



GOVERNMENT OF KERALA

Abstract

Home Department -Police Establishment- Order of the Hon'ble Kerala Administrative Tribunal dated 12.01.2023 in OA 49/2019 filed by Sri A Surendran - Complied with - Orders Issued.

HOME (A)DEPARTMENT

G.O.(Rt)No.3434/2024/HOME Dated,Thiruvananthapuram, 19-11-2024

- Read 1. Order of Honble Kerala Administrative Tribunal dated 12.01.2023 in OA 49/2019 filed by Sri A.Surendran.
2. Order of Honble Kerala Administrative Tribunal dated 22.08.2023 in RA 10/2023 in OA 49/2019 filed by Sri A Surendran.
3. Order of Honble High Court Kerala dated 10.09.2024 in OP (KAT) No. 360/2024

ORDER

The Hon'ble Kerala Administrative Tribunal as per the order read as 1st paper above has disposed of the OA with direction to the 1st respondent (i.e., Government of Kerala) to reconsider the entire issue in the light of the Rule 23(C) Part I KSR and also the directions of Tribunal on earlier occasions. The fact that the applicant in OA 49/2019 belongs to Scheduled Caste Community should also be taken into consideration while passing Orders. The Government is directed to complete the exercise and pass orders within a period of three months from the date of receipt of a copy of the order. Sri. A. Surendran has filed RA No.10/2023 to review the order dated 12.01.2023 of the Hon'ble Tribunal in OA No.49/2019.

2. The KAT in the order read as 2nd paper above has ordered as follows:

"On a perusal of the order, we find that there is merit in the contention of the applicant and therefore this Review Application is allowed and order of this Tribunal dated 12.01.2023 is reviewed and modified by adding the following sentence as last sentence in the last paragraph of the order dated 12.01.2023 in OA No. 49/2019 as follows:

"Annexures A14 and A15 are quashed to the extent it affects the applicant."

This order will form part of the order passed by this Tribunal in OA No. 49/2019 on 12.01.2023. "

3. Annexure A-14 is the Government order GO(Rt) No.308/2018/Home dated 29-01-2018 is the compliance order dated 21-03-2016 of Hon'ble KAT in OA No.37/2016 filed by Sri.A.Surendran declining his request for back arrears of DySP(HG) promotion. Annexure - 15 is the GO(Rt) NO.1857/2016/Home dated 06-06-2016 by which DySP (HG) was sanctioned to Sri A Surendran without back arrears.

4. Against the order Hon'ble Kerala Administrative Tribunal Government have filed OP(KAT) before the Hon'ble High Court of Kerala. The Hon'ble High Court of Kerala in the order read as 3rd paper above has dismissed the OP(KAT) filed by the Government.

5. Since the OP (KAT) was dismissed by Honble High Court of Kerala, Government have reconsidered the entire issue in the light of the Rule 23(C) Part I KSR. The observation made by Hon.KAT in the

combined order dated 12-01-2023 in OA Nos 49/2019&1974 of 2020 are as follows:-

"In both these Original Applications reliance is placed by respondents on Rule 2(C) of Part I KSR which reads as follows:(c)In the case of notional promotions back arrears of pay and allowances are not admissible.

(d)Promotions which do not involve change of duties, shall have effect from the date of occurrence of vacancy, or the date of acquiring eligibility for promotions, whichever is later, but monetary benefit shall be admissible only for a maximum period of one year prior to the date of order of promotion."

According to the applicant, the above rule is of no application for limiting the monetary benefits as there is no changes in the duties of DySP. The applicant was also sanctioned Higher Grade with effect from the date on which the junior most DySP was sanctioned ratio based promotion.

In this matter SPC has reported as follows:-

Sri.A.Surendran was promoted to the cadre of Deputy Superintendent of Police vide G.O.(Rt) No.34/2008/Home dated 03.01.2008 and he took charge of the post of DySP on 15.01.2008 FN. Accordingly, he commenced probation in the cadre of DySP on 15.01.2008 FN. The period of probation is one year on duty within a continuous period of two years. The Accountant General (A&E), Kerala informed that the suspension period from 22.06.2010 to 08.06.2011 as interruption of service. He has not passed the Account tests prescribed for the declaration of probation. He attained the age of 50 years as on 24.03.2010, since his date of birth being 24.03.1960. As per G.O. (MS) No. 282/81/GAD dated 26.08.1981, he is eligible for permanent exemption from passing the obligatory departmental tests. Hence he is eligible to be declared to have completed the period of probation satisfactorily with effect from 24.03.2010 FN. The following disciplinary proceedings were pending against Sri.A.Surendran:-

1. He was placed under suspension vide G.O.(Rt) No. 2092/2010/Home dated 22.06.2010, pending disciplinary action and later re-instated into service vide G.O.(Rt) No. 923/2011/Home dated 14.03.2011. He was then posted as DySP, CBCID, Kollam vide G.O.(Rt) No. 1699/2011/Home dated 07.06.2011. In this regard, an Oral Enquiry pending against him vide G.O.(Rt) No. 682/2013/Home dated 14.03.2013.
2. A Joint Oral Enquiry pending vide G.O.(Rt) No. 2593/2013/Home dated 24.09.2013.
3. The Director, V&ACB vide letter No. E 21-7783/2015 dated 17.04.2015 informed that a Vigilance Enquiry (VE 04/2011/PKD) has been conducted against Sri.A.Surendran on the allegation of acceptance of bribe. Report sent to Government on 12.01.2012, recommending Tribunal Enquiry. As such Oral Enquiry vide G.O.(Rt) No. 682/2013/Home dated 14.03.2013 was initiated against him (Sl.No. 1 above).

