

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application NO. 77 OF 2009

Thursday, this the 20th day of August, 2009.

CORAM:

**HON'BLE Dr. K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

Dr. Jacob Thomas I.P.S.,
Managing Director,
Kerala Transport Development
Finance Corporation Ltd.,
Trans Towers, Vazhuthacaud,
Thiruvananthapuram.

... **Applicant**

(By Advocates Mr. K.R.B. Kaimal, Sr.
with Mr. B. Unnikrishna Kaimal)

versus

1. Union of India represented by the
Secretary to Government of India,
Ministry of Home Affairs, New Delhi.
2. State of Kerala represented by the
Chief Secretary, Government of Kerala,
(General Administration – Special A
Department), Secretariat,
Thiruvananthapuram.

... **Respondents**

(By Advocate Mr. T.P.M. Ibrahim Khan, SCGSC (R1)
Advocate Mr. R. Premsankar, GP (R2))

The application having been heard on 12.08.2009, the Tribunal
on *20-08-09* delivered the following:

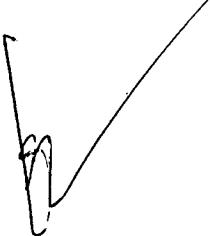
ORDER
HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

The applicant, an I.P.S. Officer having the qualifications of M.Sc.
(Agronomy), Ph.D (Agronomy) and Doctorate in Human Resources
Development (Management) at present serving as Managing Director of
Kerala Transport Development Finance Corporation Ltd. is an aspirant for the
post of Director of T.K.M. Institute of Management, Kollam affiliated to the

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University of Kerala which has been approved by the All India Council for Technical Education under the AICTE Act. The institute has offered the said appointment to the applicant and has also requested respondent No.2 to spare the applicant for a period of 5 years or as decided by the State Government. Annexure A1 refers. The applicant on his part has preferred a representation vide Annexure A3 seeking permission for such deputation and if deputation is not permissible, for extra ordinary leave on academic grounds without pay and allowances for 5 years with effect from 01.09.2008. As per Annexure A5 order dated 04.07.2006, no member of the All India Services should be allowed by the State Governments to undertake any private employment after taking leave from the State Government and all such cases should be referred to the Government of India for approval and necessary permission for service under an international organization, an autonomous body not controlled by a Government or a private body under Rule 6 (2) (ii) of the respective All India Services (Cadre) Rules. In view of the above stipulation, the second respondent had addressed communication to the first respondent as under :-

“I am directed to inform that Dr. Jacob Thomas IPS, (KL. 1985) Managing Director, Kerala Transport Development Finance Corporation Limited has requested for Extra Ordinary Leave without pay and allowances for five years w.e.f. 1.9.2008 for taking up employment as Director in T.K.M. Institute of Management, a private academic institution affiliated to Kerala University. State Government recommends to sanction Extra Ordinary Leave for a period of two years from the date of avail for the purpose. It is requested to convey the concurrence of Government of India for further necessary action. Copy of the application for Extra Ordinary Leave submitted by Dr. Jacob Thomas and the request made by the T.K.M. Institute of Management are also enclosed.



2. In this regard I am also to inform

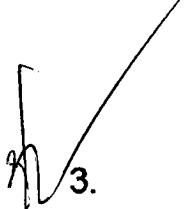
that at present a vigilance enquiry (No.VE 2/07/SCE) is going on against the officer in Government. No charges has been framed against the officer."

2. The applicant from his side has preferred representation dated 06.12.2008 to respondent No.1 through respondent No.2 requesting for necessary permission for deputation and extra ordinary leave without pay and allowances. As there was no communication either granting or refusing permission as asked for by the applicant, the applicant moved this Tribunal in O.A. No.742/2008 and the same was disposed of with a direction to the respondent No.1 to consider on priority basis the representation of the applicant and the decision be communicated to him and respondent No.2. Annexure A9 order refers. In pursuance of the above direction, the first respondent had considered the request of the applicant but rejected the same vide impugned Annexure A11 order dated 30.12.2008. The said order reads as under :-

"Sub: Request for Extra Ordinary Leave to
Shri. Dr. Jacob Thomas, IPS (KL:85) for
employment purpose in a private institutional
Organization affiliated to Kerala University –
Reg.

Sir,

I am directed to refer to your letter No.55169/Spl.A3/2008/GAD dated 13th October, 2008 on the subject mentioned above. The private organization in which Dr. Jacob Thomas, IPS (KL:85) proposed to take up employment is not covered under Rule 6(2)(i) of IPS (Cadre) Rules, 1954. Moreover, a vigilance enquiry has been initiated against him, as reported by the State Government, he is not free from vigilance angle. In view of the above, the request made by him could not be acceded to."



