unnecessarily. There were proof regarding other instances where the agents of the petitioner has approached claimants or their relatives making illegal demand of bribe. Statement was given by various Advocates practising in that court regarding all such malpractices. The Registrar (Vigilance) had arrived at conclusion regarding various instances, as follows;

“(a) In the 4 instances already mentioned above, though the cases had been posted for judgment, awards were not passed under one pretext or other.

(b) In cases where the matter is shown to have been re-opened for evidence or re-posted for hearing, the counsel appearing in those cases have stated that the postings were not at the instance of the parties and that they were made with the sole intention of delaying the award.

(c) In all the 4 cases, the petitioners were approached by the agent Sri. Radhakrishnan after the case had been taken up for judgment. Sri.

Radhakrishnan was able to give the entire details of the cases to the petitioners and this would have been possible only if he was infact the agent of Sri. K.S. Raju.

(d) In OP (MV) 76/2000 Sri. Balakrishna Pillai and Smt. Valsalakumari were able to meet Sri. K.S. Raju who directed them to settle the matter with the person called Radhakrishnan. This indicated that the person who introduced himself as Radhakrishnan in various cases was in fact the agent of Sri. K.S. Raju. In all cases mentioned above, the awards had not been passed till Sri. K.S. Raju was placed under suspension and in all cases awards have been passed in his successor in office."

11. Based on the second enquiry report submitted by the Registrar (Vigilance) Ext.P12 Memo of Charges was issued with the following charges;

"(i) That you Sri.K.S.Raju, while working as Presiding Officer, Motor Accidents Claims Tribunal, Thiruvananthapuram were in the habit of demanding and receiving money from Claimants for passing awards in their favour in Motor Accidents Claims Tribunal cases.

(ii) That you Sri.K.S.Raju while working as the Presiding Officer, Motor Accidents Claims Tribunal, Thiruvananthapuram, had engaged a private stenographer by name Suneetha in your house and she typed most of the awards in the Motor Accidents Claims Tribunal cases tried in your court.

(iii) That you Sri.K.S.Raju while working as the Presiding Officer, Motor Accidents Claims Tribunal, Thiruvananthapuram in almost all Motor Accidents Claims Tribunal cases passed awards on

dates of your choice and not on the date on which the cases were posted for passing awards and that too without notice to the parties.

(iv) That you Sri.K.S.Raju while working as the Presiding Officer, Motor Accidents Claims Tribunal, Thiruvananthapuram were in the habit of returning the records of the cases only after passing the awards and consequently in most of the cases, it was not possible for the Bench Clerk or the Advocates or their clients to know the various postings between the date on which the cases were posted for passing the awards and the date on which the awards were actually passed.

(v) That you Sri.K.S.Raju, acquired wealth, ie. two residential buildings worth several lakhs of rupees and an Ambassador car bearing Reg. No.KRD 2738 disproportionate to your known source of income.

(vi) That you, Sri.K.S.Raju had a very bad reputation while functioning as the Presiding Officer, Motor Accident Claims Tribunal, Thiruvananthapuram and were known to be corrupt.”

12. It is on the basis of Ext.P10 and Ext.P12 Memo of Charges that the inquiry was proceeded. During inquiry 23 witnesses were examined by the Presenting Officer. The list includes complainants, Advocates, Advocate Clerks etc. 3 witnesses were examined on behalf of the petitioner and 22 documents were marked on his behalf. From the charges proved in full or in part, the inquiring authority had arrived

at a conclusion that the petitioner, a judicial officer who demands bribe either directly or through agents in discharge of duties is a bane to the judiciary and does not deserve to hold any office connected to administration of justice. It is observed that the petitioner's greed for money has turned to be a curse. Allegations proved against the petitioner are grave and call for imposition of appropriate penalty on him. The High Court vide Ext.P21 had considered the report of inquiry and resolved to tentatively accept the findings and further resolved to propose major penalty of dismissal from service of the petitioner, as provided under the CCA Rules. The petitioner was issued with notice enclosing the report of enquiry and calling upon him for explanations if any. The petitioner submitted detailed explanations, which was considered in detail by the High Court. The Administrative Committee of the High Court had considered the explanations and resolved that, considering gravity of the charges which stands proved against the petitioner, there is no reason to show any

leniency, and requested to the Full Court for forwarding recommendation to the Government for imposing the proposed penalty of dismissal from service. The Full Court in its meeting held on 25-09-2006 considered the recommendations of the Administrative Committee and resolved to approve the recommendations and accordingly the Government was addressed in the matter of disciplinary proceedings and requested to place the matter before His Excellency the Governor for issuing order imposing punishment of dismissal from service. The Government have placed the matter before His Excellency the Governor and after being satisfied that the High Court had completed all the procedural formalities, His Excellency the Governor had accepted the recommendations of the High Court. Accordingly Ext.P23 proceedings was issued by the Government, by the order of the Governor, to dismiss the petitioner from service with effect from the date of the suspension.

