

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 502/2006

MONDAY THIS THE 19th DAY OF FEBRUARY, 2007

C O R A M

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR GEORGE PARACKEN, JUDICIAL MEMBER

V.V.Shajimon IFS
Divisional Forest Officer
Kozhikode ..Applicant

By Advocate Mr. N. Raghuraj

Vs.

- 1 State of Kerala represented by
the Chief Secretary, Government Secretariat
Thiruvananthapuram.
- 2 The Pricipal Secretary to Government (GAD)
Forest Department, Government of Kerala
Secretariat, Thiruvananthapuram.
- 3 The Principal Conservator of Forest
Thiruvananthapuram.
- 4 The Conservator of Forests
Northern Circle, Kannur.
- 5 Union of India represented by the
Secretary to Government
Department of Environment & Forest,
New Delhi.

Respondents.

By Advocate Mr TPM Ibrahim Khan for R -5

Advocate Mr. K. Thavamony, G P for R 1-4

ORDER

HON'BL MRS. SATHI NAIR, VICE CHAIRMAN

The applicant while working as DFO, Kozhikode was placed under suspension as per Annexure A-4 order on the allegation that a Forest offence registered u/s 27(l)(e)(iii) & (iv) of Kerala Forest Act, 1961, two months prior to his assumption of office as DFO, Kozhikode, was compounded by him against the directions of the third respondent in Annexure A-5 circular. It was also alleged therein that the provisions of Kerala Preservation of Trees Act, 1986 were not invoked while compounding in the offence registered against the accused persons.

2 It is submitted by the applicant that the provisions of the Kerala Preservation of Trees Act applies only to private Forests and Cardamom Hill Reserve areas and do not cover an area which has been declared as Ecologically Fragile Land (EFL). Moreover, the provisions of Annexure A-5 Circular alleged to have been violated by the applicant cannot stand scrutiny for the reason that such circular which prohibits the compounding of offence under the Forest Act, amounts to curtailing/abridging the powers conferred on the competent Officer by virtue of Section 68 of the Kerala Forest Act. Thus the reasons for placing the applicant under suspension as revealed from Annexure A-4 are arbitrary and wholly unsustainable in law. Therefore, it is contended that Annexure A-4 is liable to be set

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aside and the applicant is entitled to be reinstated in service with all the attendant benefits forthwith. Hence he has filed this Original Application seeking the following reliefs:

- (a) To call for the records leading up to Annexure A-4 order as per which the applicant was placed under suspension, pending disciplinary enquiry and to set aside the same.
- (b) To call for the records leading to Annexure A-5 circular and to set aside the same to the extent it prohibits the compounding of offences registered under the provisions of the Kerala Forest Act.
- © To issue necessary directions to the 2nd respondent to cancel the disciplinary proceedings initiated against the applicant pursuant to Annexure A-4 order of suspension.
- (d) To issue appropriate directions to the respondents 2 to 4 to reinstate the applicant in service forthwith and further to drop all disciplinary proceedings initiated against him pursuant to Annexure A-4 order.
- (e) Award the cost of this proceeding to the applicant and
- (f) Grant such other and further reliefs as this Hon'ble Tribunal may deem fit and proper

3 The applicant challenges the suspension order in Annexure A4 mainly on two grounds (i) that the applicant assumed charge of DFO, Kozhikode only on 28.3.2006 and hence he cannot be held liable for the charge of not including the penal provisions of Kerala Preservation of Trees Act, 1986 in Annexure A-1 which was prepared on 28.1.2006 prior to his assumption of charge. (ii) The provision of Kerala Preservation of Trees Act 1986 have no application in the facts and circumstances of the case, hence non-inclusion of this

provision in the report cannot be a basis for charge against him. The applicant has also contended that the trees in question were only firewood trees, the total value of which would come to only Rs.1000/- and the compounding fee received by the Government in this regard was Rs. 7000/-, thus no monetary loss has been sustained by the Government.

4 Initially when the matter came up for hearing, the learned counsel for the applicant submitted that the order was issued by an incompetent authority as it is issued by the Principal Secretary to the Government, General Administration Department whereas the controlling officer of the applicant is the Chief Secretary and hence on that ground alone the impugned order is without jurisdiction and therefore it can be interfered with by the Tribunal.

