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GOVERNMENT OF KERALA

Abstract

LSGD - Engineering Wing – Collapse of Uduppi lodge at Thampanoor on 01/02 2010-
Disciplinary action finalised in respect of Shri. B. Anandaraju, Executive Engineer -
Review petition - Rejected - Orders of the Hon'ble KAT complied with-Orders issued.

LOCAL SELF GOVERNMENT (EW) DEPARTMENT

GO (Rt) No.627/2017/LSGD.

Dated, Thiruvananthapuram,08/03 2017.

- Read:-
1. MOC/SOA No.45866.EW1 10/LSGD dated 10.08.2010.
 2. Enquiry Report No. CE PWD Admin/2012 dated 05/07/2012 of Shri. K.Sundaran, Chief Engineer, PWD Admn. & Design, Thiruvananthapuram.
 3. Show cause Notice No.45866 EW1 10 LSGD dated 13/01/2014.
 4. G.O (Rt) No.1634 2015 LSGD dated 30/05/2015.
 5. Review petition submitted by Sri.B. Anandaraju, dated 30.05.2015.
 6. Orders of Hon'ble Kerala Administrative Tribunal dated 13.11.2015 in OA (EKM)1108 2015.

ORDER

As per Government Order read as 4th paper above, disciplinary action against Sri.B.Anandaraju, Assistant Executive Engineer (former Town Planning Officer, Thiruvananthapuram Corporation) was finalised by reducing the rank of the officer to the lower post of Assistant Executive Engineer for a period of two years. The cause of action relates to collapse of Uduppi Lodge at Thampanoor in which six labourers were killed and many others seriously wounded. Against the above orders Sri. B. Anandaraju has filed a Review petition under rule 35 of the KCS (CC&A) Rules 1960, read as 5th paper above. Sri. Ananda Raju has also moved Hon'ble Kerala Administrative Tribunal and the Hon'ble Tribunal as per orders read 6th above has ordered Government to dispose of Review petition after affording an opportunity of being heard to petitioner within three months.

2. The main arguments put forward by the review petitioner are summarised as follows:

i) There are findings in the Domestic Enquiry Report read as 2nd above that on every aspect of the alleged charges, the Corporation Staff including Shri. Anandaraju

were absolved affording benefit of doubt. The Departmental Enquiry Report was accepted by the Government as per decision dated 05.10.2012.

ii) The Crime Branch Police also investigated the incident and issues that were the subject matter for Domestic Enquiry. In the Final Report submitted to Court, Shri. Anandaraju was not arrayed as an accused.

iii) After considering all aspects and on the basis of Domestic Inquiry Report Government once decided to impose the minor penalty of withholding of one increment without cumulative effect. Later the decision was changed and it was proposed for withholding of one increment with cumulative effect, the major penalty under Rule 11 (v) of the KCS (CC&A) Rules. He has not been given opportunity as provided under Rule 15(12)(i)(b) of the KCS (CC&A) Rules to represent against the action proposed by the appointing authority to withhold one increment with cumulative effect

iv) The decision to impose the major penalty of reduction to lower post is vitiated by illegality and violation of procedure and principles of Natural Justice.

v) The Asst. Engineer concerned Sri. Girisankar. G. a co-delinquent has been promoted as Asst.Exc.Engineer after reinstatement. The petitioner is made to suffer discrimination and thereby reversion to lower post for no reason.

vi) The finding in the Enquiry Report is that Circular No.22040 E1 06 LSGD relates to unauthorized constructions using 'Permit' for Repair' or Re-construction.

vii) The conclusions in the order sought to be reviewed are mere expression of a different opinion on facts not established. PSC is an authority conferred with advisory jurisdiction and not appellate jurisdiction in the matter of punishment.

viii) In view of the Domestic Enquiry Report the interpretations and conclusions in Para 9 on which the order imposing the penalty of reduction to lower post is based had not been established.

ix) Violation of procedure resulted in discrimination, injustice and serious prejudice. Enhancement of punishment required notice under Rule 15(12). He is served with only the Original Order imposing major penalty and no other documents.

3. On the above grounds the incumbent requested to review and cancel the imposition of punishment of reduction of rank to lower post of Assistant Executive Engineer ordered as per Government order cited as 4th above.

4. In pursuance to the orders of Hon'ble KAI read as paper 6 above, the review petitioner was heard by the Special Secretary of the Department on 30.12.2015. During the hearing Sri. Ananda Raju repeated the defence arguments which he had already submitted while processing the disciplinary action case.

5. Government have examined the arguments in the review petition put forth by Sri. B. Anandaraju, and connected records in detail and found that the review petition is devoid of merit on the following grounds:

(i). Though the enquiry officer as per the formal enquiry report read as 2nd paper above had recommended to award a minor punishment against the delinquent officers including Sri. Anandaraju, affording a benefit of doubt, he had not at all absolved them of the charges levelled against them. In fact the enquiry officer reported that the officials had misinterpreted the partition for load bearing walls. It has also been reported that they overlooked the fact that only a Structural Engineer has the right to issue structural stability certificate and it was not proper to accept a structural stability certificate produced by an Architect. The enquiry officer also opined that the delinquents might have been misled by the plan in which the building was shown as having framed structure. The Government Circular No.22040 E/1 06 LSGD dated 13.07.2006 has laid out the procedures to be met while carrying out internal alterations. But the delinquent officers took those directions in a manner that eventually led to the mishap. In fact the report of Enquiry Officer regarding incompetency of the structural stability certificate, the misinterpretation of partition wall for load bearing partition walls and the fact that the experienced Engineering wing staff were easily misled by the plan in which the building was shown as having framed structure were worth considering. If these findings of the enquiry Officer borne in mind of the delinquent officer while granting permission to the alteration of the building, the colossal mishap would not have happened. In GO read as 4th paper above also the above

aspects were prominently figured and the ground of rejection of the recommendation of the enquiry officer in awarding the punishment has also been clearly mentioned in the show cause notice read as 3rd paper above. Government have every right to depart from the findings of the Inquiry authority as provided in Rule 15(11) of KCS(CC&A) Rules 1960. The review petitioner has failed to raise any valid counter arguments against this.