13. Contentions on behalf of the petitioner are mainly to the effect that, conclusions arrived by the inquiring authority is perverse and is without any basis. It is contended that no material or evidence was collected during the enquiry in order to arrive at a conclusion that the petitioner had demanded and received money from the clients for passing of Awards in the claim cases. It is pointed out that the only evidence available was that one person named Sri.Radhakrishnan had approached the clients demanding bribe under the guise that it is for the petitioner. But the identity of the said person was not traced out or revealed and there is no materials available to conclude that the said person have any connection with the petitioner. There is also no conclusive proof that the said person was making such demands on behalf of the petitioner with his knowledge. It is contended that there was also no proof to arrive at the guilt of the petitioner with respect to the charges contained in Exts.P10 & P12 memos. Since the conclusions has no basis or support of evidence or

materials, the findings are totally perverse, is the contention.

14. Before adjudicating on admissibility of the above said contentions this court is bound to consider the extent, scope and ambit of the judicial review in the matter, under Article 226 of the Constitution. The limits with respect to re-appreciation or re-evaluation of the evidence adduced in the proceedings of inquiry is a matter which need to be cautioned. Various precedents were cited on behalf of the petitioner as well as on behalf of the 2nd respondent (High Court). On behalf of the petitioner it is contended that when the findings regarding guilt is based on no evidence or when a man of ordinary prudence could not arrive at any such conclusions based on such evidence or when such conclusions are totally perverse or when it is made at the dictates of superior authorities, the scope for interference under Article 226 is not totally barred. Much reliance is placed on the decision of the hon'ble Supreme Court in **Kuldeep Singh V. Commissioner of Police and**

others (1999) 2 SCC 10). Dictum therein is to the effect that, the High Court would not interfere with the findings of the departmental enquiry as a matter of course. The court cannot sit in appeal over those findings and could not assume the role of an appellate authority. But this does not mean that in no circumstances interference can be possible. If there is no evidence to support the findings or with those findings recorded no guilt could have been reached by an ordinary prudent man or the findings were perverse or made at the dictates of the superior authority, the court can interfere. It is held that the findings recorded in a domestic enquiry can be characterized as perverse if it is shown that such findings are not supported by any evidence on record or are not based on the evidence adduced by the parties or no reasonable person could have come to such findings on the basis of that evidence. The hon'ble Supreme Court has relied on its earlier precedents in the matter. It is found by the apex court that, where a quash-judicial tribunal arrives at any findings on no legal evidence or when the evidence

are mere ipse dixit or based on conjectures and surmises, the enquiry suffers from infirmity and non-application of mind and stands vitiated. The decision is to the effect that a broad distinction has to be maintained between the decisions which are perverse and those which are not. When a decision is arrived based on no evidence or based on evidence which is throughly unreliable and no reasonable persons would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon howsoever compendious it may be the conclusions would not be treated as perverse and the findings would not be interfered with. (emphasis supplied)

15. Learned Senior Counsel appearing on behalf of the petitioner relied on a decision of the hon'ble Supreme Court in **State of Assam V. Mohanan Chandra Kalita and another (AIR 1972 SC 2535)**. It is held that, evidence let in with matters of extraneous nature shall not prejudice the Enquiry Officer against the delinquent and

conclusions could not be arrived based on mere conjectures when there was no evidence to show that the delinquent is guilty of the offences alleged. He had also placed reliance on the decision in **Narmada P.D. Yadav V. State of M.P. and others (2007 (1) SCC 681)**. The hon'ble apex court held that when there is absolutely no evidence with respect to the demand of bribe or for receipt of the same, it can be considered that no satisfactory evidence was adduced to prove the charge in question. Under such circumstances the penalty imposed cannot be countenanced, is the dictum.

