

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 530/2012

TUESDAY, this the 12th day of February, 2013

CORAM:

**HON'BLE Mr. JUSTICE P.R. RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

1. Sanjeeb Kumar Patjoshi, I.P.S
Inspector General of Police,
Kerala State Human Rights Commission,
Kerala, Thiruvananthapuram : 695 014
2. T.O. Sooraj,
Secretary to Government, Youth Affairs and
Director of Industries and Commerce,
vikas Bhavan, Thiruvananthapura – 1

(By Advocate Mr. P.K. Manoj Kumar)

versus

1. The Union of India represented by its Secretary to Government, Public Grievances and Pension, Department of Personnel and Training, Government of India, New Delhi.
2. The State of Kerala represented by the Chief Secretary Government of Kerala, Secretariat, Thiruvananthapuram – 1 ... Respondents.

(By Advocate Ms. Deepthi Mary Varghese for R-1
Mr. M. Rajeev, G.P. for R-2)

This O.A. having been heard on 01.02.13, this Tribunal on 12-02-13 delivered the following :-

ORDER

HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

The applicants were charge sheeted under the All India Service (Discipline and Appeal) Rules, 1969, vide separate memos dated 08.11.2006

for alleged grave irregularities, dereliction of duty and breach of conduct on their part in respect of massacre at Marad on 02.05.2013. Their written statements of defence dated 27.10.2007 and 27.12.2006 respectively were submitted. The State Government ordered enquiry into the charges against the applicants vide order dated 10.10.2008. Aggrieved by the inordinate delay in finalising the disciplinary proceedings against them, the applicants have filed this O.A for the following reliefs:

“(i) To declare that the disciplinary proceedings initiated against the applicants on the basis of Annexure A-1 and A-4 Articles of charges as null and void;

(ii) To declare that the enquiry proceedings initiated against the applicants pursuant to Annexure A-1 and A-4 Article of charges issued to the applicants is vitiated by delay and to direct the second respondent to close and cancel the entire proceedings initiated against the applicants pursuant to Annexure A-1 and Annexure A-4;

(iii) To declare that the second respondent have no power or authority to issue Annexure A-7 order appointing the Vigilance Tribunal, Kozhikode, appointed under the Kerala Civil Services (Vigilance Tribunal) Rules, 1960 as the Inquiring Authority to inquire into the allegations in Annexure A-1 and A-4 Article of charges, against the applicants who are All India Service Officers;

(iv) To declare that the Vigilance Tribunal, Kozhikode, has no jurisdiction or authority to enquire into the charges in Annexure A-1 and A-4 levelled against the applicants who are All India Service officers, in the light of the provisions of law contained in Rule 8 of All India Service (Discipline and Appeal) Rules, 1969;

(v) To declare that all proceedings pending before the Vigilance Tribunal, Kozhikode, against the applicant who are All India Service officers pursuant to Annexure A-7 notification issued by the State Government is illegal, null and void.;

(vi) To issue such other further directions that this Hon'ble Tribunal may deem fit and proper to grant.”

2. In the interim order dated 14.08.2012, this Tribunal held that the

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appointment of the Vigilance Tribunal in the present case as enquiring authority is contrary to the decision rendered in O.A. No. 862/2010 at Annexure A-10 and stayed all further proceedings pursuant to order dated 10.10.2008 at Annexure A-7 and the respondents were given 03 weeks time for filing counter affidavit which was subsequently extended for 03 times.

3. On 01.02.2013, the parties were heard. During hearing, the learned counsel for the respondents submitted a copy of the order of the State Government dated 05.12.2012 by which the disciplinary proceedings against the applicants were reassigned to a senior officer of the Government, who was required to submit the enquiry report within three months, and contended that the O.A has become infructuous as the main grievance of the applicants has been redressed.

4. On the other hand, the learned counsel for the applicants submitted that protracted disciplinary proceedings should be avoided not only in the interest of the applicants but in public interest and also in the interest of inspiring confidence in the minds of the Government employees. He relied on the judgement of the Hon'ble Supreme Court in ***P.V. Mohadevan vs. MD, T.N. Housing Board***, (2005) 6 SCC 636. He further contended that the delay in concluding the enquiry has resulted in incalculable injury, loss, hardship and inconvenience to the applicants. There was no recommendation to take disciplinary action in the report of the Judicial Commission of Enquiry which enquired into the massacre at Marad on 02.05.2003. The charges were based on no evidence. They were quaint, vague and uncertain. The applicants have been discriminated against, in the matter of initiating

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disciplinary proceedings on the basis of the observation in the report of Judicial Commission of Enquiry. Therefore, the learned counsel for the applicants urged that the disciplinary proceedings initiated against the applicants should be declared as null and void.

5. The massacre at Marad occurred on 05.02.2003. The applicants were charge sheeted on 08.11.2006, i.e. more than 03 years after the massacre. The statements of defence were submitted by the applicants in 2006 and 2007. The first applicant had moved the Government to finalise the disciplinary proceedings. Subsequently, both the applicants requested the Government to drop the proceedings. The enquiry is now more than 06 years old. The delay in concluding the disciplinary proceedings cannot be attributable to the applicants. They have suffered on account of the enquiries against them. Hon'ble Supreme Court had held in a catena of cases that delayed initiation of disciplinary proceedings and delay in finalising the same are arbitrary and unreasonable. However, we find that as per the order dated 05.12.2012, the enquiry officer is expected to submit his report within 03 months.

6. In the conspectus of the facts and circumstances of the case, we are of the considered view that in the interest of justice, the enquiries against the applicants should be brought to an end without further delay. Accordingly, without going into the merits of the contentions, the O.A. is disposed of as under.

7. The respondents are directed to conclude the disciplinary proceedings

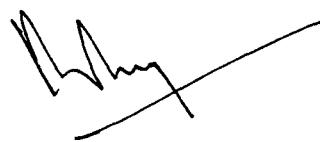
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initiated against the applicants vide Annexures A-1 and A-4 both dated 08.11.2006 within a period of 04 months from the date of receipt of a copy of this order failing which the said disciplinary proceedings against the applicants shall stand dropped. No costs.

(Dated, the 12th February, 2013)



K.GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R. RAMAN
JUDICIAL MEMBER

cvr.