CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.590/97 and O.A.591/97

Friday, this the 11th day of September, 1998.

CORAM:

HON'BLE MR AV HARIDASAN, VICE CHAIRMAN

HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

O.A.590/97

K Achuthan,
I.F.S.(Retired),
Conservator of Forests,
Vrindavanam,
Kandalloor.P.O.
Alappuzha. - Applicant

By Advocate Mr OV Radhakrishnan

vs

1. State of Kerala,
represented by its
Chief Secretary to Government,
Secretariat,
Thiruvananthapuram.

2. Principal Chief Conservator of Forests(General),
Thiruvananthapuram.

3. District Collector,
Alappuzha.

4. Union of India represented by
its Secretary,
Ministry of Environment and Forests,
Paryavaran Bhavan, CGO Complex,
Lodhi Road, New Delhi. - Respondents

By Advocate Mr CA Joy, G.P.(for R.1 to 3)

By Advocate Mr Govindh K Bharathan, SCGSC(for R-4)

O.A.591/97

Babuji A George,
I.F.S.(Retired),
Deputy Conservator of Forest in chargee
Conservator of Forest(Inspection and Evaluation)
Kozhikode.
Residing at Ayirakuzhiyil,
Panicker Road,
Kozhikode-673 011. - Applicant

By Advocate Mr OV Radhakrishnan

Vs

1. State of Kerala represented by its
Chief Secretary to Government,
Secretariat,
Thiruvananthapuram.

2. Principal Chief Conservator of Forest(General),
Thiruvananthapuram.

3. District Collector,
Kozhikode.

4. Union of India represented by its
Secretary,
Ministry of Environment and Forests,
Paryavaran Bhavan, CGO Complex,
Lodhi Road, New Delhi. - Respondents

By Advocate Mr CA Joy, G.P.(for R.1 to 3)

By Advocate Mr Govindh K Bharathan, SCGSC(for R.4)

The applications having been heard on 9.9.98, the Tribunal on 11.9.98 delivered the following:

O R D E R

HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

These two cases relate to identical issues and are disposed of by a common order. For purposes of discussion we will refer to the pleadings in O.A.590/97.

2. Applicant is a retired Conservator of Forests belonging to the Kerala cadre of the Indian Forest Service. By A-1 dated 29.1.91, certain charges were levelled against him. Applicant submitted A-2 written statement of defence against the articles of charges and by A-3 order dated 10.12.92, the Government issued the following order:

"In view of the remarks offered in your letter cited Government have decided not to proceed with disciplinary action against S/Shri Babuji A George and Achuthan.K, IFS in this case."

On his retirement, the second respondent issued a no liability certificate in respect of the applicant and forwarded it to the Government on 18.9.96 as seen from A-4. However, the applicant was not paid his retiral benefits. Thereafter, the impugned order A-5 dated 15.4.97 was served on the applicant stating that the Government had ordered a vigilance enquiry into the irregularities in the preparation of estimates for the felling, collection and transport etc. of bamboos in 1979 Teak Plantation of Chedlath Range in Kozhikode Forest Division during 1987-88 and 1988-89. A-5 further states that the vigilance enquiry report was received on 19.5.94 recommending an enquiry against three officers including the applicant by the Vigilance Tribunal and recovery of loss of Rs.4,83,962 sustained by Government from the applicant and Shri Babuji A George(Applicant in O.A.591/97). A-5 further states as follows:

> "A detailed examination of the case revealed that both the officers i.e. Shri Babuji A George, IFS(Retd) and Shri K Achuthan, IFS(Retd.) are responsible for the loss sustained by the Government. After considering all aspects of the issue Government have decided to recover the loss sustained by Government due to the irregularities in the execution of the departmental works from the two accused officers, under Public Accountants Act of 1963. Accordingly this amount of Rs.4,83,962(Rupees four lakhs eighty three thousand nine hundred sixty two only) will be recovered equally from Shri Babuji A George, IFS(Retd.) and Shri K Achuthan, IFS(Retd.)(i.e.Rs.2,41,981 each)(Rupees two lakhs forty one thousand nine hundred and eighty one only) by following the procedure stipulated in Sections 3&4 of Public Accountants Act, 1963.
>
> 5. The District Collectors, Kozhikode and Alappuzha will take necessary steps to recover the amount from the accused officers viz. Shri Babuji A George and K Achuthan respectively, and report compliance to Government."

