

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAMBENCH

Original Application No. 262 of 2009

Thursday, this the 12th day of November, 2009

CORAM:

Hon'ble Mr. George Paracken, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

V.V. Mohanan IFS, Working Plan Officer,
Vanasree, Chinnakkada, Kollam.

Applicant

(By Advocate – Mr. Elvin Peter P.J.)

V e r s u s

1. Union of India, Ministry of Environment and Forests, represented by its Secretary, New Delhi.
2. The Union Public Service Commission, represented by its Secretary, New Delhi.
3. State of Kerala, represented by the Chief Secretary to Government, Government Secretariat, Thiruvananthapuram.
4. The Principal Secretary to Government, Forest and Wildlife Department, Government of Kerala, Secretariat, Thiruvananthapuram.

Respondents

[By Advocate – Mr. Varghese P. Thomas (R1)
Mr. Thomas Mathew Nellimoottil (R2)
Mr. R. Premsankar, GP (R3&4)]

The application having been heard on 12.11.2009, the Tribunal on same day delivered the following:

ORDER

By Hon'ble Mr. George Paracken, Judicial Member

The applicant is aggrieved by the Annexure A-2 show cause under Rule 8 of the All India Service (Discipline & Appeal) Rules, 1969 issued to

him vide letter No. 107041/Spl.C1/2003/GAD, dated 24.8.2004 containing the following articles of charges and the statement of imputations:-

Articles of Charge

"1. That you did not retain the custody of the cheque books and receipt books as laid down in the Kerala Forest Code, but allowed the same to fall into and get misused by Shri C.D. Bastin, Upper Division Clerk, Office of the Working Plan Officer, Thrissur thereby giving him an opportunity to misappropriate Government money to the tune of Rs. 8,15,763/- during November, 2000 to February, 2001.

2. That if you had followed up the monthly reconciliation of expenditure and of cheque book issued and cheque cashed at treasury, that could have unearthed cases of misappropriations immediately after their occurrence. The misappropriation that had occurred during November 2000 and February 2001 were detected only in June 2001. Thus you have failed in discharging your official duty."

Statement of Imputations

"Shri V.V. Mohanan, IFS, Deputy Conservator of Forests, while holding full additional charge of the post of Working Plan Officer, Thrissur, has given the charge of Working Plan Officer, Thrissur, to Shri C.D. Bastin, a U.D. Clerk in that office. Shri C.D. Bastin, U.D. Clerk, misusing the opportunity, misappropriated huge amount of Government money by forging documents and signature of Working Plan Officer, Thrissur, as detailed below:-

Period	Amount misappropriated	Details	Remarks/Departmental Officer's failure
November 2000	Rs. 10,000.00	Pay & allowances of Shri C.D. Bastin. Actual entitlement Rs. 5,164/-; but drew Rs. 15,164/- as per cheque	The custody of cheque was left to the UDC instead of the Working Plan Officer himself violating Para 4.9.3 Forest Code Vol.II. The departmental Officer did not verify the amount of bill and amount of cheque.
November 2000	Rs. 53,685.00	Amount drawn stated to be towards arrears of pay of Division staff from November 1998 to February 2000. Not supported by Acquittance Roll or Bill copy.	The custody of cheque was left to the UDC instead of the Working Plan Officer himself violating Para 4.9.3. Forest Code Vol. II. Failure of Working Plan Officer to verify Acquittance in support of disbursement.

Period	Amount misappropriated	Details	Remarks/Departmental Officer's failure
December 2000	Rs. 39,518.00	Preparing a false bill representing terminal leave salary of one PA Ibrahim Kutty, Range Officer who had already retired in July, 1998.	Terminal leave salary of Shri Ibrahim Kutty had already been paid in August, 1998. Failure to maintain service book, leave account etc. properly.
December 2000	Rs. 10,000.00	Wage bill of computer operator drawn Rs. 14,250/- in the place of actual requirement of Rs. 4,250/- only. Falsified entries in the cheque leaf.	This could be done by the clerk as he had a very free access to the cheque books. Failure to verify claim.
January 2001	Rs. 96,305.00	Preparing false bills representing terminal leave salary and higher grade fixation arrears of one Shri M.K. Karunakaran, Retired Range Officer.	Shri M.K. Karunakaran had already been paid his terminal leave salary as early as in March, 2000. Failure to maintain service book and wage records properly.
February, 2001	Rs. 5,96,295.00	Cheque for this amount was drawn without preparing bills or vouchers by forging signature of Working Plan Officer (WPO). In the monthly account the cheque was shown as cancelled.	The cheque book was left with the UDC Shri Bastin.
November 2000	9,960.00	A wage bill was prepared in the name of one Illoopunni K.C. forging signature of the WPO though there is no such person named K.C. Illoopunni in the Division.	The cheque book was left with the UDC Shri Bastin.