The disciplinary proceedings vide Sl. No. 1 and 3 are of same set of charge. Subsequently the Oral Enquiry pending against Sri.A.Surendran vide G.O.(Rt) No.682/2013/Home dated 14.03.2013 (Sl No. 1 above) was disposed by the Government by exonerating him from the charges levelled against him vide G.O.(Rt) No.2909/2015/Home dated 13.11.2015. The Joint Oral Enquiry vide G.O.(Rt) No.2593/2013/Home dated 24.09.2013 (Sl No. 2 above) was also disposed of by exonerating him from the charges levelled against him vide G.O.(Rt) No. 634/2016/Home dated 25.02.2016.

The probation in respect of Sri.A.Surendran was later extended upto 26.03.2010 and declared to have satisfactorily completed the period of probation in the cadre of Deputy Superintendent of Police with effect from 25.03.2010 vide G.O. (Rt) No.520/2016/Home dated 16.02.2016.

In view of the declaration of probation in the cadre of Deputy Superintendent of Police and exoneration from the disciplinary proceedings pending against Sri.A.Surendran, it was requested Government to sanction him Ratio Based Higher Grade with effect from the date on which his junior Sri.D.Mohanan, DySP has got Higher Grade. Sri.D.Mohanan, DySP, the immediate junior to Sri.A.Surendran, has been sanctioned ratio based higher grade in the cadre of Deputy Superintendent of Police with effect from 07.10.2013 AN vide G.O.(Rt) No. 2017/2014/Home dated 18.07.2014. As such Sri.A.Surendran is

also eligible for sanctioning ratio based higher grade and the Government have sanctioned the same vide GO(RT) No.1857/2016/Home dated 06.06.2016. Sri.A.Surendran, DySP was promoted to the cadre of SP(non IPS) vide G.O.(Rt) No. 1128/2016/Home dated 30.03.2016 and he retired from service on 31.03.2016 on superannuation.

Due to the non declaration of probation in respect of Sri.A.Surendran, in the cadre of Deputy Superintendent of Police and also due to the pending disciplinary proceedings, was the reason not sanctioned Ratio Based Higher Grade in time. He was superseded from the Select List of Deputy Superintendents of Police fit for promotion as Superintendent of Police(non IPS) for the year 2014 (for the vacancies in 2015) by the Departmental Promotion Committee (Higher) held on 26.08.2015. Many of his juniors have been sanctioned ratio based higher grade and also promoted to the cadre of Superintendents of Police(non IPS), since their probation in the cadre of DySP were declared earlier and they have clear service records. Hence the reliefs sought for by the applicant in the OA is not true to the facts and is liable to be rejected.

Further notional promotions are usually allowed to regain the lost seniority of the senior due to promotion of junior superseding senior and as per Rule 23(C) Part I KSR back arrears of pay and allowances are not admissible.

6) On a reconsideration of matter it is seen that :-

- The delay in declaration of probation of Sri.A Surendran was mainly due to the pendency of departmental proceedings against him.On exoneration, the applicant was granted notional promotion with effect from the date on which his juniors were promoted. Here, the applicant was only notionally promoted and hence he is not eligible for back arrears of DySP(HG) promotion.
- As per the dictum in OP(KAT)No.167 of 2016(Sri.S.Gopalakrishnan Vs.State of Kerala) the Hon.High Court of Kerala affirmed that if a promotion due to an employee

had not been wrongly denied, he is not eligible for back arrears. In the instant case also it cannot be held that the DySP(HG) promotion due to him had been wrongly denied since his probation was not declared in time, in the light of disciplinary action pending against him.

- Notional promotions are usually allowed to regain the lost seniority of the senior due to promotion of the junior superseding the senior. In such cases arrears of pay and allowances are not admissible as per rules 23(c) of Part I KSRs, since retrospective assumption of charge is practically not possible. It is seen that if back arrears of DySP(HG) promotions are granted to the applicant it will create a precedent and every chance to arise such similar requests. As per the dictum in Paluru Ramakrishnaiah Ors Vs Union of India and Virender Kumar, General Vs Avinash Chandra Chada the applicant is not eligible for back arrears.

9. In the circumstances the matter of granting back arrears to Sri.Surendran in the post of DySP(HG) cannot be considered, as DySP(HG) promotion due to him was not been wrongly denied earlier. Hence the request of Sri.Surendran.A for DySP(HG) promotion back arrears is hereby declined.

10. Thus the order of Hon'ble High Court of Kerala read as 1st paper above is complied with.

(By order of the Governor)
BINIL V V
DEPUTY SECRETARY

To:

The State Police Chief, Kerala, Thiruvananthapuram

Sri A Surendran , Superintendent of Police (Non-IPS) (Rtd)(Through State Police Chief)

The Advocate General, Kerala, Ernakulam (with C/L)

The Principal Accountant General (A&E)/(Audit), Kerala, Thiruvananthapuram.

Information &Public Relations Department (Web&New Media) (For publishing in the official website)

Stock File (HOME-A2/25/2019-HOME)

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