



2023/KER/65636

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

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THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

FRIDAY, THE 13<sup>TH</sup> DAY OF OCTOBER 2023 / 21ST ASWINA, 1945

OP(KAT) NO.418 OF 2019

AGAINST THE ORDER DATED 29.1.2019 IN O.A.NO.2285/2013 OF

KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM

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PETITIONER:

STATE OF KERALA, REPRESENTED BY SECRETARY  
TO GOVERNMENT, AGRICULTURE DEPARTMENT, GOVT.  
SECRETARIAT, THIRUVANANTHAPURAM, PIN-695001.

BY SENIOR GOVERNMENT PLEADER, SMT.VINITHA B.

RESPONDENT:

P. K. RADHAKRISHNAN, AGED 57 YEARS.



BY ADVS.  
PUSHPARAJAN KODOTH  
K.JAYESH MOHANKUMAR  
VANDANA MENON

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING BEEN FINALLY  
HEARD ON 13.10.2023, THE COURT ON THE SAME DAY DELIVERED  
THE FOLLOWING:



"CR"

**J U D G M E N T****A.Muhamed Mustaque, J.**

The point that arises for consideration in this original petition is whether in a disciplinary proceedings initiated under the Kerala Civil Services (Classification, Control and Appeal) Rules (for short KCS (CC&A) Rules), a recovery can be effected for the loss sustained by the Government without giving a fullest opportunity to the Government servant to discredit the evidence brought against him. An ancillary question also arises in this case as to the continuation of the proceedings under the KCS (CC&A) Rules for the recovery of loss after the retirement of the Government servant.

2. The disciplinary proceedings were initiated against the party respondent before his retirement invoking Rule 15 of KCS (CC&A) Rules, the procedure for imposing major penalty. However, midway it seems proceedings were converted to Rule 16 proceedings of KCS (CC&A) Rules to impose minor penalties and ordered recovery of loss. No opportunity was given to the respondent to discredit the materials against him. On a challenge made by the respondent, the Tribunal noted that converting the proceedings midway from major penalty to minor penalty was legally unsustainable and a consequent order of recovery was



also *set aside*. It is specifically noted that the procedure under Rule 15 of KCS (CC&A) Rules was not followed for effecting recovery.

3. It is apparent in this case that the procedure under Rule 15 of KCS (CC&A) Rules was not followed for recovery of loss. Arguments have been raised by the learned Government Pleader based on Rule 16 of KCS (CC&A) Rules and argued that rigor of Rule 15 is not applicable. It may be true that rigor of Rule 15 may not as such would apply for a proceedings under Rule 16. However, the court cannot ignore the principles of natural justice. The principles of natural justice will have to be read into the statutory provisions. Natural justice implies a fair opportunity to contradict and to obviate the prejudice that may cause to the aggrieved consequent upon the denial of such opportunity. If the recovery of loss is effected without giving an opportunity of hearing to the respondent to discredit the materials collected which are relied on for fastening the liability, that proceedings will be vitiated. It is appropriate to refer to famous principles enunciated by Lord Denning in **B.Surinder Singh Kanda v. Government of the Federation of Malaya (1962 AC 322)** observed as follows:

*“ If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him: and*



*then he must be given a fair opportunity to correct or contradict them.”*

Therefore, even in a proceedings under Rule 16 of KCS (CC&A) Rules, full and fair opportunity should be given to the respondent to discredit the materials against him.

4. However, in the light of the fact that the proceedings have been confined to the recovery of loss as the respondent had retired from the service, the proceedings already initiated under Rules 15 and 16 of KCS (CC&A) Rules would vanish and the proceedings will have to be in accordance with the Rule 3 part III of the Kerala Service Rules (for short, 'KSR'). The Rule 3 & 3(a) of the KSR reads as follows:

*“3. The Government reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension or the whole or part of any pecuniary loss caused to Government, if in a departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement.*

*3(a) Such departmental proceeding, if instituted while the employee was in service, whether before his retirement or during his re-employment, shall after the final retirement of the employee, be deemed to be a proceeding under this rule and shall be continued and concluded by the authority by which it was commenced in the same manner as if the employee had continued in service.”*



5. Thus the proceedings now initiated must be in accordance with Rule 3 part III of the KSR as above. In such a situation, the principles of natural justice as referred to above will have to be followed.