This illegal and unauthorized act of Shri C.D. Bastin caused great financial loss to the tune of Rs. 8,15,763/- to Government.

As per Para 4.9.3 Volume II of Kerala Forest Code, Cheque Books and Receipt Books shall be kept in personal custody of the Divisional Forest Officer or other officers authorized to sign the cheques or receipts. Para 4.8.8 ibid stipulates the procedure to be


followed in verification of Cash Book by Disbursing Officers. Total disregard to the above mentioned codal requirements by Shri V.V. Mohanan IFS coupled with the supervisory lapses, enabled Shri C.D. Bastin, U.D. Clerk, Working Plan Office, Thrissur, to misappropriate Government money as detailed above. Had the above codal provisions been observed, the misappropriation could have been prevented. The lethargic attitude in carrying out official duties and functions has led to misappropriation of huge amount of money by Shri C.D. Bastin, U.D. Clerk.

The above action tantamounts to grave dereliction of duty on the part of Shri V.V. Mohanan IFS punishable under the provisions of All India Service (Discipline & Appeal) Rules, 1969 and hence the charges."

2. The applicant, vide Annexure A-3 letter dated 4.11.2004, gave a detailed explanation denying the charges. He has submitted that the irregularities 1, 2 and 4 mentioned in the statement of imputations was committed by Shri C.D. Bastin, UDC working under him by forging the cheque leaves after he had signed and issued. As regards item 3 & 5 were concerned, they were irregularities committed by the clerk by way of misappropriation to the tune of Rs. 1,35,823/- by preparing terminal leave salary bills and arrears on account of grade fixation in respect of two retired Range Officers and the said misappropriation could not have been prevented, even if the cheque book was in his personal custody. As regards item No. 6 was concerned, it was misappropriation of Rs. 5,96,295/- by writing the cheque and forging his signature by the UDC. The UDC was given access to the cheque book because there were no cash chests or other appropriate containers in his room to keep it and other valuable records. Therefore, the cheque book was kept under lock and key in the safe inside the office room giving the spare key to Shri C.D. Bastin who was the only ministerial officer in his office to enable him to produce the same before any

authorized authorities for inspection, internal audit, finance inspection, etc. in his absence which used to be a prolonged ones, since he was only holding the additional charge of Working Plan Officer in addition to other urgent works in his original post. He has further submitted that he was fully conscious of the fact that Shri C.D. Bastin, UDC being a permanent government servant with years of experience and governed by all the rules and regulations applicable to government servants will be responsible for the custody of the articles in circumstances explained and also there was no reason to believe that a ministerial officer in such a situation would forge documents and cheques with ulterior motives, causing huge loss to government. As regards item No. 7 regarding misappropriation of Rs. 9,960/- was concerned, he submitted that the same was done by Shri C.D. Bastin, UDC by preparing wage bills in the names of fictitious persons forging his signature for approval of the bill and it was nothing but forging, cheating and criminal breach of trust. The amount was shown as paid from the advance already drawn and kept in the office. Therefore, the misappropriation of this amount also has nothing to do with custody of the cheque book.

3. The applicant has also stated in his explanation that he himself has verified the records before handing over charge of Working Plan Division, Thrissur to Shri K.J. Antony Joseph, IFS, Deputy Conservator of Forests, Research North, Thrissur. At that time Shri C.D. Bastin was absconding from duty. During verification of records he could get some sign of misappropriation and forgery of records. Subsequently he verified all the



records pertaining to the period in which Shri C.D. Bastin worked in Working Plan Office. It was due to his honest and sincere effort that he could find out the misappropriation. As all the misappropriations were well planned, Shri C.D. Bastin had taken all precautions to hide them for ever. If it was not detected by him at that time it would have been left as undetected forever. After detection of the misappropriation, he had taken all legal steps in the matter including lodging complaint in the Town East Police Station, Thrissur on 23.6.2001. Based on his complaint, a case was registered as Crime No. 593/2001 and subsequently transferred to Vigilance and Anti-Corruption Wing. Thereafter, the respondents have not taken any action and the matter was just kept pending.