16. Per contra, counsel appearing for the 2nd respondent contended that a re-evaluation or a re-appreciation of the evidence adduced before the inquiring authority is not at all contemplated in a judicial review, in exercise of Article 226. He placed reliance on the decision of the apex court in **K.L. Shinde V. State of Mysore (AIR 1976 SC 1080)**. The hon'ble Supreme Court held that, whether or not there is sufficient evidence against the

delinquent to justify the punishment is a matter on which this court cannot embark. It is observed that the departmental proceedings do not stand on the same footing as of a criminal prosecution, in which high degree of proof is required. The departmental proceedings are not governed by strict Rules of evidence as contained in the Evidence Act. In another decision of the hon'ble Supreme Court in **State of Mysore V. Shivabasappa (AIR 1963 SC 375)** it is observed that, domestic tribunals exercising quasi-judicial functions are not courts and therefore they are not bound to follow the procedure prescribed for trial of actions in courts nor are they are bound by strict Rules of evidence. They can obtain all information and materials for the points under enquiry from all sources and through all channels, without being fettered by Rules and proceedings governed in court. The only obligation which law casts on them is that, they should not act on any information which they may receive unless they put it to the parties against whom it is to be used and give him a fair opportunity to explain it.

17. Learned counsel for the 2nd respondent pointed out a decision of this court in **Syndicate Bank V. B.K. Mahim (2000 (2) KLJ 151)**. The dictum is to the effect that, while exercising powers of judicial review the High Court cannot normally substitute their own conclusions to impose penalty. In the said decision, while reversing the judgment of a Single Judge, the Bench observed that, it was not justifiable to sit in over judgment of the Enquiry officer as well as the orders passed by the disciplinary authority. It is found that a judicial review is possible only in exceptional and rare cases where the High Court exercising powers of judicial review is of the opinion that it shocks the conscience of the court that the decision was totally not supported by any cogent reasons. In another decision of this court in **Pushkaran V. State of Kerala (2005 (2) KLJ 484)** it is observed that, in normal circumstances the punishment cannot be interfered by the court in exercise of writ jurisdiction on mere non-compliance of technicalities or procedural formalities.

18. Based on the legal principles enunciated as above, this court made a quick appraisal and advertence to Ext.P20 report of enquiry. It is revealed that, evidence was adduced before the inquiring authority with respect to the fact that a person named Sri.Radhkrishnan had contacted various clients and their relatives and made attempts to persuade them to pay bribe to the petitioner, promising higher amounts as compensation. The said person took freedom to request the clients to meet the petitioner and to enter upon conversation with him about the cases pending before the Tribunal, so as to negotiate and decide on the amount of bribe vis-a-vis the amount of compensation. It is proved that the said person took PW22 to the residence of the petitioner and the petitioner engaged in a conversation with PW22 touching upon the matter of disposal of a pending case. Evidence of PW22 was found reliable. Detailed narration of the evidence which is re-produced in Ext.P20 would definitely repose confidence to accept the same as true and correct. There is also evidence adduced before the inquiring

authority to prove that the person named Sri.Radhakrishnan had contacted at least 3 other clients under similar circumstances and demanded bribe for the petitioner, for passing Awards. It is found that, pronouncement of the Awards were indefinitely delayed by the petitioner and one of such claim petition was dismissed subsequently, despite the fact a the memo of settlement was submitted by the Insurance Company. Depositions of various witnesses examined, including the Advocates and Advocate Clerks, have supported the above facts and instances. Learned Senior Counsel appearing for the petitioner made vehement arguments detailing about certain discrepancies in the evidence of PW22, with respect to the circumstances and situations under which he had explained about meeting with the petitioner. Further it is contended that the linkage between the petitioner and the person named Sri.Radhakrishnan could not be established without any element of doubt. But, as already observed, legal precedents are to the effect that the proceedings of

departmental enquiry are not governed by strict Rules of evidence as contemplated under the Evidence Act. The inquiring authority are not courts which are bound to follow the procedure prescribed for actions in court. The hon'ble Supreme Court in the decision in **State of Rajasthan V. V.K. Meena ((1996) 6 SCC 417)** held that, the question to be decided in a disciplinary proceedings is as to whether the delinquent is guilty of such context warranting his removal from service, whereas in criminal proceedings the question is whether the offence registered against him under the Prevention of Corruption Act is established or not. The standard of proof, the mode of enquiry and the rules governing the enquiry vis-a-vis the procedure of trial are entirely distinct and different. In the matter of Departmental proceedings the standard of proof is not any proof beyond reasonable doubt, but it is the preponderance of probabilities tending to draw inference, is sufficient.

19. It is held by the apex court in **Maharashtra State of Higher Secondary and High School Education**

V. K.S. Gandhi ((1991) 2 SCC 716) that no mathematical formula could be laid on the degree of proof. The probative value could be gauged from the facts and circumstances in a given case. The standard of proof is same as in both in civil cases and domestic enquiry. It is open to the authorities to receive and place on record all necessary, relevant and cogent and acceptable material facts, though not proved strictly in conformity with the Evidence Act. In cases where only circumstantial evidence would furnish the proof, inferences from the evidence and circumstances must be carefully distinguished from conjectures or speculations.

