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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

THURSDAY, THE 16TH DAY OF JUNE 2022 / 26TH JYAISHTA, 1944

OP(KAT) NO. 130 OF 2022

AGAINST THE ORDER/JUDGMENT IN OA 1842/2020 OF KERALA

ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM

PETITIONER/S:

JAYACHANDRAN V  
AGED 48 YEARS  
S/O VISWANATHAN,  
INSPECTOR OF POLICE, VIGILANCE AND ANTI  
CORRUPTION BUREAU,  
SPECIAL INVESTIGATION UNIT-I, POOJAPPURA,  
THIRUVANANTHAPURAM, PIN-695 012  
RESIDING AT MANDARAM, T.C.33/1851(1),  
AYODHYA NAGAR, MANIKANTESWARAM P.O.,  
THIRUVANANTHAPURAM, PIN-695 013.  
BY ADVS.S.P.ARAVINDAKSHAN PILLAY, N.SANTHA  
V.VARGHESE, PETER JOSE CHRISTO, S.A.ANAND, K.N.REMYA  
L.ANNAPOORNA

RESPONDENT/S:

- 1 STATE OF KERALA  
REPRESENTED BY GOVERNMENT PLEADER, HIGH COURT OF  
KERALA, PIN - 682031
- 2 STATE POLICE CHIEF,  
POLICE HEADQUARTERS,  
THIRUVANANTHAPURAM-695 033.  
PIN - 695033

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING  
COME UP FOR ADMISSION ON 08.06.2022, THE COURT ON  
16TH JUNE, 2022 DELIVERED THE FOLLOWING:

A.K. JAYASANKARAN NAMBIAR

AND

MOHAMMED NIAS. C.P. JJ

.....  
OP (KAT) No. 130 of 2022  
.....

Dated, this the 16<sup>th</sup> day of June, 2022

**JUDGMENT**

**Mohammed Nias.C.P., J.**

The petitioner is the applicant in O.A.(EKM) 1842 of 2020 questioning the dismissal of his Original Application filed challenging Annexure-A8 enquiry report/PR Minutes, Annexures -A10 and A12 to the extent the applicant was given the penalty of barring of three increments with cumulative effect in the departmental enquiry initiated as per Annexure - A1 memo of charges. Departmental enquiry was initiated against the petitioner on the allegation that he while working as Inspector of Police, Museum Police Station, Thiruvananthapuram City, manhandled one K.G. Suresh Babu at 10.30 p.m on 3-1-2014 and also registered a false case against him. The petitioner denied the charges stating that the car belonging to K.G. Suresh Babu was parked very near to Raj Bhavan on 3-1-2014 when the Hon'ble Prime Minister of India was camping in the Raj Bhavan. Since Sri. Suresh Babu did not bother to answer on being

asked as to why the car is being parked there, the petitioner had to arrest and take him to the police station. It is alleged that the Enquiry Officer was biased and had submitted Annexure-A10 report which was accepted by the disciplinary authority who issued Annexure-A7 show cause notice proposing the penalty of reversion of the petitioner to a lower category of Sub Inspector for a period of five years. By Annexure A-10, disciplinary proceedings were finalised by awarding him the penalty of barring of three increments with cumulative effect. Petitioner filed Annexure-A11 statutory review petition before the Government which was rejected by Annexure-A12 order.

2. The Tribunal dismissed the Original Application by rejecting the contention of the petitioner that copy of the enquiry report was not furnished to him soon after it was drawn up and the same was given only after a provisional decision was taken to impose a penalty of reduction of rank for a period of five years, by relying on Rule 17 (i) (b) of the Kerala Police Departmental Inquiries, Punishment and Appeal Rules, (KPDIP) & A Rules.

3. The contention of the Government that only after the disciplinary authority takes a decision, the copy of the report need to

be given to the delinquent employee, together with the findings of the disciplinary authority on the enquiry report, was accepted and accordingly holding that there were no grounds to interfere with the orders impugned, the Original Application was dismissed.

