



2024:KER:79223

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

&

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

WEDNESDAY, THE 23RD DAY OF OCTOBER 2024/1ST KARTHIKA, 1946

O.P.KAT) NO. 59 OF 2017

AGAINST THE ORDER/JUDGMENT DATED 08.04.2016 IN TA NO.3016

OF 2012 OF KERALA ADMINISTRATIVE TRIBUNAL,

THIRUVANANTHAPURAM

PETITIONERS/RESPONDENTS:

- 1 SUPERINTENDENT OF POLICE
KASARGOD DISTRICT, KASARGOD, KERALA-671314.
- 2 DIRECTOR GENERAL OF POLICE
POLICE HEAD QUARTERS, THIRUVANANTHAPURAM,
KERALA-695014
- 3 STATE OF KERALA,
REP. BY ITS PRINCIPAL SECRETARY, DEPARTMENT OF
HOME, SECRETARIAT, THIRUVANANTHAPURAM,
KERALA-695001.

BY SRI. B. UNNIKRISHNA KAIMAL, SR. GP



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RESPONDENT/APPLICANT:

V.V. KUMARAN
S/O.KOTTAN, AGED 39 YEARS, KALLUNGAL HOUSE,
PALLIKERE, POST NILESWAR, KASARGOD DISTRICT,
KERALA-671314.

BY ADV SRI.M.SASINDRAN

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME
UP FOR FINAL HEARING ON 23.08.2024, THE COURT ON
23.10.2024 DELIVERED THE FOLLOWING:



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ANIL K. NARENDRAN & P.G. AJITHKUMAR, JJ.

O.P.(KAT) No.59 of 2017

Dated this the 23rd day of October, 2024

JUDGMENT

P.G.Ajithkumar, J.

The respondents in T.A.No.13016 of 2012 on the files of the Kerala Administrative Tribunal, Thiruvananthapuram have filed this original petition invoking the provisions under Article 227 of the Constitution of India. They are aggrieved of the order of the Administrative Tribunal dated 08.04.2016 in that application, which was filed by the respondent.

2. The respondent was a Police Constable in Kasaragod Town Police Station. He was terminated from service following a disciplinary enquiry. The Administrative Tribunal as per the impugned order set aside the orders imposing such a penalty. Appellants are directed to reinstate the respondent with all consequential service benefits, including promotion and back wages. The said order is under challenge.



3. On 22.02.2017, this Court ordered interim stay of operation of the impugned order for a period of one month. The interim order was extended until further orders on 22.03.2017.

4. Heard the learned Senior Government Pleader and the learned counsel for the respondent.

5. The disciplinary proceedings was initiated against the respondent on the allegation that while he was on sentry duty at Kasaragod Town Police Station on 14.04.1993, he along with other police personnel on duty in the police station committed theft of five barrels of sandalwood oil kept in the lockup. They allegedly removed the sandalwood oil and filled the barrels with water. That resulted in screening of evidence since the said sandalwood oil was the contraband in crime No.193 of 1993 of that police station.

6. A disciplinary enquiry was conducted, which culminated in Ext.P4 report finding the respondent guilty. After giving an opportunity of being heard, as per the order dated 30.10.1999, the disciplinary authority (District Police



Superintendent) removed the respondent from service. His appeal was dismissed by the Deputy Inspector General of Police, Kannur Range. His further appeal to the Inspector General of Police, Northern Range, and then to the Director General of Police, Kerala and finally to the Government met with the same fate. Aggrieved thereby, the respondent filed O.P.No.306 of 2003 before this Court, which was eventually transferred to the Kerala Administrative Tribunal. The Tribunal, after hearing both sides, allowed the transfer application as per the impugned order.

7. The main plank of the respondent's contention before the Administrative Tribunal was that in the criminal prosecution concerning the same matter, he was acquitted by the Chief judicial Magistrate, Kasaragod as per Ext.P15 judgment and in view of that, the punishment imposed in the disciplinary proceedings would not sustain in law. It was further contended that the evidence of the Circle Inspector of Police, who detected the offence and seized the contraband in crime No.193 of 1993, alone was available to establish guilt of



the respondent, but when on appreciating the evidence of the same witness, the competent criminal court found the respondent not guilty, no disciplinary action is possible against the respondent owing to the provisions of Section 101(8) of the Kerala Police Act, 2011.

8. The Tribunal considered the said contentions in the light of the law laid down by the Apex Court in **Corporation of the City of Nagpur v. Ramchandra G.Modak [(1981) 2 SCC 714]**, **Paul Anthony v. Bharat Gold Mines Ltd. [(1999) 2 SCC 679]** and **G.M.Tank v. State of Gujarat [(2006) 5 SCC 446]** and came to the conclusion that the penalty imposed on the respondent is untenable. The Tribunal extracted the relevant portions in Ext.P15 judgment of acquittal, where the evidence was appreciated and reasons for acquitting the respondent are stated.