6. We note that the Tribunal *set aside* the entire proceedings without noting Rule 3 part III of the KSR as above. The Tribunal ought to have allowed the official respondents to continue in terms of Rule 3 of the KSR as the proceedings were intended for the recovery of loss alone. Thus the impugned order is set aside. The Original Petition is disposed of permitting the petitioner-Government to proceed as above with the following directions:

1. The proceedings shall be concluded within three months.
2. The petitioner-Government shall be given all the details and the materials collected against the respondent to discredit such materials.
3. The petitioner-Government shall release the admitted amount of pensionary benefits to the respondent within two months.

Sd/-

**A. MUHAMED MUSTAQUE, JUDGE**

Sd/-

**SHOBA ANNAMMA EAPEN, JUDGE**

APPENDIX OF OP (KAT) 418/2019

## PETITIONER'S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE O.A.NO.2285/13 ALONG WITH EXHIBITS BEFORE THE KERALA ADMINISTRATIVE TRIBUNAL.
- EXHIBIT P1 (A1) TRUE COPY OF THE MEMO OF CHARGES DATED 16.12.2006 ISSUED BY THE DIRECTOR OF AGRICULTURE.
- EXHIBIT P1 (A2) TRUE COPY OF THE EXPLANATION SUBMITTED BY THE APPLICANT DATED 25.4.2007.
- EXHIBIT P1 (A2 (A)) TRUE COPY OF THE ENGLISH TRANSLATION OF ANNEXURE A2.
- EXHIBIT P1 (A3) TRUE COPY OF THE ORDER DATED 6.6.2007 OF THE AGRICULTURAL DIRECTOR APPOINTING ENQUIRY OFFICER AS PER RULE-15 OF KCS (CCA) RULES, 1960.
- EXHIBIT P1 (A3) (A) TRUE COPY OF THE ENGLISH TRANSLATION OF ANNEXURE A3.
- EXHIBIT P1 (A4) TRUE COPY OF THE LETTER DATED 11.6.2007 OF THE DIRECTOR OF AGRICULTURE.
- EXHIBIT P1 (A5) TRUE COPY OF THE SHOW CAUSE NOTICE DATED 3.3.2008 OF DIRECTOR OF AGRICULTURE.
- EXHIBIT P1 (A6) TRUE COPY OF THE EXPLANATION SUBMITTED BY THE APPLICANT DATED 10.4.2008.
- EXHIBIT P1 (A7) TRUE COPY OF THE ORDER DATED 24.4.2007 ISSUED BY THE PRINCIPAL AGRICULTURAL OFFICER, KASARAGOD.
- EXHIBIT P1 (A7 (A)) TRUE COPY OF THE ENGLISH TRANSLATION OF ANNEXURE A7.



- EXHIBIT P1 (A8) TRUE COPY OF THE MEMO OF CHARGES OF THE RESPONDENT DATED 7.4.2009.
- EXHIBIT P1 (A9) TRUE COPY OF THE EXPLANATION SUBMITTED BY THE APPLICANT DATED 1.6.2009.
- EXHIBIT P1 (A10) TRUE COPY OF THE DETAILED EXPLANATION SUBMITTED BY THE APPLICANT DATED 1.7.2009.
- EXHIBIT P1 (A11) TRUE COPY OF THE NOTICE DATED 10.5.2012 TO APPEAR BEFORE THE DEPUTY SECRETARY, AGRICULTURE, FOR PERSONAL HEARING.
- EXHIBIT P1 (A12) TRUE COPY OF THE ORDER OF THE RESPONDENT NO.1093/2013/AD DATED 18.6.2013 ALONG WITH COVERING LETTER OF THE PRINCIPAL AGRICULTURE OFFICER, KANNUR, DATED 11.7.2013.
- EXHIBIT P2 TRUE COPY OF THE INTERIM ORDER DATED 18.10.2013.
- EXHIBIT P3 TRUE COPY OF THE ORDER OF THE TRIBUNAL DATED 4.4.2016.
- EXHIBIT P4 TRUE COPY OF THE REPLY STATEMENT FILED BY THE 1ST RESPONDENT ALONG WITH ANNEXURE R1 (A) AND R1 (B) DATED 16.3.2015.
- EXHIBIT P4 (R1 (A) ) TRUE COPY OF THE CLAIM STATEMENT.
- EXHIBIT P4 (R1 (B) ) TRUE COPY OF THE ENQUIRY REPORT.
- EXHIBIT P5 TRUE COPY OF THE ORDER IN OA.1054/2014 DATED 1.9.2015.
- EXHIBIT P6 TRUE COPY OF THE ORDER OF THE KERALA ADMINISTRATIVE TRIBUNAL DATED 29.1.2019 IN THE AFORESAID ORIGINAL APPLICATION.