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only on 17/4/2001

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.298/2001
Tuesday this the 17th day of April, 2001.

CORAM:

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE SHRI T.N.T.NAYAR, MEMBER (A)

P.K.Surendranathan Asari,
Principal Chief Conservator of Forests (under suspension),
S/o. Late K.K.Achari,
"Surasindu", T.C.9/2228,
Kurups Lane, Sasthamangalam,
Thiruvananthapuram.

...Applicant

(By Advocate Sri P.V.Mohanan)

vs.

1. Union of India,
Represented by Secretary,
Ministry of Forest and Wild Life Department,
New Delhi.
2. State of Kerala,
Represented by Chief Secretary,
Government of Kerala.
3. Principal Secretary to
Forest and Wild Life,
Thiruvananthapuram.
4. C.Ramachandran,
Principal Secretary in charge,
Home and Vigilance,
Thiruvananthapuram.
5. V.K.Sinha,
Chief Conservator of Forest (Wild Life),
Thiruvananthapuram.
6. Dr.Mehar Singh,
Conservator of Forest (Wild Life),
Olavakkode.

.. Respondents

(By Advocate Sri S.K.Balachandran, ACGSC) (R1)
Advocate Sri C.A.Joy, Govt. Pleader (R2 & 3)

The Application having been heard on 3.4.2001, the Tribunal
on 17.4.2001 delivered the following:-

ORDER

HON'BLE SRI A.V.HARIDASAN, VICE CHAIRMAN:

Shri P.K.Surendranathan Asari, Principal Chief
Conservator of Forests and the second seniormost Member of
the Kerala Cadre of Indian Forest Service has filed this

application challenging the legality, propriety and correctness of the order dated 21.3.2001(Annexure A1) by which he has been placed under suspension. It is alleged in the application that the officer who has issued the order of suspension is incompetent to issue such an order, that the order has not been issued by the Government after application of mind in terms of the relevant rule applicable to the applicant as a member of an All India Service, that the legal adviser to Vigilance had advised that there was nothing to implicate the applicant with any offence, that the order of suspension has been issued to wreak vengeance against the applicant, because the applicant's explanation contained in Annexure A6 regarding issue of ownership certificate to the President, Pappinisseri Vish Chikilsa Society and his report Annexure A7 regarding unauthorised action of respondents 5 and 6 ,infuriated the ruling political party and that the impugned order was politically motivated, malafide and issued for extraneous reasons.

2. In a statement filed on behalf of the second respondent, it has been contended that the application is not maintainable as the applicant has not exhausted the departmental remedy of appeal, that the Secretary, Vigilance is competent to issue the order on behalf of the Government and that the impugned order is perfectly justified.

3. We have heard the learned counsel of the applicant and of the second respondent on admission and interim relief. The applicant had alleged in the application that the suspension had not taken effect as he had not been

served with the order. On 30.3.01 an ad interim order of status quo was issued. The order of suspension is assailed on the ground of jurisdiction of the authority to issue the order, on the ground of lack of application of mind by the competent authority to the relevant aspects including the relevant rules and on the ground of mala fides. We find that these are aspects in this case which need adjudication after admitting the application and allowing the respondents to file reply affidavits. The contention of the applicant that the order does not disclose application of mind by the competent authority to the facts in the light of the appropriate rules, prima facie, appears to us to have considerable force. In this connection it is necessary to refer to the impugned order which reads thus:-

"Read:-1. Letter No.C4-VC.17/94/SIU/224055/94 dated 10.7.1999.

2.G.O.(Rt) No.98/2001/Vig. dated 21.3.2001.

ORDER

A surprise check conducted by the Vigilance and Anti Corruption Bureau in the construction work of Dormitory at Vellarada revealed that there were serious irregularities in the execution of the work. Therefore a case in 17/94/SIU under section 13(2) read with 13(1)(c) and (d) of Prevention of Corruption Act, 1988 and section 120 B,468,471, 477(A) of Indian Penal Code was registered by the Vigilance and Anti-Corruption Bureau, Special Investigation Unit, Thiruvananthapuram. The Director, Vigilance and Anti-corruption Bureau as per the letter read above has reported that on completion of the Investigation of the case the following officers were found responsible for the irregularities in the work.