5 The respondents and the State Government were directed to submit their statement on the limited question of competency of authority who issued this impugned order. Accordingly, the respondents filed a reply stating that as per the Rules of Business of the Government of Kerala, "All India Services" is a subject allotted to the General Administration Department in the Government. The Secretary to Government being the official Head of the Department, an order can be issued in his name for and on behalf of the Government. The applicant is an officer of the Indian Forest Service working in connection with the affairs of the State. The All India

Service (Discipline & Appeal) Rules 1969 empowers the State Government to institute proceedings against All India Service officers as provided under Rule 7(1)(b)(i) under the Rules of Business of the Government of Kerala, the Principal Secretary, GAD is also a competent authority to issue order of suspension of an All India Service officer as the Head of the Department to which the subject matter of All India Service matters are allotted. The Central Government empowers the State Government by general order as defined in Rule 2((C)(1) of AIS Rules to place an officer under suspension.

6 The learned counsel for the applicant at this stage submitted that the impugned order is an appealable order and that an affidavit is submitted along with the appeal memorandum and that an M.A. has been filed for a direction to dispose of the appeal.

7 In the meanwhile the applicant also filed a rejoinder raising again the contention that the order of suspension was not issued by the competent authority and that the mandatory approval of the Council of Ministers was not taken.

8 When the matter came up for hearing on 18.10.2006, it was stated by the counsel for the applicant that there was a similar case of an IFS officer who was placed under suspension in O.A. 108/06. and since that was heard on merit and the order has been reserved.

he wanted to withdraw M.A. 941/06 as the Appeal Memorandum has not been preferred by him. Accordingly, permission was granted to withdraw the M.A. and the respondents were directed to file reply.

9 The respondents have filed reply statement in which they have submitted that the action of the DFO in having issued orders for compounding the case and to withdraw the case against the accused has been done ignoring the seriousness of the issue with the intention to help the accused persons. It was also found that the land involved in the issue forms part of the forest land which was restored to ex-owners in accordance with court directions at Jeerakapara area and notified under Section 5 of Kerala Preservation of Trees Act, 1985 which an action was against the circular orders of the Principal Chief Conservator of Forests regarding compounding of forest offences as well as ignoring the sensitive and serious nature of the issue, as tree felling at Jeerakapara forest area had been a subject matter of discussion and debate in the media and public at large from the year 1994 onwards and many reports and had appeared in public media regarding illicit felling of trees in the area. Hence the action of the applicant was highly irresponsible and irregular and amounted to gross misconduct and therefore he was placed under suspension. They also contended that the area originally formed part of vested forest land restored to its ex owners at Jeerakapara based on court directions and felling of trees from such restored area is covered by

notification under Section 5 of Kerala Preservation of Trees Act, 1986. The area in question was also notified under Section 5 of the said Act and offences booked under KPT Act are not compoundable.

10 The applicant filed a rejoinder reiterating that the contention that the area in question was a Vested Forest by virtue of Section 5 of Kerala Preservation of Trees Act, 1985 was without any factual or legal basis. By virtue of Section 5 of the Kerala (Vesting and Management of Ecologically Fragile Land) Act, 2003 the area in question stands vested with the Government and therefore the provisions of Kerala Preservation of Trees Act, 1985 have absolutely no application in the facts and circumstances of the case. Hence the statements of the respondents in their reply are misleading and no errors have been committed in preparing the charge memo by the Range Officer and the applicant in compounding the offences.

11 When the matter came up for final hearing, the learned counsel argued that this Tribunal had already settled similar matter in O.A. 108/06 on 17.10.2006 by quashing the suspension order of the applicant therein belonging to the IFS and ordered reinstatement with consequential benefits and therefore the applicant herein is also to be treated similarly. Hence we called for the case file and examined it. It is seen that there are no similarities in the facts and circumstances of these two cases. It is true that the applicant in the O.A. 108/06 is also a Divisional Forest Officer belonging to the IFS.