9. Ext.P2 is the memo of charge, based on which the disciplinary proceedings was initiated. Ext. P4 is the report of enquiry. Ext.P15 is the judgment of the Chief Judicial Magistrate, Kasaragod in C.C.No.194 of 1994 wherein the



respondent and his co-accused were tried. After juxtaposing the allegations set forth against the respondent in both the disciplinary proceedings and criminal prosecution, the Tribunal held that the matter in issue in both are one and the same. Nature of evidence let in both the proceedings as also the persons tendered evidence are also the same. It was in such circumstances the Tribunal found that no penalty could be imposed on the respondent on the basis of Ext.P4 enquiry report.

10. On a comparative reading of Exts.P2 and P4 with Ext.P15, it can well be said that the allegations set forth against the respondent in both the proceedings are the same. That, the respondent along with other police personnel on duty in Kasaragod Town Police Station stole five barrels of sandalwood oil kept in the lock up of that police station. The sandalwood oil was seized in connection with crime No.193 of 1993 of that police station. Same persons tendered evidence to prove the said allegation in the disciplinary proceedings as well as the criminal prosecution. Therefore, the findings of the



Tribunal that the edifices upon which both the disciplinary proceedings and the criminal prosecution rest are one and the same cannot be faulted. In such a factual situation, applicability of the provisions of Section 101(8) of the Kerala Police Act requires consideration. Section 101(8) of the Kerala Police Act reads as follows:

“101. Departmental Enquiry Proceedings.- xx xx
(8)(1) Department level enquiry proceedings may be initiated against any police officer for the same matter even though he was exonerated by a criminal court after trial, he shall not be subjected to penalties on the basis of the same facts in department level enquiry.
(2) A police officer if convicted for an offence involving moral turpitude or serious misconduct the disciplinary authority concerned or the State Police Chief or the Government may, after considering the nature of the offence, make him compulsorily retire or remove or dismiss that officer from service.”

11. A Division Bench of this Court considered the extent of applicability of the said provision to a disciplinary proceedings against a police personnel in **State of Kerala v. S.Vijayakumar [2021 (4) KLT 35]**. It was held that in view



of the provisions contained in Section 101(8)(1) which provide that when the departmental enquiries were initiated on the same set of facts as in the criminal case which ended in an acquittal, then no punishment could be imposed on the delinquent. It was explained that the purport of the provision is that, though the departmental proceedings could be initiated in the same matter based on which the criminal proceedings also arose, once the delinquent is exonerated by the criminal court after trial, then he shall not be subjected to penalties on the basis of the same set of facts. The exceptions to the rule is, when there are materials to hold that the facts proved against the delinquent in the department enquiry is different from the facts proved in the criminal trial which exonerated him, there would not be any bar for imposing penalty in the disciplinary action.

12. The aforesaid proposition was reiterated by this Court in **State of Kerala v. P.V.Kuryan [2024 (2) KLT 428]** and **Amalraj S. v. State of Kerala [2024 (1) KHC 284]**. Therefore, ordinarily the incumbent, who was acquitted



by the criminal court, shall not be subjected to penalty in a disciplinary proceedings; provided the same set of facts are involved in both the proceedings. Of course, if more materials are brought about in the departmental enquiry and there is difference in the proved facts, punishment of the delinquent in the disciplinary proceedings may be possible.

13. As stated above, the allegations as well as the evidence tendered in both the disciplinary proceedings and criminal prosecution against the respondent are materially and substantially the same. Therefore, the provisions of Section 101(8) of the Kerala Police Act creates a bar for imposing penalty on the respondent. It is true that the disciplinary proceedings was initiated against the respondent before commencement of Kerala Police Act, 2011. But when the proceedings has been pending, the respondent is entitled to get the benefit of the said provision.

14. The Tribunal also placed reliance on the law laid down by the Apex Court in **Corporation of the City of Nagpur [(1981) 2 SCC 714]**, **Paul Anthony [(1999) 2**



SCC 679] and **G.M.Tank [(2006) 5 SCC 446]** in order to hold that the penalty imposed on the respondent is legally unsustainable since he was acquitted in the criminal prosecution. In **Paul Anthony [(1999) 2 SCC 679]** the Apex Court on finding that the charges framed against the incumbent and the evidence brought on record in the criminal prosecution as well as the departmental proceedings were the same, it was held that his acquittal in the criminal case has the inevitable consequence of absolving him from the departmental proceedings. It was further held that the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, is that if more materials are brought about in the departmental enquiry and there is marked difference in the proved facts, punishment of the delinquent in the disciplinary proceedings is possible.