4. The applicant has also submitted that during the pendency of the present disciplinary proceedings a number of IFS officers who were appointed along with him in the year 1991 and even his juniors have been promoted to the cadre of Conservator of Forest in the scale of Rs. 37,400-67,000/-. He has specifically given the case of Shri S. Gopalakrishnan, IFS (KL-1991) who was promoted to the grade of Conservator of Forests in the aforesaid scale and posted as Conservator of Forests (IHRD), Thiruvananthapuram in the existing vacancy. Similarly Shri Rajan Sehgal, IFS (KL-1992), Assistant Inspector General of Forests, Ministry of Environment & Forest, New Delhi was promoted to the grade of Conservator of Forest on proforma basis. He has stated that his case has been kept under the sealed cover. According to him, he was not promoted

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only because of the pendency of aforesaid inquiry proceedings against him.

5. After issuing the aforesaid articles of charge and statement of imputations on 24.8.2004 and receiving the explanation dated 4.11.2004 from the applicant, the respondents have not taken any action in the matter for several years. It was only with the issuance of Annexure A-9 order dated 31.1.2009, the respondents have even appointed Shri N.K. Sasidharan, IFS (KL:88), Conservator of Forest (Eastern Circle), Olavakkode, Palakkad as the Inquiring authority and Shri A.R. Sasikumar, IFS, Deputy CF, North Wayanad as Presenting Officer to inquire into the charges framed against him with direction to complete the inquiry and submit the report to the Government within two months. Thereafter, the applicant made Annexure A-7 and Annexure A-8 representations 11.3.2009 and 24.3.2009 respectively requesting the respondents to finalize the long pending disciplinary action against him at the earliest. However, the Respondents have not taken any further steps to finalize the disciplinary proceedings. He, has, therefore, approached this Tribunal with the present OA seeking a direction to the respondents to quash and set aside the Annexure A-2 Article of Charges and the Statement of imputation.

6. The applicant has relied upon the judgment of the Apex Court in the case of State of Andhra Pradesh Vs. N. Radhakishan – AIR 1998 SC 1833, and the judgments of the Hon'ble High Court of Kerala in Vilasanadas Daniel Vs. District Collector – 2001 (3) KLT 965 and Sheikh Meeran Rawther Vs. Principal Secretary to Government - 2001




(1) KLT SN 43.

6.1 In the case of N. Radhakishan (supra) Apex Court considered the question whether the disciplinary proceedings can be terminated on the ground of delay and consequently the charge memo itself can be quashed.

The Apex Court held as under:-

“19. It is not possible to lay down any pre-determined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all relevant factors and to balance and weight them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether delay has vitiated the disciplinary proceedings the Court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations.

20. In the present case we find that without any reference to records merely on the report of the Director General, Anti-Corruption Bureau, charges were framed against the respondent and ten others, all in verbatim and without particularizing the role played by each of the officers charged. There were four charges against the respondent. With three of them he was not concerned. He offered explanation regarding the fourth charge but the disciplinary authority did not examine the



same nor did it choose to appoint any inquiry officer even assuming that action was validly being initiated under 1991 Rules. There is no explanation whatsoever for delay in concluding the inquiry proceedings all these years. The case depended on records of the Department only and Director General, Anti Corruption bureau had pointed out that no witnesses had been examined before he gave his report. The Inquiry Officers, who had been appointed one after the other, had just to examine the records to see if the alleged deviations and constructions were illegal and unauthorised and then as to who was responsible for condoning or approving the same against the by-laws. It is nobody's case that respondent at any stage tried to obstruct or delay the inquiry proceedings. The Tribunal rightly did not accept the explanations of the state as to why delay occurred. In fact there was hardly any explanation worth consideration. In the circumstances the Tribunal was justified in quashing the charge memo dated July 31, 1995 and directing the state to promote the respondent as per recommendation of the DPC ignoring memos dated October 27, 1995 and June 1, 1996. The Tribunal rightly did not quash these two later memos.