Applicant is aggrieved by this order and prays that A-5 be quashed and for the following reliefs:

> "(ii) to issue appropriate direction or order commanding the respondents not to proceed against the applicant pursuant to Annexure A5 Government Order dated 15.4.97;
>
> (iii) to declare that the provisions of the Kerala Public Accountants Act, 1963 cannot be invoked for recovering the amount of Rs.4,83,962 or any portion thereof from the applicant on the basis of the recommendations made in the Vigilance enquiry report received by the Government on 19.5.1994 and made mention of in Annexure A5 Government order;
>
> (iv) to issue appropriate direction or order compelling respondents 1 and 2 to sanction and disburse full pension and other retiral benefits legitimately due to the applicant without regard to Annexure A5 dated 15.4.1997 and the Vigilance enquiry report relied on therein with 18% interest per annum from the respective dates they came due till the date of payment."

The averments in O.A.591/97 are also in the same line as in this O.A. but for difference in name and date and the impugned order is common.

Applicant urges the following grounds to support his prayers:

> (1) A-5 order under the Public Accountants Act 1963 is illegal, arbitrary and without authority of law and is violative of Articles 14, 16, 21 and 300-A of the Constitution of India and Rule 9 of the CCS(Pension) Rules, 1972.
>
> (2) The Vigilance enquiry was conducted without notice to the applicant and the applicant was not questioned even by the Deputy Superintendent of Police(Vigilance), Northern Range whose report is relied on in A-5. It was only a fact finding enquiry conducted by the Vigilance Department and the recommendations made therein cannot have any binding character. On the basis of the

recommendations, the Government cannot take any departmental or judicial proceedings against the applicant in view of the specific statutory bar contained in Rule 9(2)(b) of the CCS(Pension) Rules, 1972. The departmental proceedings already initiated had been dropped by the Government and thereafter fresh departmental proceedings in respect of the same charges cannot be initiated. The Government is precluded from proceeding against the applicant for fixing or quantifying the liability, if any, on the basis of the recommendations made in the vigilance enquiry.

(3) The loss caused to the Government must first be established and then it must be established that the said loss was caused by the default or misconduct of the Public Accountant by a competent authority in a legally valid proceeding before the Kerala Public Accountants Act, 1963 can be invoked.

(4) The enquiry contemplated under sub section 3 of Section 3 of the Kerala Public Accountants Act, 1963 is limited to the extent of enforceability of the liability already fixed against a public accountant. The liability cannot be determined under the Act by the Collector. The liability can be determined only in a departmental or judicial proceedings and only thereafter the Public Accountants Act can be invoked to recover the amounts due.

(5) The word 'claim' means a "demand for something as due" or to "seek or ask for on the ground of right etc." The Government cannot demand an amount of Rs.4,83,962 as of right from the applicant or any other official on the basis of the recommendation in a vigilance enquiry report which is not binding on anybody. The recommendations of the vigilance enquiry report cannot partake of the character of a finding of liability in a departmental or judicial proceedings.

(6) The applicant was not served with a copy of the vigilance enquiry report or given an opportunity to controvert the allegations levelled

against him. The conclusions arrived at in the vigilance enquiry report are not disclosed to the applicant. There is therefore a clear breach of the principles of natural justice.

(7) There is no justification for withholding the pension and other retiral ... benefits even though no liability certificate was forwarded to the Government.

3. The respondents have submitted in their reply statements that the recovery of amount due to the Government from a person who is already retired from service cannot be termed as a "service matter" and that the Tribunal has no jursidiction to entertain the O.A. Even though departmental proceedings were initiated against the applicant and were subsequently dropped for certain technical reasons, a vigilance enquiry was ordered into the matter by Government letter dated 10.12.92. The enquiry conducted by the vigilance department revealed that the applicant had gone wrong in making the suggestion for clear felling of bamboos directly by the Department and the sanction given by Shri Achuthan, the then Conservator of Forests was not in order. The said action has resulted in a loss of Rs.4,83,962 to Government. The vigilance enquiry report was received only on 19.5.94 and by the time it was processed the applicant had retired. No disciplinary action could be taken against the applicant since the incident had occurred beyond a period of 4 years of his retirement. Therefore the Government has decided to invoke the provisions contained in the Public Accounts Act 1963 for recovery of the loss sustained by the Government due to the default of a Public Accountant. Merely because no action could be initiated under the All India Services(Discipline and Appeal) Rules, the applicant cannot claim that recovery of loss shall not be effected by any means.