4. Before us, it is the specific contention of the learned counsel for the petitioner that there was no legally reliable evidence against the petitioner and that the disciplinary authority accepted the enquiry report and decided to punish the petitioner before giving a copy of the enquiry report to the delinquent or obtaining his remarks which deprived the petitioner of his right to point out the vitiating factors of the enquiry report and also for avoiding punishment on the basis of such a report. The enquiry officer and the disciplinary authority not being one and the same, a copy of the report ought to have been given to the delinquent before the disciplinary authority decided on the further course of action to be taken on the report. The learned counsel also argues that Annexure-A13, which was the Government letter dated 21-1-2016 by which the request of Sri. K.G. Suresh Babu for sanction to prosecute the petitioner was rejected was not considered at all.

5. This Court by order dated 24-5-2022 directed the

Government Pleader to get instructions on the primary contention of the petitioner regarding the failure to furnish enquiry report which was against the dictum laid down by the Constitution Bench of the Apex Court in *Managing Director, ECIL v. B. Karunakar [(1993) 4 SCC 727]* and as to whether the matter could be remitted to be done afresh from that stage and in adherence to the dictum laid down in **B. Karunakar's Case (supra)**.

6. We notice that on going through Annexure-A7 show cause notice dated 28-09-2016, that a decision was taken to revert the petitioner as Sub Inspector for a period of five years provisionally and an explanation was sought as if the enquiry report is being accepted in full and the concurring with the findings of the guilt rendered in the enquiry report/punishment, and the opportunity was given only to show cause as to why provisional decision regarding the proposed imposition of penalty of reversion to a lower post shall not be finally passed. It is crystal clear that the enquiry report was not served on the appellant before or an opportunity to plead why the findings in the enquiry report should not be accepted by the disciplinary authority or on the quantum of punishment was offered to the petitioner. This action flies in the face of the dictum laid down by

the Constitution Bench in **B. Karunakar's Case** (supra).

7. As stated above, Annexure - A8 enquiry report and PR minutes were given to the applicant only along with Annexure - A7 show cause notice after the Government accepted the findings in the enquiry report and provisionally decided to impose a penalty. It is pertinent to note that the enquiry officer and the disciplinary authority in the instant case were not one and the same. This is in violation of the principles of natural justice and the same cannot be condoned at all, as held in **B. Karunakar's Case** (supra)

“The findings or recommended punishment by the enquiry officer are likely to affect the mind of the disciplinary authority in his concluding the guilt or penalty to be imposed. The delinquent is, therefore, entitled to meet the reasoning, controvert the conclusions reached by the enquiry officer or is entitled to explain the effect of the evidence recorded. Unless the copy of the report is supplied to him, he would be in dark to know the findings, the reasons in support thereof or nature of the recommendation on penalty. He would point out all the factual or legal errors committed by the enquiry officer. He may also persuade the disciplinary authority that the finding is based on no evidence or the relevant material evidence was not considered or overlooked by the enquiry officer in coming to the conclusions, with a view to persuade the disciplinary authority to disagree with the enquiry officer and to consider his innocence of the charge, or even that the guilt as to the misconduct has not been established on the evidence on records or disabuse the

initial impression formed in the minds of the disciplinary authority on consideration of the enquiry report. Even if the disciplinary authority comes to the conclusion that charge or charges is/are proved, the case may not warrant imposition of any, penalty. He may plead mitigating or extenuating circumstances to impose no punishment or a lesser punishment. For this purpose the delinquent needs reasonable opportunity or fair play in action. The supply of the copy of the report is neither an empty formality, nor a ritual, but aims to digress the direction of the disciplinary authority from his derivative conclusions from the report to the palliative path of fair consideration. The denial of the supply of the copy, therefore, causes to the delinquent a grave prejudice and avoidable injustice which cannot be cured or mitigated in appeal or at a challenge under Art. 226 of the Constitution or S.19 of the Tribunal Act or other relevant provisions. Ex post facto opportunity does not efface the past impression formed by the disciplinary authority against the delinquent, however, professedly to be fair to the delinquent. The lurking suspicion always lingers in the mind of the delinquent that the disciplinary authority was not objective and he was treated unfairly. To alleviate such an impression and to prevent injustice or miscarriage of justice at the threshold, the disciplinary authority should supply the copy of the report, consider objectively the records, the evidence, the report and the explanation offered by the delinquent and make up his mind on proof of the charge or the nature of the penalty. The supply of the copy of the report is thus, a sine qua non for a valid, fair, just and proper procedure to defend the delinquent himself effectively and efficaciously. The denial thereof is offending not only Art.311(2) but also violates Arts. 14 and 21 of the Constitution.