3. The applicant has challenged the above order through this O.A. and

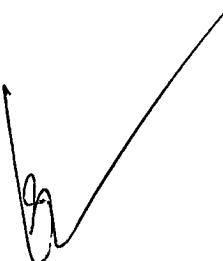
prayed for the following :-

- "(i) an order quashing Annexure A-11.
- (ii) an order directing the 1st respondent to reconsider Annexure A-6 and to issue orders granting permission to the applicant to take up the employment as shown in Annexure A-5;
- (iii) an order directing the 2nd respondent to issue orders sanctioning the Extraordinary Leave without Pay and Allowances for 2 years as recommended by them, to enable the Applicant to take up employment in T.K.M. Institute of Management, Kollam, without any further delay."

4. Respondent No.1 has filed reply stating that there are only a few posts that are covered under deputation within the State Government and the same are as under :-

- (i) A Municipal Corporation or a Local Body of the State,
- (ii) State Government PSUs,
- (iii) Training/Research/Educational Institutions wholly or substantially funded or controlled by the State Government,
- (iv) Autonomous Institutions wholly or substantially funded or controlled by the State Government.,
- (v) A registered Trust or Society or Association or Body of Individuals wholly or substantially funded or controlled by the State Government."

5. In so far as the request of the applicant is concerned, the respondents have further stated as under :-


"The service conditions of All India Service Officers are governed according to the rules framed by the Central Government in

consultation with the State Governments under the All India Service Act, 1951. Deputation to an international organization, an autonomous body not controlled by the Government, or a private body is only possible under Rule 6(2) (ii) of the respective All India Service Cadre Rules for which the Cadre Authority is the Central Government. The request of the petitioner for taking up of an assignment of T.K.M. Institute of Management, was forwarded to this respondent but the same was rejected as the Institute is not covered under the rule ibid. Further, the State Government (R-1) informed that a vigilance enquiry is pending against the applicant, therefore, the applicant was denied vigilance clearance by the Respondent No.1."

6. The fact that due to pendency of a vigilance enquiry against the applicant, the request made by him was not agreed to by respondent No.1 has been reiterated in this reply.
7. In so far as respondent No.2 is concerned, in the reply it has been stated that the relief sought for by the applicant is a matter coming under the purview of Government of India, Ministry of Home Affairs. The fact that the said respondent No.2 had forwarded the recommendation letter to Government of India for their concurrence has been confirmed in their reply.
8. The applicant had filed his rejoinder to reply of respondent No.1. It has been contented that the applicant's case falls under Rules 6 (2) (ii) of Indian Police Service Cadre Rules, 1954 and not 6(2) (i) of the said Cadre Rules. It has also been contented that mere pendency of vigilance enquiry is not relevant in matter of grant of leave.

9. The senior counsel for the applicant argued that the following are the relevant rules in regard to the subject matter in this O.A. :-

(a) Rule 6 of the Indian Police Service (Cadre) Rules 1954 which reads as under :-

" 6. Deputation of cadre officers – 6

(1) A cadre officer may, with the concurrence of the State Governments concerned and the Central Government, be deputed for service under the Central Government or another State Government or under a company, association or body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by the Central Government or by another State Government.

Provided that in case of any disagreement, the matter shall be decided by the Central Government and the State Government or State Governments concerned shall give effect to the decision of the Central Government.

(2) A cadre officer may also be deputed for service under -

(i) a company, association or body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by a State Government, a Municipal Corporation or a Local Body, by the State Government on whose cadre he is borne; and

(ii) an international organization, an autonomous body not controlled by the Government, or a private body, by the Central Government in consultation with the State Government on whose cadre he is borne:

Provided that no cadre officer shall be deputed to any organization or body of the type referred to in item (ii), except with his consent:

Provided further that no cadre officer shall be deputed under Sub Rule (1) or Sub Rule (2) to a post other than a post under the Central Government or under a company, association or body of individuals whether incorporated or not, which is wholly or substantially owned or

controlled by the Central Government, carrying a prescribed pay which is less than, or a pay scale, the maximum of which is less than, the basic pay he would have drawn in the cadre post but for his deputation”

b) Rules 7 & 15 of All India Services (Leave) Rules, 1955 which reads as under :-

“7. Maximum period of absence from duty. - (1) No member of the Service shall be granted leave of any kind for a continuous period exceeding five years.