A1- Sri R.Rajendran, formerly wild life Warden, Thiruvananthapuram(Now, Assistant Conservator of Forests, Social Forestry, Thiruvananthapuram)

A2- Sri E.Velappan, formerly Assistant Wild Life Warden,Neyyar Sanctury.

A3- Sri D.Ratheesh, formerly Assistant Wild Life Warden.

A4- Smt.Shylaja, W/o. Kamalasan, Kallikkad.

A5- Sri Joseph, Parakkal Vedu, Fayam Abkari.

A6- Sri P.K.Surendranathan Asari, I.S., Formerly Chief Conservator of Forests, Wild Life.

A7- Sri A.Janardhanan, III/2 Kuppakonam Puthoor 2nd Street, Coimbatore.

Investigation has further disclosed that an amount of Rs.2,35,166/- has been paid in excess of what was actually due to the contractor. Therefore the Director, Vigilance and Anti-Corruption Bureau has requested to accord sanction for prosecuting the A1, A2, A3 ,A6 in this case.

Government after examining the case in detail felt that it is not proper to retain the above mentioned officers in service during the remaining stages of the case in public interest. Sri R.Rajendran(A1) has already been placed under suspension as per G.O. read as second paper above in another case. Government therefore place the following officers under suspension with immediate effect.

1.Sri E.Velappan, formerly Assistant Wild Life Warden, Neyyar Sanctuary.

2.Sri D.Ratheesh, formerly Assistant Wild Life Warden, Nanyar Sanctuary.

3.Sri P.K.Surendranathan Asari, IFS, formerly Chief Conservator of Forests ,Wild Life,Trivandrum.

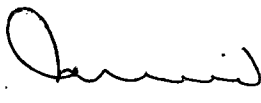
Chief Conservator of Forests(Administration)/Principal Secretary, Forest and Wild Life will relieve the officers concerned forthwith and report to Government by return."

The applicant is a senior Member of the Indian Forest Service which is an All India Service. During the pendency of a criminal investigation or trial against a member of the All India Service, a member of the Service can be placed under suspension by the Government being satisfied that it is desirable to do so taking into account the relevant aspects under Rule 3 of the All India Services(Discipline

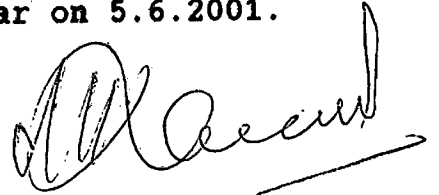
and Appeal)Rules. In the composite order placing two State Forest Service Officers and the applicant under suspension, it is not discernible that the Government had considered the relevant aspects and came to a conclusion that the applicant a member of an All India Service is to be placed under suspension. The facts and rules to be considered in the case of State Forest Service Officers and in the case of a member of an All India Service are entirely different. Therefore we are of the considered view that there is a very strong prima facie case for admission of the application and stay of further operation of the order to the extent it affects the applicant. The allegation regarding malafides also has got to be gone into after affording the respondents opportunity to file affidavits. Since the counsel of the second respondent argued that the suspension has already taken effect, we are of the view that it should be made clear that the continued suspension of the applicant is stayed to meet the ends of justice.

In the light of what is stated above, we admit the application. We order stay of further operation of the impugned order of suspension of the applicant till the disposal of the application. The respondents shall allow the applicant to function as Principal Chief Conservator of

Forests till the disposal of the Original Application. Issue notice to respondents 4 to 6. Respondents shall file reply affidavit in four weeks. Rejoinder, if any, be filed by the applicant within 2 weeks thereafter. List the case for completion of pleadings before Registrar on 5.6.2001.



(T.N.T.NAYAR)
MEMBER (A)



(A.V.HARIDASAN)
VICE CHAIRMAN

/njj/