(ii). The Departmental Enquiry and Criminal Enquiry by Crime Branch Police is entirely different in many aspects. In fact the Crime Branch of Police investigated the matter to ascertain the criminal intent of the person involved in the mishap. Government have never made any allegation against the delinquent officer regarding his criminal intention in the mishap. The Departmental Enquiry was mainly focussed on the role of the Officer responsible for issuing permit for the internal alteration of the old building disregarding the relevant rules of KMBR and other gross violation which were instrumental for the mishap. The Departmental Enquiry has clearly established the charges against the officials. Accordingly the Crime Branch Police enquiry is not relevant to the Departmental disciplinary proceedings, against the officer.

(iii). The contentions of the review petitioner that Government had once decided to impose a minor penalty of withholding of one increment without cumulative effect is totally baseless. Government at no stage of the disciplinary procedures had decided to impose minor penalty against the officer. In fact the file noting referred by the review petitioner was only a suggestion which the disciplinary authority had not accepted. However Government had once tentatively decided to modify the punishment of Sri. Anandaraju from reduction of rank to the lower post to barring of one increment with cumulative effect from his salary. But after receiving the advice of the Kerala Public Service Commission Government had examined the entire matter thoroughly and since the allegation against delinquent officer was so grave, the Government stuck to its original decision to award a punishment of reduction of rank. The contention of the Review Petitioner that he was denied of opportunity as provided under Rule 15(12)(i)(b) of KCS(CC&A) Rules to represent against the actions proposed to withhold one increment with cumulative is also not worth considering. As per provision of Rule 15(12)(i) of the KCS(CC&A) Rules, notice under Rule 15(12)(i)(b) had been served to the delinquent

officer as per Show Cause Notice dated 13.01.2014 read as 3rd paper above. Rule 15(12) (i)(b) of KCS(CC&A) Rules 1960 envisages that a notice has to be given to the delinquent officer on the action proposed to be taken against him under item (v) to (ix) of Rule 11(1) of KCS (CC&A) Rule 1960 (major penalty). The contention of the petitioner that he has to be given a notice on the basis of the temporary decision taken by Government during the processing of the file to reduce his punishment from reduction of rank to barring of one increment with cumulative effect is not sustainable. The above temporary decision taken in the file was only a step towards finalisation of disciplinary proceedings. The notice as contemplated in the rules was issued to the petitioner before passing final orders as Show Cause Notice read as paper (3) above.

(iv). The contention of Sri. B. Anandaraju that he has been discriminated with his co-accused Sri. Girisankar also has no footing. The promotion of Sri. Girisankar to the cadre of Assistant Executive Engineer was only on provisional basis and his provisional promotion has not been regularised yet. As per GO read as 4th above it has been ordered to deduct an amount of ₹3000.- from the monthly salary of Sri. G. Girisankar.(Rtd) Assistant Executive Engineer for 3 years, which is equivalent to a major punishment. Another allegation of the review petitioner is that the conclusions in the GO read as 4th above are mere expression of a different opinion on facts is not established. In fact even in the review petition Sri. Anandaraju has failed to put forward any valid explanation to the procedural lapses and irregularities well explained in the MOC/SOA, Show Cause Notice and in the Government Order.

(v). The allegation of Sri. B. Anandaraju that procedural violation has been occurred while finalizing the disciplinary action is also not true. In fact all the procedural formalities have been scrupulously followed as mandated in the KCS (CC&A) Rules 1960. The contention that he has served with only the original orders imposing major penalty, is also baseless. In fact the officer was heard twice, ie on 04.01.2012, after issuance of MOC SOA read as 1st paper above and on 09.10.2013 subsequent to the orders of Hon'ble High Court of Kerala dated 26.09.2013 in OP (KAT) 3305 13 apart from the notice read as 3rd above. In reply to the show cause notice intimating the tentative decision regarding the punishment, the review petitioner had not sought any chance for

further personal appearance. The officer could not point out a single genuine instance of procedural irregularity in favour of his claim and he had been given every opportunity to explain his case.

6. In short, the role of Shri. B. Anandaraju in issuing permit for internal alteration of the building in violation of the relevant rules of KMBR and other procedural irregularities lead to the fatal mishap is quite evident. He has failed to put forward any valid reason to reduce his punishment of reduction of rank to Assistant Executive Engineer ordered as per Government Order read as 4th above and hence his review petition is rejected and orders issued accordingly.

7. The orders of Hon'ble KAT read as 6th paper above is also complied with accordingly.

8. The Chief Engineer, LSGD will take urgent necessary steps to implement the GO read as 4th above.

(By order of the Governor)

T.K. JOSE

Principal Secretary to Government

To

The Advocate General, Thiruvananthapuram (with C.L.)

Sri. B. Anandaraju, Executive Engineer (former Town Planning Officer)

(Through Chief Engineer, LSGD)

The Chief Engineer, LSGD, Thiruvananthapuram.

The Accountant General (Audit A&F) Kerala, Thiruvananthapuram

The Treasury Officer concerned. (Through CE, LSGD)

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