[(2)] Unless the Central Government, in view of the special circumstances of the case, determines otherwise, a member of the service who remains absent from duty for a continuous period exceeding five years other than on foreign service, whether with or without leave, shall be deemed to have resigned from the service.

Note : Provided that a reasonable opportunity to explain the reason for such absence shall be given to the member of the service before the provisions of sub rule (2) are invoked.”

“15. Extraordinary Leave. - 15(1) Subject to the provisions of rule 7, extraordinary leave may be granted to a member of the Service in the following special circumstances, that is to say -

(a) When no other kind of leave is admissible, or

(b) When any other kind of leave is admissible but the member of the Service applies in writing for the grant of extraordinary leave.

(2) Government may retrospectively convert periods of absence without leave into extraordinary leave even when any other kind of leave was admissible at the time when absence without leave commenced.

(3) Extraordinary leave shall not be debited to the leave account.”

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(c) Rule 13 of the All India Services (Conduct) Rules, 1965 which reads,

"no member of the service shall, except with the previous sanction of the Government undertake any other employment".

10. The senior counsel argued that vide impugned order at Annexure A1, two reasons have been spelt out in rejecting the request of the applicant for permission to take up private employment and for grant of extra ordinary leave. The same are as under :-

(a) The private organization in which the applicant proposed to take up employment is not covered under Rule 6 (2) (i) of IPS (Cadre) Rules, 1954.

(b) A vigilance enquiry has been initiated against the applicant as reported by the State Government and thus the applicant is not free from vigilance angle.

11. The senior counsel submitted that in so far as the first reason is concerned, the same is untenable since the case of the applicant falls under Rule 6 (2) (ii) of IPS Cadre Rules, 1954. If it were under Rule 6 (2) (i), permission of the Central Government is not essential. As regards the second reason, the senior counsel argued that generally whenever a vigilance enquiry takes place, the individual is kept under suspension so that there will be a smooth sailing of enquiry. In other words, during enquiry if the charged officer is kept away from the institution, that will be considered better and in the instant case, the applicant would be away from the State Government for 2 years. As such the said reason that the applicant has not been clear from vigilance angle is also not appropriate.

12.

Counsel for the respondents submitted that a reading of Rules 6 (2)

(ii) would go to show that the institution in which the applicant seeks appointment is not covered under the said rules.

13. The parties were permitted to file written submission as well, if the suit desires. Accordingly counsel for the applicant has filed his written argument, which has also been taken into account.

14. Rules stipulate that save with the previous sanction of the government, no member of the service can undertake any other employment.

Rule 6(2)(ii) of the a cadre officer may also be deputed for service under an international organization, an autonomous body not controlled by the Government, or a private body, by the Central Government in consultation with the State Government on whose cadre he is borne. But this provision does not give any right to the individual to claim deputation, but affords a power to the Central Government to send a member of the services on deputation to a private organization. If a member is desirous of moving to a private body, but the Central Government declines his request for deputation, then, the member could apply for extra ordinary leave under the All India Services (Leave) Rules which could be sanctioned by the State Government itself, but since under the Conduct Rules, for taking up private employment the applicant has to seek the permission of the Central Government, the State Government has, vide Annexure A-6. Thus, the respondents have misconstrued that the case of the applicant falls under Rule 6 where there is no provision for private employment, and ignored the provisions of Rule 13 of the Conduct Rules.

15. To a pointed question, as to whether the TKM Institute of

Management has still the vacancy unfilled, the senior counsel replied in affirmative. Hence, if the Central Government considers the case of the applicant dispassionately and arrives at a decision to grant necessary permission to take up private employment, the State Government could well consider grant of two years of extraordinary leave to the applicant, and the applicant would be in a position to join the services of the private body.

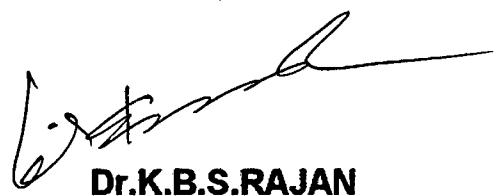
16. The OA is, therefore, allowed. Respondent No. 1 is directed to consider the case of the applicant for necessary permission to accept private employment for a period of two years and if the decision of the said respondent is in affirmative, then, the second respondent may consider grant of extraordinary leave to the applicant. The decision by the Central Government should be taken within a period of four weeks from the date of communication of this order, while grant of leave shall be considered by the respondent No. 2 within a period of two weeks thereafter. If the Central Government refuses permission, due reasons therefor, shall be given to the applicant.

17. No costs.

(Dated, the 20th August, 2009)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER



Dr. K.B.S. RAJAN
JUDICIAL MEMBER