
(2014) 07 KL CK 0148
In the High Court Of Kerala
Case No : OP(KAT).No. 230 of 2014 (Z)

T. Babu Rajan

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 11-07-2014

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2014) 07 KL CK 0148

Hon'ble Judges : K.M. Joseph, J;A.K. Jayasankaran Nambiar, J

Bench : Division Bench

Advocate : K. Jaju Babu (SR.), Brijesh Mohan and Resmi G. Nair, Advocate for the Appellant; C.R. Syamkumar, Government Pleader, Advocate for the Respondent

Judgement

K.M. Joseph, J.—The petitioner is the applicant before the Kerala Administrative Tribunal(hereinafter referred to as "the Tribunal" for short). He was working as a jailor under the respondents. Disciplinary action was taken against him vide Annexure A2 memo of charges. The petitioner submitted Annexure A3 reply. Since the Government was not satisfied with the reply, the Government issued Annexure A4 show cause notice dated 21/6/2011 proposing to impose punishment of barring of one increment with cumulative effect. The petitioner submitted Annexure A5 reply to the said show cause notice. The Government, in the meantime, consulted the Public Service Commission. The PSC suggested to the Government that barring of one increment with cumulative effect was not proportionate to the gravity of the offence committed by the petitioner and, therefore, barring of three increments with cumulative effect might be imposed. The Government accepted the suggestion of the PSC and passed Annexure A6 order imposing punishment of barring of three increments with cumulative effect, without issuing any further notice to the petitioner. Feeling aggrieved by the same, the petitioner filed Annexure A8 review petition before the Government seeking review of Annexure A6. That was also rejected by Annexure -A9. Challenging Annexures A6 and A9 orders, the Original Application was filed. The

Tribunal disposed the O.A. quashing Annexure A9 and directing the Government to reconsider and dispose of Annexure A8 Review Petition afresh after giving notice of hearing to the petitioner. It was feeling aggrieved by the same, the appellant preferred this Petition under Article 227 of the Constitution.

2. We heard the learned senior counsel appearing for the petitioner and also the learned Government Pleader appearing for the official respondents.

3. The learned senior counsel for the petitioner points out that, considering the facts and circumstances of this case, the Tribunal ought to have given an opportunity of hearing to the petitioner before passing Annexure A6.

4. The learned Government Pleader would submit that, as far as Annexure A9 is concerned, the matter would be reconsidered and there is no need to quash Annexure A6.

5. This is a case where the petitioner was proceeded on the basis of the notice proposing only to impose punishment of barring one increment with cumulative effect. The respondents proceeded to consult the Public Service Commission and the Commission suggested that barring of one increment with cumulative effect was not proportionate to the gravity of the offence committed by the petitioner and what would be proportionate is punishment by imposition of barring of three increments with cumulative effect. There was no fresh notice issued to the petitioner bringing to his notice the new proposal to impose punishment as suggested by the PSC. Thus, it can be clearly seen that there is violation of principles of natural justice. No doubt we notice that in the impugned order, the petitioner had pointed out that if he had been given a personal hearing, he could have persuaded the Government to take a lenient view. We are of the opinion that Annexure A6 can be treated as a notice proposing the punishment to be imposed on the petitioner. In other words, it will be treated as notice to impose punishment of barring three increments with cumulative effect. The Original Petition is disposed of as follows: We modify the order of the Tribunal in the Original Application and we direct that Annexure A6 will be treated as notice to the petitioner. The petitioner will place objection to Annexure A6 within a period of one month from today. The first respondent will proceed to take a decision in the matter after affording an opportunity of hearing to the petitioner on his objection to be filed as provided. The Original Petition is disposed of as above.