
(2006) 12 KL CK 0029

In the High Court Of Kerala

Case No : Writ Petition (C) No. 20640 of 2004-F

Shaji Lukose

APPELLANT

Vs

The State of Kerala and Others

RESPONDENT

Date of Decision : 12-12-2006

Acts Referred:

Citation : (2007) 1 ILR (Ker) 543 : (2007) 1 KLJ 312

Hon'ble Judges : K.K. Denesan, J

Bench : Single Bench

Advocate : R. Rajasekharan Pillai, M.S. Nishad and Sabina Jayan, for the Appellant; P. Nandakumar, GP, for the Respondent

Final Decision : Allowed

Judgement

K.K. Denesan, J.—The petitioner is a Sub Inspector of Police under the Government of Kerala. Challenge is to Ext. P3 order passed by the Deputy Inspector General of Police (3rd respondent) as also orders affirming Ext.P3 passed by respondents 2 and 1 vide Exts.P5 and P6 respectively.

The petitioner has been found guilty of the charges framed against him and the disciplinary authority inflicted on him the penalty of barring increment without cumulative effect. Statutory remedies invoked by him, ended in a futile exercise. Hence this writ petition.

2. The main contention urged by the petitioner is that he was not supplied with a copy of the enquiry report. Learned Counsel for the petitioner submits that the enquiry report is one of the important materials which ought to have been supplied to the petitioner to enable him to submit effective reply to the provisional finding that he was guilty of the charges. Reliance is placed on the decisions of this Court in Thevan v. Superintendent of Police ILR 1998 (1) 289 and Radhakrishnan Nair, R. Vs. State of Kerala and Others .

3. A counter-affidavit has been filed on behalf of the respondents. It is contended that the penalty is a minor one and the rules do not contemplate supply of

enquiry report to the delinquent employee and that there is no irregularity or illegality as contended by the petitioner.

4. I am unable to accept the contention of the respondent. It is evidence from Ext. P3 that a report filed by the enquiring authority has been relied on by the disciplinary authority to find the petitioner guilty. What is stated in Ext. P3 is, (sic). It is trite that the materials on which the disciplinary authority may place reliance on shall be supplied to the delinquent employee in order to afford him reasonable opportunity to defend the charges. The mere fact that a non-oral enquiry alone was ordered against the petitioner and the penalty imposed is a minor one, is no valid reason in the facts and circumstances of this case not to supply a copy of the enquiry report to the petitioner. Of course, unless special circumstances exist, it is open to the disciplinary authority in minor penalty proceedings, not to appoint an enquiry officer because formal enquiry is not ordinarily necessary. In such cases, it can look into all relevant aspects and arrive at the conclusion. Naturally, the question of furnishing the enquiry report will not arise. But in a case where the disciplinary authority has thought it proper to appoint an enquiring officer, who, after going through the materials before him, has drawn up a report finding the employee guilty, that becomes an important material in the disciplinary proceedings. Copy of the same shall be supplied to the delinquent employee to enable him to submit appropriate representation, unless the disciplinary authority finds the delinquent employee not guilty of the charges. The petitioner is well founded in his submission that there is negation of the procedural safeguards.

5. The impugned orders are, therefore, liable to be set aside. I do so. The respondents are free to supply a copy of the enquiry report to the petitioner and to pass fresh orders after considering the representation, if any, filed by him. Without prejudice to that right, this writ petition is allowed.