8. The argument on the side of the Government before the

Tribunal that there is no specific rule in the Kerala Police Departmental Inquiries, Punishment and Appeal Rules to give enquiry report at the stage of drawing up of the same to the delinquent cannot be accepted at all. The right to receive the report is considered as the essential part of reasonable opportunity to be extended to the person affected by the report and a refusal to furnish the report amounts to denial of the right to defend himself and to prove his innocence in the disciplinary proceedings. Even if such right is not explicitly stated in the regulations or statute, that right being a fundamental and essential part of the natural justice, must be read into every regulation or rules. There is nothing in the rules aforesaid which excludes the operation of the principle of natural justice entitling the delinquent to be served with a copy of the enquiry report before accepting the report or proposing a punishment. It is trite that the principles of natural justice must be read into the unoccupied interstices of the statute/rules or regulations unless there is a clear mandate to the contrary.

9. Under these circumstances, we have no option but to set aside the order dated 9<sup>th</sup> March 2022 of the Kerala Administrative Tribunal in OA 1842 of 2020 and to allow this Original Petition.



10. We direct that the enquiry proceedings will have to start afresh from the stage of drawing up of the enquiry report and by giving a copy of the said report to the delinquent to offer his explanation on the findings in the enquiry report and as to why the enquiry report cannot be accepted. The delinquent should also be given an opportunity to show cause against the proposed punishment. The disciplinary authority may decide as to the necessity of separate notices for the above or a composite notice.

The proceedings will commence as aforesaid and will be proceeded on the basis of the rules keeping in mind the dictum of law laid down in **B. Karunakar's Case** (supra). The proceedings as directed above will be completed within a period of six months from the date of receipt of a copy of this judgment.

**Sd/- A.K. JAYASANKARAN NAMBIAR, JUDGE**

**Sd/-MOHAMMED NIAS.C.P., JUDGE.**

**Ani/**

**/true copy/**

Exhibit: P1 TRUE COPY OF THE O.A.(EKM)NO.1842/2020 FILED BEFORE THE KERALA ADMINISTRATIVE TRIBUNAL, ADDITIONAL BENCH, ERNAKULAM.

ANNEXURE-A1: TRUE COPY OF MEMO OF CHARGES NO.01/PR/CR.DETT/2014 DATED 07.03.2014 ISSUED TO THE APPLICANT BY THE ASSISTANT COMMISSIONER OF POLICE, CRIME DETACHMENT, THIRUVANANTHAPURAM CITY, WITH THE APPENDED STATEMENT OF ALLEGATIONS .

ANNEXURE-A2: TRUE COPY OF EXPLANATION DATED 20.04.2014 SUBMITTED BY THE APPLICANT TO ANNEXURE-A1.

ANNEXURE-A3: TRUE COPY OF G.O. (RT)NO.1201/2014/ HOME DATED 25.04.2014.

ANNEXURE-A4: TRUE COPY OF THE MEMO OF CHARGES DATED 11.09.2014 WITH THE APPENDED STATEMENT OF ALLEGATIONS ISSUED TO THE APPLICANT.

ANNEXURE-A5: TRUE COPY OF THE EXPLANATION DATED 31.10.2014 SUBMITTED BY THE APPLICANT TO ANNEXURE-A4.

ANNEXURE-A6: TRUE COPY OF THE WRITTEN STATEMENT OF DEFENCE DATED 23.04.2015 FILED BY THE APPLICANT BEFORE THE INQUIRY OFFICER.