15. The same is the principle laid down by the Apex Court in **Corporation of the City of Nagpur [(1981) 2 SCC 714]** and **G.M.Tank [(2006) 5 SCC 446]**. In the light of the



said position of law, the Tribunal held the disciplinary action of terminating the respondent from service to be illegal and consequently set aside Exts.P4, P7, P8, P10, P12 and P14. We find no reason to interfere with the said finding in the exercise of the powers under Article 227 of the Constitution of India. We find so also in the light of the provisions of Section 101(8) of the Police Act and its interpretation by this Court in **S.Vijayakumar [2021 (4) KLT 35], P.V.Kuryan [2024 (2) KLT 428] and Amalraj S. [2024 (1) KHC 284]**.

16. In **G.M.Tank [(2006) 5 SCC 446]** the Apex Court after holding that the dismissal of the appellant therein was illegal, proceeded to hold that the appellant having been retired by then, was not to be paid back wages. He was held to have entitled to the pension alone. Here, the respondent was terminated from service as per the order dated 30.10.1999. He was out of service all throughout. The proceedings against him protracted for one or the other reasons. Following that view taken by the Apex Court in **G.M.Tank [(2006) 5 SCC 446]** and also in **Ex L/NK Rajput**



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Ajith Singh v. Union of India [2023 KHC OnLine 7135],
the backwages of the respondent is limited to three years
preceding today. The respondent is, however, entitled to get
all other service benefits as ordered by the Tribunal.

The original petition is disposed of accordingly.

Sd/-

ANIL K. NARENDRAN, JUDGE

Sd/-

P.G. AJITHKUMAR, JUDGE

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APPENDIX OF OP(KAT) 59/2017

PETITIONER ANNEXURES

- ANNEXURE A1 A TRUE PHOTO COPY OF T.A.NO.3016/2012
IN WPC.NO.18431/2005 ON THE FILE OF
THE KERALA ADMINISTRATIVE TRIBUNAL.
- ANNEXURE A2 A TRUE PHOTOCOPY OF THE COUNTER
AFFIDAVIT FILED BY THE 3RD PETITIONER.
- ANNEXURE A3 A TRUE PHOTOCOPY OF THE ORDERS PASSED
BY THE KERALA ADMINISTRATIVE TRIBUNAL
IN T.A.NO.3016/2012 DATED 8.4.2016.
- EXHIBIT P1 TRUE COPY OF THE ORDER DATED 18.4.1993
- EXHIBIT P2 TRUE COPY OF MEMO OF CHARGES ISSUED BY
1ST RESPONDENT
- EXHIBIT P3 TRUE COPY OF WRITTEN EXPLANATION
SUBMITTED BY THE ENQUIRY OFFICER
- EXHIBIT P4 TRUE COPY OF THE REPORT SUBMITTED BY
THE ENQUIRY OFFICER
- EXHIBIT P5 TRUE COPY OF THE SHOW CAUSE NOTICE
DATED 21.6.1999 ISSUED BY THE 1ST
RESPONDENT
- EXHIBIT P6 TRUE COPY OF THE STATEMENT FILED BY
THE PETITIONER BEFORE THE 1ST
RESPONDENT
- EXHIBIT P7 TRUE COPY OF ORDER DATED 30.10.1999
ISSUED BY THE 1ST RESPONDENT
- EXHIBIT P8 TRUE COPY OF THE ORDER DATED 14.2.2000
ISSUED BY DIG OF POLICE



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EXHIBIT P9 TRUE COPY OF THE APPEAL MEMO PRESENTED
BEFORE THE IG OF POLICE

EXHIBIT P10 TRUE COPY OF ORDER NO.A2/17115/2000
DT. 28.7.2000 PASSED BY THE IG OF
POLICE

EXHIBIT P11 TRUE COPY OF THE APPEAL PREFERRED
BEFORE THE 2ND RESPONDENT

EXHIBIT P12 TRUE COPY OF THE ORDER DATED 2.1.2001
ISSUED BY THE 2ND RESPONDENT

EXHIBIT P13 TRUE COPY OF THE REPRESENTATION DATED
12.1.2001 SUBMITTED BEFORE THE 3RD
RESPONDENT

EXHIBIT P14 TRUE COPY OF THE ORDER DATED 8.2.2005

EXHIBIT P15 TRUE COPY OF THE JUDGMENT AND ORDER IN
CC NO 194/94 OF THE CJM KASARGODE.