21. Accordingly we do not find any merit in the appeal. It is dismissed with costs."

6.2 In *Vilasanadas Daniel (supra)* the Hon'ble High Court of Kerala held as under:

"9. Referring to the delay in the proceedings, it is further submitted at paragraph 13 of the counter-affidavit that "Even though the incident happened during 1976 there was administrative delay in processing the same and action could be taken against the petitioner and the other officers only recently". Such a casual statement, I am afraid, will not be sufficient at all to defend the proceedings now initiated against the petitioner. As already observed at the opening paragraph, the incident was in 1976, the memo of charges was issued only in 1991 and even thereafter there is a delay of more than 9 years in initiating a serious action in the matter of disciplinary proceedings by keeping the petitioner under suspension. Certainly serious prejudice is caused to the petitioner."

6.3 In *Sheikh Meeran Rawther (supra)* the Hon'ble High Court of Kerala has again held as under:


"We are unable to understand why the Government all of a sudden issued the memo of charges dated 18.1.2000 with regard to certain incidents happened 14 years ago on which the Secretary (Taxes I),

Board of Revenue, had opined that it would be difficult to prove the charges legally as early as in 1992. Matter rested there for years but resurrected all on a sudden. If the Government had any intention to take action with regard to the incident happened in 1986 it would have taken then and there. The precipitated action by the Government by issuing the memo of charges dated 18.1.2000 was not called for or could be justified at this distance of time. In the facts and circumstances of this case we are satisfied that the motive induced by the Government to take action against the appellant was not to take disciplinary proceedings against him for misconduct which is bonafide believed he had committed, but to wreak vengeance on him for incurring the wrath of the member of the Legislative Assembly. We may in this case notice that the charges were levelled against the appellant with regard to an incident happened in 1986. We also notice in 1987 memo of charges was issued to him on the basis of which enquiry was conducted by the Secretary who made a note on 3.9.1992 that it would be difficult to pursue the case legally. We must take it that the said opinion has been accepted by the Government. Government have issued the present memo of charges with regard to an incident which happened 14 years ago. There is no acceptable explanation for the delay. In the facts and circumstances of the case, we hold that the present memo of charges has been issued since the charges levelled against him in the memo of charges dated 15.10.1998 could not be proved. We also hold that the present memo of charges were vitiated by malafide and is ill motivated and issued for improper purpose. We therefore quash Ext. P1 memo of charges against the petitioner. Consequently the judgment of the learned Single Judge stands set aside."

7. The applicant has also relied upon the Annexure A-4 letter of the Principal Chief Conservator of Forests dated 19.10.2005 addressed to the Secretary to Government, General Administration (Special-C) Department, Thiruvananthapuram regarding the misappropriation of money by C.D. Bastin, Upper Division Clerk and the disciplinary action initiated against the applicant. The Principal Chief Conservator of Forests stated that the applicant himself was the officer who detected the misappropriation of money and he had taken all legal steps in the matter including lodging complaints before the Police and it was based on his complaint that the criminal case was registered against Shri Bastin and it was subsequently

transferred to the Vigilance and Anti-corruption Wing. He has also stated that the charges that the applicant did not keep the cheque book and cash book in his personal custody was not unusual in the Forest Department as the disbursing officers keep the cheque book and cash book with Head Accountants and Office Managers. Moreover, in most of the wings of the Department, the arrears of SST are pending for a long time due to various reasons beyond the control of officers. However, he stated that the issue is a serious crime and the Police should dig out the real culprits in their investigation either in Forest Department or in Government Treasury.

8. The respondents in their reply has submitted that the applicant was holding full additional charge of Working Plan Officer, Thrissur from 3.4.1998 to 5.8.2001 when the fraud occurred. Subsequently, a vigilance case VC 4/02/TSR was registered by the Director, Vigilance and Anti Corruption Bureau. As per vigilance circular No. 10280/E3/01/Vig dated 25.1.2005 when an investigation/inquiry against a government servant is initiated by the Director of Vigilance and anti-Corruption Bureau/Vigilance Tribunal, the Head of the Department/office concerned shall not initiate a parallel departmental inquiry on the same allegation. Accordingly, the action against the applicant at the departmental level were stopped. As the charges already framed and the irregularities pointed out by the Director, V&ACB were one and the same, revised article of charges and statement of imputations were not required. After completion of the Vigilance case, the Director, V&ACB submitted his report to government and the disciplinary proceedings were re-commenced.