20. Learned Senior Counsel for the petitioner placed reliance on the decision in **Roopsingnegi V. Punjab National Bank and others ((2009) 2 SCC 570)**. The apex court held that, materials brought on record pointing out guilt are required to be proved. The decision must be arrived at based on such evidence which is legally admissible. Eventhough the Evidence Act may not be

applicable in a departmental proceedings the principles of natural justice will apply. If the report of Enquiry Officer is based on mere ipse dixit as also surmises or conjectures, the same could not have been sustained. He had further placed reliance on **Narmada PD Yadav's case** (cited supra) to content that, when there is absolutely no evidence with respect to demand of bribe made by the petitioner, the inquiring authority could not have arrived at the conclusion of guilt. It is pointed out that, despite the evidence of PW22, there were contradictions in his versions regarding meeting of the petitioner. It is also attributed that there was failure on the part of the inquiring authority to examine the wife of PW22 as a witness.

21. Learned Senior Counsel for the petitioner contended that, it is duty of the higher judiciary to protect subordinate judicial officers who works mostly in a charged atmosphere. There is a growing tendency of maligning reputation of judicial officers by disgruntled litigants who fails to secure order in their favour. Besides 'Judge bashing'

various other problems are being faced by the subordinate judiciary at the hands of unscrupulous litigants and lawyers. For proper functioning of the democracy an independent judiciary to dispense justice without fear and favour is paramount. Reliance was placed in this regard on the decision of the hon'ble Supreme Court in **Nirmala Jhala V. State of Gujarat ((2013) 4 SCC 301)**. The decision follows on holding that opportunity to cross-examine persons who were examined in preliminary enquiry has to be given to the delinquent. Denial of such opportunity will amount to violation of principles of natural justice. But in the said decision itself the apex court held that in the departmental enquiry principle of preponderance of probability is acceptable and not the doctrine of proof beyond reasonable doubt. Findings must have been evaluated on the basis of what a prudent man would have done. In the said decision it is observed that, judicial review is not akin to adjudication on merits by re-appreciating evidence as an appellate authority. Adequacy or reliability

of evidence cannot be permitted to be canvassed before the court in a writ proceedings. The only consideration in judicial review is as to whether conclusions of the appellate authority are based on evidence on record and supported by findings. Even when some defect is found in the decision making process, the courts must exercise its discretionary power with great caution, keeping in mind larger public interest and only when it comes to the conclusion that overwhelming public interest require interference, should the court intervene.

22. In the case at hand, as discussed in the report of the inquiring authority, there is ample and reliable materials and evidence available on record to support the conclusions. The findings arrived by the inquiring authority are based on all circumstantial evidence and on preponderance of probabilities. There is no incriminating materials available before this court to hold that the conclusions are totally perverse or totally baseless. It cannot be said that there is absolutely no evidence in

support of such conclusions. Therefore considering the limited scope of judicial review vested under Article 226, this court is not at all convinced that there exists any circumstances warranting interference in order to arrive at a conclusion that with respect to the findings arrived based on the evidence collected, there is lack of relevancy or that such conclusions are without any basis or perverse.

23. The petitioner raised contentions that the enquiry is vitiated because copy of the complaints based on which the preliminary enquiry was conducted, were not furnished to him. It is pointed that Ext.P4 request was made before the inquiring authority to furnish copy of the complaint of Adv. Suresh Kumar, Thiruvananthapuram, based on which investigation was originally initiated. It was also contended that all the witnesses cited by the petitioner were not permitted to be examined by the inquiring authority. But going by Rule 15 of the CCA Rules, it is permissible that investigation can be initiated on the basis of any complaint received or on consideration of any report or for other

reasons. The disciplinary proceedings was initiated based on a report of investigation conducted through Registrar (Vigilance). The petitioner was given opportunity to explain as to why the disciplinary action should not be initiated based on the report of enquiry conducted by the Registrar (Vigilance). There is absolutely no prejudice caused to the petitioner with respect to non-supply of copy of the complaint based on which the investigation was initiated. There is no requirement under the CCA Rules to afford the delinquent with participation in the preliminary enquiry. Therefore it cannot be held that non-furnishing of copy of the complaint has caused any prejudice to the petitioner in the proceedings of enquiry. There is also no evidence with respect to any denial of opportunity to put forth defence case or the petitioner is prevented to adduce evidence on his behalf.