The order of suspension of the applicant in O.A. 108/06 was issued under Rule 3(3) of AIS (D&A) Rules which reads as follows:

"Rule 3(3)A member of the Service in respect of, or against, whom an investigation, inquiry or trial relating to a criminal charge is pending may, at the discretion of the Government be placed under suspension until the termination of all proceedings relating to that charge, if the charge is connected with his position as a Member of the service or is likely to embarrass him in the discharge of his duties or involves moral turpitude."

It may be seen that the above provision relates to suspension of officials in respect of whom an investigation/enquiry/trial relating to a criminal charge is pending. Hence, the only question of law before the Tribunal in that case was whether any enquiry or trial was pending against the applicant at the time of suspension. It was found by the Tribunal on the evidence on record that at the time of issue of the order of suspension, the government had only decided to entrust the matter to the Crime Branch for detailed investigation and therefore no investigation as such was pending on the date of passing of the suspension order. It was only on this ground that the order of suspension came to be quashed in that O.A.

12 The facts and the circumstances of this case are entirely different. The applicant herein has been suspended under Rule 3(1) of the AIS (Discipline and Appeal Rules) 1969 which reads as under:

"3 Suspension

(1) If having regard to the circumstances in any case and where articles of charges have been drawn up, the nature of the charges the Government of a State or the Central Government, as the case may be, is satisfied that is necessary or desirable to place under suspension a member of the service, against whom disciplinary proceedings are contemplated or are pending that Government may-

(a) if the member of the service is serving under that Government, pass an order placing him under suspension, or

(b) if the member of the service is serving under another Government request that Government to place him under suspension,

pending the conclusion of the disciplinary proceedings and the passing of the final order in the case.

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13 The above rule enables the State Government or Central Government as the case may be to place an All India Service Officer under suspension against whom disciplinary proceedings are contemplated or are pending. It is only the satisfaction of the said Government which is required to place the officer under suspension and mere contemplation is enough. It is clearly mentioned in the Annexure A-4 order dated 5.6.2006 that the applicant is placed under suspension pending disciplinary proceedings relating to the charges as mentioned in the suspension order. Therefore this case is entirely on a different footing and we do not consider that the order is in any manner legally unsustainable under the provision of the All India Service (Discipline & Appeal Rules) 1969 as contended by the

applicant.

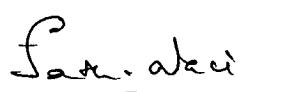
14 The main contention of the applicant is that Annexure A-4 rests on factually or legally wrong premises. We have found that legally the order cannot be held to be invalid. In fact, these are matters which the aggrieved party should take up before the competent authority as the rules permit the submission of an appeal or memorial against the order as provided in Rule 16 of the AIS(D&A) Rules, 1969 and instructions in the DPR Letters No. 11018/1/76-AIS(III) dated 11.2.1976 and of even number dated 30.4.1979. The applicant at the initial stage itself was advised by us to file an appeal and now the learned counsel for the applicant has submitted that he has not filed the appeal as he was under the impression that the decision in O.A. 108/06 would govern his case also. This has been proved to be not correct as we have explained above that O.A. 108/06 was allowed on a totally different ground. Hence we are of the considered view that the facts and the other legal issues raised by the applicant regarding the applicability of the Kerala Preservation of Trees Act 1986 and Ecologically Fragile Land Act, and the fact that the incident occurred prior to the assumption of the charge of the applicant, etc. should be placed before the concerned Departmental authority and the Tribunal cannot go into these issues while discharging the function of judicial review of the vires of the order. The competency of the State Government to issue such an order is not in doubt as per the AIS(Disciplinary and Appeal) Rules 1969 as

discussed above. Therefore the suspension will not be unsustainable in law. Its unsustainability on the facts of the case has to be gone into by the competent authority.

15 Therefore, we direct the applicant to submit an appeal or memorial to the competent authority as per the rules within two weeks from the date of receipt of the order. Taking note of the fact that the delay has occurred in filing the appeal due to the pendency of the O.A and the mistaken impression in the mind of the applicant that the O.A is covered by the order of this Tribunal in O.A. 108/06 which had been decided in favour of the applicant, we direct that the competent authority shall accept the appeal petition if submitted by the applicant condoning the delay that has occurred due to the applicant approaching this Tribunal and also further direct that the appeal shall be disposed of as expeditiously as possible. With these directions the O.A. is disposed of. No costs.

Dated 19.2.07


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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