

**(1997) 08 KL CK 0015**  
**In the High Court Of Kerala**  
**Case No : O.P. No. 8293 of 1991-K**

Thevan and Another

APPELLANT

Vs

Superintendent of Police and Others

RESPONDENT

**Date of Decision :** 01-08-1997

**Acts Referred:**

Constitution (Forty-Second Amendment) Act, 1976 — Article 311, 311(2)  
Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 — Rule 16 , 16(1)  
Kerala Police Departmental Inquiries, Punishment and Appeal Rules, 1958 — Rule 12, 15, 15(1), 17, 17(1)

**Citation :** (1997) 2 KLJ 521

**Hon'ble Judges :** P.A. Mohammed, J

**Bench :** Single Bench

**Advocate :** Premjit Nagendran, for the Appellant; P.K. Santhamma, Government Pleader, for the Respondent

**Final Decision :** Allowed

## Judgement

P.A. Mohammed, J.—The writ Petitioners are Police Constables in the Police Department of the Government of Kerala. In this writ petition they are challenging the disciplinary proceedings initiated against them by the first Respondent, the Superintendent of Police, Palghat.

2. The facts in short are thus: When the Petitioners reported for duty at 8.00 a.m. on 11th September 1987, one Chandran was standing on the veranda of the Ottappalam Police Station. On enquiries they were told that the abovesaid Chandran was asked to remain in the Police Station though no entry had been made in the General Diary about his arrest or detention. However, he had escaped from the Police Station as he was not under distraint. On the basis of this incident disciplinary proceedings had been initiated against the Petitioners and consequently an enquiry officer had been appointed. The first Respondent after perusing the preliminary report issued Exts. P-4 and P-5 orders placing the Petitioners under suspension and directed the Circle Inspector, Mannarghat to conduct a detailed enquiry under Rule 8(1)(iii) of the Kerala Police Departmental

Inquiries, Punishment and Appeal Rules, 1958 (for short "the Rules"). After conducting a detailed enquiry the enquiry officer issued Exts. P-7 and P-8 enquiry reports on 4th March 1988. Ultimately the disciplinary authority issued Exts. P-9 and P-10 orders on 15th March 1988 imposing on each Petitioner minor penalty of debarring the increment for a period of two years with cumulative effect. As against those orders they filed appeals before the second Respondent, who by Exts. P-11 and P-12 orders rejected them. Being aggrieved by these orders, the Petitioners filed revision petitions before the third Respondent. Those petitions were also rejected by Exts. P-13 and P-14 orders. Then they filed review petitions before the Government which were also rejected by them as per Exts. P-17 and P-18 orders. Exts. P-9 to P-12, P-13, P-14, P-17 and P-18 orders are challenged in this writ petition.

3. Heard learned Counsel for the Petitioners and also the Government Pleader for the Respondents.

4. The contention advanced before me by the learned Counsel for the Petitioners is that before imposing the punishment as per Exts. P-9 and P-10, the Petitioners have not been granted an opportunity to state their case with regard to the findings and conclusions of the enquiry officer contained in Ext. P-7 and P-8 enquiry reports. It is further pointed out that the punishment had been imposed without granting an opportunity to the Petitioners to file representations against the proposed punishments. In other words, the plea is that imposition of penalty is in violation of the principles of natural justice. The Government Pleader on the other hand brings to my notice that with holding of increment for a period of two years with cumulative effect is a minor punishment and therefore no notice is required to be issued to the delinquent officers. The counter affidavit filed on behalf of the fourth Respondent explains that as per Rule 17(b) of the Rules barring of increment comes under the purview of minor punishments and hence no prior notice is called for.