ANNEXURE-A7: TRUE COPY OF THE SHOW CAUSE NOTICE NO.49022/H1/15/HOME DATED 28.09.2016 ISSUED BY THE 1ST RESPONDENT.

ANNEXURE-A8: TRUE COPY OF THE OF THE P.R. MINUTES/ INQUIRY REPORT NO.1/PR/DCP/SPSTS/2014 DATED 30.05.2015.

ANNEXURE-A9: TRUE COPY OF THE REPLY DATED 10.11.2016 SUBMITTED BY THE APPLICANT TO ANNEXURE-A7 SHOW CAUSE NOTICE. ANNEXURE-

A10: TRUE COPY OF THE G.O.(MS)NO.73/ 2019/HOME DATED 15.06.2019.

ANNEXURE-A11: TRUE COPY OF THE REVIEW PETITION DATED 14.08.2019 FILED BY THE APPLICANT BEFORE GOVERNMENT.

ANNEXURE-A12: TRUE COPY OF THE G.O.(RT)NO.1553/2020/HOME DATED 06.07.2020.

ANNEXURE-A13: TRUE COPY OF THE GOVERNMENT LETTER NO.53315/A5/2015/HOME DATED 21.01.2016.

ANNEXURE-A14: TRUE COPY OF THE REPORT NO.02/ST/PHQ/ 14 DATED 18.01.2014 BEFORE THE 2ND RESPONDENT.

ANNEXURE-A15: TRUE COPY OF THE RTI APPLICATION DATED 10.05.2018, FILED BY THE APPLICANT BEFORE THE STATE PUBLIC INFORMATION OFFICER OF THE MEDICAL COLLEGE HOSPITAL, THIRUVANANTHAPURAM.

ANNEXURE-A16: TRUE COPY OF THE LETTER NO.G3.10368/ 2018/ GMCH DATED 24.05.2018 OF THE STATE PUBLIC INFORMATION OFFICER, MEDICAL COLLEGE HOSPITAL, THIRUVANANTHAPURAM.

ANNEXURE-A17: TRUE COPY OF THE LETTER NO.G3.12842/ 2018/GMCH DATED 21.07.2018 ISSUED BY THE APPELLATE AUTHORITY.

ANNEXURE-A18: TRUE COPY OF THE ORDER DATED 27.12.2018 ON APPEAL NO.AP1819(1)/2018/SIC OF THE STATE INFORMATION COMMISSION.

ANNEXURE-A19: TRUE COPY OF THE LETTER NO.G3/10368/ 2018/GMCHT DATED 02.04.2019 OF THE SUPERINTENDENT AND APPELLATE AUTHORITY.

ANNEXURE-A20: TRUE COPY OF THE FINAL ORDER DATED 06.03.2020 IN APPEAL NO. AP 1819(1)/2018/SIC OF THE INFORMATION COMMISSION.

ANNEXURE-A21: TRUE COPY OF THE REPORT OF THE APPELLATE AUTHORITY MENTIONED IN ANNEXURE-A20.

ExhibitP2                    EXHIBIT-P2:    TRUE    COPY    OF    THE    REPLY  
STATEMENT FILED ON BEHALF OF THE FIRST  
RESPONDENT IN O.A.1842/2020 OF THE HON'BLE  
KERALA ADMINISTRATIVE TRIBUNAL.

EXHIBIT-P3:                TRUE COPY OF THE REJOINDER FILED BY THE  
APPLICANT TO THE REPLY STATEMENT FILED ON  
BEHALF OF THE 1ST RESPONDENT IN  
O.A.1842/2020 OF THE HON'BLE KERALA  
ADMINISTRATIVE TRIBUNAL.

ANNEXURE-A23:    TRUE COPY OF THE LETTER  
NO.53315/ A5/2015/HOME DATED 21.01.2016  
ISSUED BY THE 1ST RESPONDENT.

EXHIBIT-P4:                TRUE COPY OF THE FINAL ORDER DATED  
09.03.2022 IN O.A.1842/2020 OF THE KERALA  
ADMINISTRATIVE TRIBUNAL.