24. The petitioner had also raised a contention that, issuance of Ext.P5 notice calling for explanation even prior to framing of the charges has caused prejudice. It is

contended that the authority had an opportunity to frame the charges in a manner covering all the defence put forth by the petitioner. Defence was extracted under compelling circumstances through the explanations called for. It is pointed out that no such procedure of getting explanations before framing of the charges, is contemplated under the CCA Rules. From Ext.P5 it is evident that the High Court had issued a show cause notice giving opportunity to explain as to why disciplinary action shall not be initiated based on the preliminary enquiry conducted. It is only an additional opportunity afforded to the petitioner which cannot be presumed in any manner as one intended to elucidate any of his defences. Therefore the enquiry will not be vitiated because of Ext.P5 notice issued prior to framing of charges.

25. Yet another contention raised is regarding non-disclosure of the recommendations made by the High Court to the Governor. Under Article 235 of the Constitution the High Court is vested with control over the subordinate

courts. It is trite law that the control vested on the High Court includes disciplinary control and it is well within the competence of the High Court to take disciplinary action against any judicial officer in the subordinate courts. The Second proviso to Rule 13 of the CCA Rules provides that the authority competent to impose penalty specified under Rule 11 on the District Judges, is the Governor. The Governor shall exercise such power after obtaining report from the High Court. In matters relating to disciplinary proceedings against judicial officers the Government follows the views expressed by the High Court. In the case at hand the petitioner has given an opportunity to explain based on the findings contained in the enquiry report. Therefore there is sufficient compliance of the mandatory procedure contemplated under Article 311 (2) of the Constitution of India. Sufficient opportunity was afforded to the petitioner after furnishing copy of the inquiry report. He was given notice to submit objections/explanations with respect to the punishment proposed. Thereafter the Administrative

Committee of the High Court considered those explanations and found them not satisfactory. The recommendations of the Administrative Committee was considered by the Full Court and a resolution was adopted to recommend to the Governor to impose the punishment. Since the petitioner was furnished with a copy of report of inquiry and provided with an opportunity to explain against the punishment proposed, there is no further necessity to furnish copy of the recommendations made by the High Court to the Governor and no such procedure is contemplated either under the Constitution or under the CCA Rules.

26. Another contention is also raised regarding non-issuance of any show cause notice by the Government or by the Governor, before approving the recommendations. In a decision of this court in **High Court of Kerala V. Muhammed Faizal (2010 (1) KLT 857)** it is observed that, it is futile to contend that the Government have got any independent powers in the matter of acceptance of recommendations made by the High Court. The

constitutional provisions contained in Article 235 and also the relevant provisions under the CCA Rules firmly insulate the judiciary from the executive arm of the Government. Therefore the Government cannot take any decision on its own. Hence there is no point in asking the Government to hear the delinquent and to take a decision. So the contention in this respect cannot be countenanced.

27. Before concluding the judgment it will not be out of context to have a reference to a recent decision of the hon'ble Supreme Court in **R.C. Chandel V. High Court of Madhya Pradesh and another ((2012) 8 SCC 58)**. The hon'ble apex court held that, judicial service is not an ordinary Government Service and the Judges are not employees as such. Judges hold the public office; their function is one of the essential functions of the State. In discharge of their functions and duties, the Judges represent the State. The office that a Judge holds is an office of public trust. A Judge must be a person of impeccable integrity and unimpeachable independence. He

must be honest to the core with high moral values. When a litigant enters the court, he must feel secured that the Judge before whom his matters has come would deliver justice impartially and uninfluenced by any considerations. The standard of conduct expected of a judge is much higher than an ordinary man. There is no excuse that since the standards in the society have fallen, the judges who are drawn from the society cannot be expected to have high standards and ethical firmness required of a Judge. A Judge like Caesar's wife must be above suspicion. The credibility of judicial system is dependent upon the Judges who man it. For a democracy to thrive and the rule of law to survive, justice system and the judicial process have to be strong and every Judge must discharge his judicial functions with integrity, impartiality and intellectual honesty.

28. Evaluated based on the settled doctrines of law and legal precedents prescribing parameters in the matter, this court is not at all convinced that the case at hand is one warranting interference under judicial review to have a

modification or reversal of the findings rendered by the inquiring authority or on the recommendations made by the High Court or on the proceedings issued under orders of His Excellency the Governor, in dismissing the petitioner from service.

Consequently the writ petition fails and the same is hereby dismissed.

Sd/-
C.K. ABDUL REHIM
JUDGE

AMG

True copy

P.A. to Judge