5. Rule 15 of the Rules deals with different types of penalties. With holding of increments is one of the penalties specified therein. However, this rule does not prescribe issue of notice before imposing the penalties. Rule 17 of the Rules deals with procedure for imposing penalties mentioned in Clauses (j), (k), (l) and (m) of Sub-rule (1) of Rule 15. The with holding of increment with cumulative effect is out of the purview of the rule. However, the learned Counsel has brought to my notice the decision of the supreme Court in *Kulwant Singh Gill Vs. State of Punjab*, which holds that debarring of increment with or without cumulative effect is not a minor penalty. After analysing the provisions contained in Punjab Civil Services (Punishment and Appeal) Rules, 1970 the Court observed:

With holding of increments of pay simpliciter undoubtedly is a minor penalty within the meaning of Rule (5)(iv). But Sub-rule (v) postulates reduction to a lower stage in the time-scale of pay for a specified period with further directions as to whether or not the Government employee shall earn increments of pay during the period of such reductions and whether on the expiry of such period

the reduction will or will not have the effect of postponing the future increments of his pay. It is an independent head of penalty and it could be imposed as punishment in an appropriate case. It is one of the major penalties.

The reading of the said decision would evince that it was after analysing the provisions of the relevant rules the Supreme Court has come to the above conclusion. In this case the Respondent with all force adopted the view that what is imposed is a minor penalty and hence I do not feel it essential to go further in this regard.

6. The next question is even assuming what is imposed is a minor penalty the Petitioners are entitled to an opportunity to file a representation before the punishment is actually imposed. In this context it is brought to my notice the decision of this Court in *Thobias v. State of Kerala* 1987 (1) KLT 501 where Rule 15(g) of the same rules came up for discussion. This Court held:

Punishment of withholding of increments is mentioned in Rule 15(g) of the Rules. It cannot be said that such a penalty can be imposed without giving any opportunity to the person concerned. Rule 12 deals with the summary procedure when punishment specified in Rule 15(g) is proposed. But the contention is that it is only in Rule 17(1)(b) that a provision is made for issuing a notice to show cause, even after the conclusion of the enquiry. That rule pertains to the imposition of certain major penalties. It is true that there is no such specific provision for giving an opportunity to explain after the conclusion of the enquiry proceedings, in cases where the proposal is to impose a penalty like the one imposed in this case. Absence of such a specific rule does not provide a carte blanche for dispensing with the rules of natural justice.

Recently I have had an occasion to deal with a case in O.P. No. 8972 of 1991 where the question whether the delinquent Government servant is entitled to get an opportunity to state his case as against the proposal to impose minor penalty, under Rule 16(1) of the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 arose for consideration. In that case, I took the view that Rule 16 does not exclude either expressly or by necessary intendment the application of the principles of natural justice at the time of actual imposition of punishment and therefore he is entitled to get a pre-decisional notice.

7. While dealing with the above question, I do recall the amendment introduced in Clause (2) of Article 311 by virtue of the Constitution (Forty-second Amendment) Act, 1976 whereby the requirement of providing opportunity to the delinquent to make representation on the penalty proposed has been expressly taken away. In this context, the following observation of the Supreme Court in *Union of India and others Vs. Mohd. Ramzan Khan*, , is apposite.

Deletion of the second opportunity from the scheme of Article 311(2) of the Constitution has nothing to do with providing of a copy of the report to the delinquent in the matter of making his representation. Even though the second stage of the inquiry in Article 311(2) has been abelished by amendment, the

delinquent is still entitled to represent against the conclusion of the Inquiry Officer holding that the charges or some of the charges are established and holding the delinquent guilty of such charges. For doing away with the effect of the enquiry report or to meet the recommendations of the Inquiry Officer in the matter of imposition of punishments, furnishing a copy of the report becomes necessary and to have the proceeding completed by using some material behind the back of the delinquent is a position not countenanced by fair procedure. While by law application of natural justice could be totally ruled out or truncated, nothing has been done here which could be taken as keeping natural justice out of the proceedings and the series of pronouncements of this Court making rules of natural justice applicable to such an inquiry are not affected by the Forty-second Amendment. We, therefore, come to the conclusion that supply of a copy of the inquiry report along with recommendation, if any, in the matter of proposed punishment to be inflicted would be within the rules of natural justice and the delinquent would, therefore, be entitled to the supply of a copy thereof. The Forty-second Amendment has not brought about any change in this position.

