

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NO. 108/2006

Monday, this the 30th day of October, 2006.

CORAM :

**HON'BLE Dr. K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER**

V.V. Mohanan, I.F.S.,
K.L.1991, Divisional Forest Officer,
Thrissur. : Applicant

(By Advocate Mr. Elvin Peter.P.J.)

Versus

1. State of Kerala represented by
its Chief Secretary,
Secretariat,
Thiruvananthapuram.
2. The Principal Chief Conservator of Forests,
Thiruvananthapuram.
3. Union of India represented by its
Secretary, Govt. of India,
Ministry of Environment & Forest,
Lodi Road,
New Delhi. : Respondents

(By Advocate Mr. P Parameswaran Nair, ACGSC (for R-3))

(By Advocate Mr K Thavamani, G.P. (for R.1 & 2)

The application having been heard on 17.10.2006, the Tribunal on 30.10.2006 delivered the following :

ORDER

HON'BLE MR N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

1. The applicant Sri V.V.Mohanan IFS is aggrieved by the order of suspension passed by the Government of Kerala.



2. The facts are that, in pursuance of certain irregularities pertaining to removal of timber from forests in Thrissur division, some forest officers were found to have committed certain lapses. The Government of Kerala passed the impugned order suspending the applicant for his alleged lapses in the discharge of his official duties. Relevant portions of the order are extracted here below:

"Serious irregularities pertaining to the illicit removal of timber from the final felling of 1939 - 40 Teak Plantation Bit-I, Cheppilakkode, Machad Range, Thrissur Division have been brought to the notice of Government. It is reported that one Shri I.K.Sulfikar, who was awarded the contract for removing the timber from the above coupe transported 16 loads of timber by forging 16 subsidiary transit passes intended to be supplied to the Depots. The value of the detected pilferage of 16 loads of timber is estimated at Rs.40 lakhs. The illicit removal of timber from the Teak Plantation is so grave that the Contractor managed to get away with such huge quantity of timber even after 5 month from the expiry of his contract. On conducting widespread verification 19.431 of timber in round and 9.43 M3 of converted timber worth Rs.7.9 lakhs were recovered and other tools valued at another Rs.11 lakhs used in the commission of the offence were seized.

The following lapses occurred on the part of officers as per the report of the Principal Chief Conservator of Forests.

1. No verification of timber received in the depots has been made in time and depot receipt issued. This against the provisions contained in the forest code and Circulars issued in this regard.
2. Payment was made by the DFO, Thrissur based on quantity Certificates received from the Timber Sales Division in the absence of depot receipts in Form 12 as against the provision in the Forest Code.
3. As per section 11.1.4(iv) of Kerala Forest Code, Depot Officers shall verify the delivered logs, taken them in the stock and issue depot receipt in Form 12 within 24 hours of receipt of timber to the DFO/Range Officer and the Contractor. Form 12 was issued after several months.
4. No enquiry/verification was made about the undelivered timber in the main passes, the currency of which expired.
5. The officers failed to detect the passes said to be tampered/forged by the contractor.
6. The contract period including the extended period expired on

30.6.2005. The pilferage of loads of timber was detected only on 6.12.2005. i.e. after a period of 5 months.

There are thus, serious lapses on the part of Shri VV Mohanan, IFS (KL: 1991), Divisional Forest Officer, Thrissur in the discharge of the official duties.

Having regard to the nature of the conduct of the officers and also the gravity of the charges Government have decided to remit the case to the Crime Branch Police for detailed investigation of the case. Government therefore considers that it is necessary to place Shri VV Mohanan, IFS (KL: 1991), Divisional Forest Officer, Thrissur under suspension till termination of all proceedings because of charges being connected with his position as a member of the service. Accordingly Shri VV Mohanan, IFS (KL: 1991), DFO, Thrissur is placed under suspension under Rule 3(3) of All India Service (Discipline & Appeal) Rules 1969 forthwith pending termination of all proceedings relating to these charges."

Aggrieved by the said order the applicant has approached this Tribunal.

3. He seeks to get the impugned order set aside and direct the respondents to reinstate him in service. His main ground is that neither an investigation, nor an inquiry is pending against him, the prerequisites for placing an all-India service order under suspension, under the relevant rules.

4. The respondents oppose the application. According to them the impugned orders were passed based upon the seriousness of the lapses involved and the State Government was competent to place an IFS officer under suspension under the relevant rule.

5. Heard the Counsel and perused the documents. During the hearing, the learned Counsel for the State Government was assisted by the Joint Secretary to the Government, who was familiar with the facts of the case.

6. The limited point for consideration is whether the *condition precedent* does exist in this case for placing the applicant under suspension. The relevant rule, ie., Rule 3(3) of the AIS (D&A) Rules, 1969 is reproduced below:

"3(3) A member of the service in respect of, or against whom

(emphasis supplied) 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.

7. The operative portion of this Rule which should concern us is the opening lines. Thus, there should be either an investigation, inquiry or trial, pending either in respect of or against the officer concerned. As pointed out by the applicant, the expressions 'investigation' and 'enquiry' in Rule are defined in the Criminal Procedure Code. Section 2(g) and (h) of the Code read as follows:

"2(g) 'enquiry' means every enquiry, other than a trial, conducted under this code by a Magistrate or Court.

(h) 'investigation' includes all the proceedings under this code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf."

The first step is the commencement of investigation followed by enquiry and trial. The point to be decided is whether, as on the date of passing of the impugned order, there was any investigation, pending against the applicant. The answer to this question is answered in the body of the order itself which says "...Government have decided to remit the case to the Crime Branch Police for detailed investigation of the case.." This would only mean that no investigation was pending on the day of passing of the impugned order. Further confirmation is available, if any was needed, from the respondents that only crime which is under investigation and in which the applicant is an accused is the one in case VC,2/2006/TSR registered in Vigilance and Anti-corruption Bureau Police station Thrissur on 12-5-2006, u/s 13(c)(d)r/w 13(2) of PC Act 1988 and u/s 420,409 & 120-B IPC in which the applicant is accused no 1. It was also confirmed that no other case is pending investigation against the applicant. Two points are worth noting in this regard. First, as on that date of the impugned

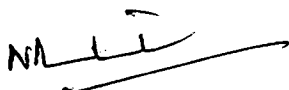


order there was no investigation pending against the applicant and the first ever investigation against the applicant in the above mentioned transaction started on 12-5-2006, almost three months after the impugned order. The respondents have no case that any other enquiry or trial had been pending against the applicant on the date of the impugned order.

8. We find therefore that the rule 3(3) of All India Services (Discipline & Appeal) Rules, 1969 envisages that a member of the service may be suspended only in respect of or against whom an investigation, inquiry or trial is pending, that on the date of the impugned order viz, 17.2.2006, none of these processes were pending as admitted by the respondents, that, in fact, the first ever case in which investigation started and in which the applicant was accused No.1 was registered on 12.5.2006 and that the ingredients of the above mentioned rule have not been satisfied.

9. Hence we order that the impugned order be quashed and the applicant be reinstated in service forthwith with consequential benefits, if any. No costs.

Dated, the 30th October, 2006.



N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER



Dr. K.B.S. RAJAN
JUDICIAL MEMBER

trs