8.1 They have also submitted that as per the findings of Director, V&ACB the whole misappropriation was caused due to the lack of supervision of the applicant. As per Treasury Rule 253, the Drawing Officer has to keep the Treasury Cheque Book under his custody in lock and key. The applicant has not followed the said statutory rule but the cheque book with the UD Clerk to keep the same and it led to the misappropriation of fund. The applicant was required to verify the cash book with the cheque, counterfoils and vouchers frequently but the same was not done. As supervisory lapses were evidently proved against the applicant departmental action against him has become necessary.

9. We have heard the learned counsel for the applicant and the learned counsel for the respondents. It is seen that the Article of charge was issued to the applicant way back on 24th August, 2004 and he submitted his explanation immediately on 4.11.2004. Thereafter, the respondents have not taken any effective steps in the matter to finalize the disciplinary proceedings. As a result the applicant was kept under cloud for all these 5 years. The explanation given by the respondent State that the vigilance case against the applicant on the same charge was pending all these years is not at all satisfactory. Because of the inaction on the part of the respondents, the applicant suffered irreparably. He was by passed by his batch mates and juniors in the matter of promotions. It was only in 2009 that the respondents have decided to re-commence the disciplinary proceedings and issued the Annexure A-9 order dated 31.1.2009 appointing Shri N.K. Sasidharan, IFS (KL:88), Conservator of Forest (Eastern Circle), Olavakkode, Palakkad as




the Inquiring authority and Shri A.R. Sasikumar, IFS, Deputy CF, North Wayanad as Presenting Officer with direction to the Inquiring authority to complete the inquiry and submit the report to the Government within two months. Again, there was no further action in the matter. Therefore, the applicant made representations dated 11.3.2009 (A-7) and 24.3.2009 (A-8) for speedy finalization of the disciplinary proceedings pending against him. Even then the respondents have not shown any interest to proceed with the inquiry. It is now nearly ten months that the inquiry proceedings have not moved an inch further. The inordinate delay in conducting the inquiry is highly prejudicial and it is against the interest of the applicant. Such delay not only spoils the future of the officials of the respondent State Government but it also adversely affect the morale and efficiency of the official concerned.

10. We have also seen from the record that it was the applicant himself who has initiated action to detect the misappropriation of money made by Shri C.D. Bastin, Upper Division Clerk while posted under him. He reported the alleged fraud committed by Shri Bastin to the Police and Vigilance. As a result, a criminal case was initiated against him. In the criminal case pending against him, the applicant is only a witness. The Chief Conservator of Forest in his letter to the Government has also informed the Government that it is not unusual in the Forest Department that the disbursing officers keep the cheque book and cash book with Head Accountants and Office Managers. In this case also the applicant has kept the cheque book in the office chests for which Shri C.D. Bastin had access.

As the applicant had additional charge, he had to be away from the station for long durations. In those circumstances, particularly in view of the letter Annexure A-4 dated 19.4.2005 of the Principal Chief Conservator of Forest, the Government should have taken a view in the matter and should have decided whether the inquiry proceedings pending against the applicant for the last over 5 years were to be dropped or not. We do not see any application of mind by the disciplinary authority or any other responsible authorities on these issues. Such application of mind was necessary particularly because the charge against him was not so grave. The sum total of the matter is that the disciplinary proceedings initiated against the applicant on 24.8.2004 which should have been completed within six months in normal course have not proceeded beyond the stage of appointing an inquiring authority and a presenting officer during the last five years. The respondent has no case that the applicant has contributed in any manner for such abnormal delay in completion of the disciplinary proceedings. In these circumstances, we are of the considered view that the judgment of the Apex Court in N. Radhakrishnan's case (supra) and the judgments of the Hon'ble High Court of Kerala in the cases of Vilasanadas Daniel and Sheikh Meeran Rawther (supra) will squarely apply in the applicant's case also.

11. We, therefore, allow this OA and quash and set aside the Annexure A-2 show cause notice dated 24.8.2004. The respondents shall consider the applicant for promotion as Deputy Conservator of Forests (Selection Grade) and Conservator of Forests with effect from the date of promotion of his immediate junior and grant him all consequential benefits. The respondents

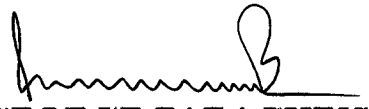


shall comply with the aforesaid directions within a period of two months from the date of receipt of this order.

12. There shall be no order as to costs.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(GEORGE PARACKEN)
JUDICIAL MEMBER

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