The above decision came up for consideration before the Constitution Bench of the Supreme Court in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., wherein it has been laid down thus:

In the view that we have taken, viz., that the right to make representation to the disciplinary authority against the findings recorded in the enquiry report is an integral part of the opportunity of defence against the charges and is a breach of principles of natural justice to deny the said right, it is only appropriate that the law laid down in Mohammed Ramzan case should apply to employees in all establishments whether Government, or non-Government, public or private. This will be the case whether there are rules governing the disciplinary proceeding or not and whether they expressly prohibit the furnishing of the copy of the report or are silent on the subject.

The theory of reasonable opportunity and principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. The appex Court further Said in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., . "What is dispensed with is the opportunity of making representation on the penalty proposed and not of opportunity of making representation on the report of the enquiry officer. The latter right was always there.

(emphasis supplied)

It also held: "...the disciplinary authority has to consider the representation of the employee against the report before it arrives at its conclusion with regard to his guilt or innocence of the charges". The above positions are undisturbed even though the application of the principles laid down in Union of India and others Vs. Mohd. Ramzan Khan, is made prospective by the Constitution Bench in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., .

8. The above discussions will bring forth two propositions. Firstly before imposing any minor penalty, the delinquent shall be given a pre-decisional notice. Secondly the delinquent shall be given a reasonable opportunity to object the finding or conclusion contained in the enquiry report submitted by the enquiry officer. The furnishing of the copy of the enquiry report would be an empty formality if it is not followed by an opportunity to file the representation before the actual imposition of punishment. If such an opportunity is given the delinquent shall be in a position to persuade the disciplinary authority not to accept the findings or conclusions of the enquiry officer. These are salient requirements in the observance of principles of natural justice. There are cases involving no enquiry report and the punishment is proposed on the basis of the evidence recorded by the disciplinary authority. In certain cases the copy of the enquiry report is given to the delinquent but no opportunity is granted to him to submit the representations. In certain other cases, even though the enquiry officer recommends no punishment, the disciplinary authority proposes punishment on the basis of his own findings. In all these contingencies the interest of the delinquent can be sufficiently safeguarded if he is given a pre-decisional notice or an opportunity to represent against the findings in an enquiry report.

9. In the present case, the grievance of the Petitioners is mainly directed against the findings contained in the enquiry reports evidenced by Exts. P-7 and P-8. As an example it is pointed out that the enquiry officer preferred oral evidence to the official documentary evidence. On the whole conclusion of the enquiry officer's faulty and erroneous, so pleaded by the Counsel. The punishment is proposed on such conclusions and hence the Petitioners pleaded that the punishment imposed on them is totally vitiated. As pointed out above, the copies of the enquiry reports namely Exts. P-7 and P-8 had been supplied to the Petitioners on 4th March 1988. However, without granting an opportunity to make representation against the findings/conclusions contained in those reports, the disciplinary authority hurriedly passed Exts. P-9 and P-10 orders imposing penalty on 15th March 1988 basing on the report of the enquiry officer. The case pleaded is that because of this unusual hurry shown by the disciplinary authority, the Petitioners had been actively prevented from submitting the representation against the findings contained in the enquiry report. Whatever that be, one thing is abundantly certain that the Petitioners did not get an opportunity either to make representation against the enquiry report or against the proposal to levy penalty. This has no doubt resulted in miscarriage of justice. These impugned orders are invalid as there is violation of the principles of natural justice.

10. In view of what is said above, the impugned orders Exts. P-9 to P-12, P-13, P-14, P-17 and P-18 are set aside. I direct the first Respondent to issue notice to the Petitioners calling upon them to file representations against the proposal to impose punishments and objections against Exts. P-7 and P-8 enquiry reports within a specified time. I further direct the first Respondent to afford a personal hearing to the Petitioners and to pass orders on merits and in accordance with

law after considering those representations and submissions to be made during the personal hearing. The Original Petition is allowed as above.