..7

4. In his rejoinders the applicant submits that the expression "service matter", is wide enough to take in any conduct of a person in the course of or in the capacity of a member of any All India Service. The action of the respondents in proceeding against the applicant without a legal claim cannot be termed as a matter falling outside the jurisdiction of the Tribunal. The applicant is not disputing that he is a Public Accountant or that the Public Accountants Act cannot be invoked against him for recovering any claim. His specific case is that the Government or the Department did not establish any liability against him in any valid proceedings either judicial or departmental before or after his retirement and therefore the Government and the Department have no legal or valid claim against him. A-4 order dropping the proceedings against the applicant did not reserve any right to take any further action nor did the order state that the dropping of the departmental proceedings was subject to any vigilance or judicial enquiry. A-4 orders dropping the enquiry were unconditional. There was ample time after the enquiry report was received by the Government to take action against the applicant before he retired and if such action had been commenced, it could have been continued after his retirement in accordance with the rules in that behalf. Having permitted the applicant to retire on superannuation and no liability having been fixed against the applicant in any departmental or judicial proceedings while in service or after retirement, it is not possible or permissible to recover the amount towards liability which was not fixed or quantified by issuing a notice to the applicant by invoking the provisions contained in the Public Accountants Act, 1963. Applicant is not aware as to whether a crime case was registered against him in the Vigilance Police Station(Special Cell) and he was not informed about registering such a case. The alleged loss was arrived at by the Vigilance Police without notice to the applicant and without affording him an opportunity of being heard and it cannot be made the basis

for fastening the liability on the applicant. The Director, Vigilance Investigation had recommended only disciplinary action against the applicant. That clearly shows that the liability can be determined only in a departmental or judicial proceeding. The fact that such a disciplinary action cannot be initiated in terms of the rules in that behalf is no reason to proceed against the applicant without quantifying the loss in proper proceedings. The Kerala Public Accountants Act is only an executory law and liability or quantum of claim cannot be determined thereunder.

5. It is clear from the pleadings summarised above that the Kerala Public Accountants Act 1963 only provides for speedy recovery of amounts due to the state from a public accountant and does not prescribe the mechanism for determining the liability of the Public Accountant. The action proposed in the impugned order is taken against the applicant on the basis of action performed by him during his service and the fact that he has retired would not place the proceedings beyond the jurisdiction of the Central Administrative Tribunal. The ground regarding lack of jurisdiction raised by the respondents cannot therefore be accepted.

6. It is clear that any claim against the applicant regarding the loss allegedly caused by him can be fixed only under a disciplinary proceedings initiated against him or in any judicial proceedings and that no such proceedings have been taken to fix the liability of the applicant. The Government cannot unilaterally examine the vigilance enquiry report and decide that the applicant is liable for loss that might have been caused to the Government. Based on the vigilance enquiry report legally acceptable proceedings should have been taken up to fix the liability of the applicant. This has not been done. The Public Accountants Act cannot be invoked unless the claim has been first determined and the

liability has been fixed on the applicant in legally acceptable proceedings and the Act does not provide the mechanism for determining the liability or the claim. Only after the claim or liability is determined in separate proceedings, while the execution proceedings for recovery are resorted to, the Act provides for an opportunity to the applicant to show cause against the recovery. Such post-decisional opportunity would not be equivalent to the grant of an opportunity to the applicant at the time of fixation of the liability or the claim. The vigilance enquiry report was not made available to the applicant and the Government fixing the liability on the applicant without any enquiry in which he participated and was given opportunity to show cause against the proceedings is clearly in violation of natural justice. Absence of a legal means to recover losses does not permit the respondents to order recovery by illegal means. The liability fixed on the applicant cannot therefore be sustained and the action taken under the Kerala Public Accountants Act in the absence of any legally determined claim cannot also be sustained.

7. In the light of the discussion above, we find that the contentions raised by the applicants in both these applications are well founded. The impugned order A-5 in O.A.590/97(A-7 in O.A.591/97) is quashed. The prayers (ii) and (iii) are allowed. As regards prayer(iv), we direct the respondents to sanction and disburse the full pension and other retiral benefits legitimately due to the applicant with interest at 12% per annum from the date on which they became due till the date of payment, within a period of three months of today.

8. Applications are allowed as aforesaid. No costs.

Dated, the 11th September, 1998.

sd/-
(PV VENKATAKRISHNAN)
ADMINISTRATIVE MEMBER

sd/-
(AV HARIDASAN)
VICE CHAIRMAN

trs/10998

CERTIFIED TRUE COPY
Date 14-9-98

Deputy Registrar

LIST OF ANNEXURES

O.A. 590/97

1. Annexure A1 : True copy of the Articles of Charges No.17394/Spl.C2/89/GAD dated 29.1.1991 of the first respondent.

2. Annexure A2 : True copy of the representation No.KA/CFPWP.877/91 dated Nil of the Applicant to the Commissioner and Secretary,(Forests & Wild Life), Govt. of Kerala, Thiruvananthapuram.

3. Annexure A3 : True copy of the letter No.89269/Spl.C2/91/GAD dated 10.12.1992 of the first respondent.

4. Annexure A4 : True copy of the letter No.DO. No.F1-70152/95 dated 5.3.1997 of the second respondent.

5. Annexure A5 : True copy of the Government Order No.G.O(Rt) 3006/97/GAD dated 15.4.1997 of the first respondent.

(Annexure A7 in O.A.591/97)

.....