

## P.K. Abbas Vs State Of Kerala

**Court:** High Court Of Kerala

**Date of Decision:** Jan. 17, 2025

**Acts Referred:** Constitution of India, 1950 " Article 226, 227

Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 " Rule 15

**Hon'ble Judges:** A. Muhamed Mustaque, J; P. Krishna Kumar, J

**Bench:** Division Bench

**Advocate:** Jelson J.Edampadam, A.J.Varghese

**Final Decision:** Dismissed

### Judgement

P.Krishna Kumar, J.

1. A disciplinary proceeding was initiated against the petitioner who was a Village Officer, alleging that he committed serious irregularities in effecting

Transfer of Registry in many cases. When he was found guilty in the enquiry, the disciplinary authority imposed a penalty of barring three increments

with cumulative effect. The petitioner challenged the same before the Kerala Administrative Tribunal, but it evoked no positive results and hence this

petition.

2. When the Vigilance and Anti-corruption Bureau received certain complaints against the petitioner, they conducted an enquiry against him.

Thereafter, they recommended to initiate disciplinary action against the petitioner and to transfer him to some other station out of the District. This is

the situation in which the disciplinary action was initiated against the petitioner.

3. As per the direction of the District Collector, the Deputy Collector (LR) conducted a preliminary enquiry into the allegations made against the

petitioner. After the enquiry, he reported that during the tenure of the petitioner as the Village Officer at Kaipamangalam Village, he had accepted 20

applications for Transfer of Registry without receiving the fee required for such transfer and he effected mutation without following the procedural

formalities. Based on the preliminary enquiry report, Annexure A1 charge memo was issued to the petitioner. After considering the reply submitted by

the petitioner against the charge memo, it was decided to proceed with the disciplinary action and accordingly, the Deputy Collector (LA) conducted

an enquiry as contemplated under Rule 15 of the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 and submitted Annexure A3

report finding that the petitioner is guilty of three out of the four charges and consequently the said punishment was imposed as per Annexure A8. The

review application preferred against the said order was also dismissed by the Government, as per Annexure A10.

4. Heard the learned counsel appearing for the petitioner and the learned Senior Government Pleader.

5. It is persuasively argued by the learned counsel for the petitioner that the order impugned is liable to be set aside for the reason that the Deputy

Collector conducted an inspection at the Village office and collected certain materials upon which the charge was framed, but the petitioner was not

asked to be present at the time of inspection and that he was not served with the copy of the report on the inspection. Though the learned counsel has

raised certain other challenges against the impugned order in the original petition, he fairly limited his submissions to the above ground during the

course of hearing.

6. On the other hand, the learned Senior Government Pleader submitted that the records considered by the enquiry officer clearly reveal the culpable

role of the petitioner in effecting several mutations without receiving the required fee and that the report of the Vigilance and Anti-Corruption Bureau

also shows that the petitioner is guilty of corrupt practices.

7. It is settled law that this court can interfere with the disciplinary proceeding only when the enquiry is held in violation of the procedure prescribed on

that behalf or where the principles of natural justice have not been followed. The High Court, in the exercise of its powers under Article 226/227 of

the Constitution of India, is not expected to reappreciate the evidence or correct the errors of fact however grave it may appear to be [see Union of

India and Others v. P.Gunasekaran (AIR 2015 SC 545)].

8. The only ground upon which the impugned order is challenged before this court during the time of hearing is that, the petitioner was not asked to be

present during the inspection conducted by the Deputy Collector and that he was not supplied with a copy of materials collected during the inspection.

We find no merit in the said contention for the plain reason that it was only a preliminary enquiry conducted by an officer deputed by the District

Collector and there is no mandatory requirement in law that at the time of preliminary enquiry for verifying records, the presence of the incumbent

should be ensured. Even though it is contended that the petitioner was not served with a copy of the said enquiry report, we are not persuaded to

accept the same as the manual of disciplinary proceedings specifically provides that the employee is not entitled to get a copy of the preliminary

enquiry report. That apart, the petitioner was served with a charge memo containing all details forming part of the said preliminary enquiry report and

hence no prejudice was caused to him by the said act.

9. The learned counsel for the petitioner referred to a decision of this Court in State of Kerala Vs. Radhakrishnan [2023 (6) KLT 256] for contending

that if the employee is not given an opportunity of hearing to discredit the materials collected during the inspection, the disciplinary proceedings would

be vitiated. True, this court observed in the said case that

10. misplaced.

11. Radhakrishnan. As the disciplinary proceeding would be vitiated if the recovery of loss is effected without giving an opportunity of hearing to the

employee to discredit the materials collected which are relied on for fastening the liability. However, the matters under consideration in that case were

entirely different. A disciplinary proceeding was initiated against the employee for a major penalty but it was converted in the midway to the one for

imposing minor penalties. Then the disciplinary authority straightaway ordered recovery of loss. No opportunity was given to the employee to discredit

the materials found against him. It is in this circumstance the court observed that the proceedings were vitiated. In this case, the punishment was

imposed only after a proper formal enquiry. Therefore, reliance made on case (supra) is completely

10. At this juncture, the learned counsel for the petitioner further submitted that the petitioner is a physically challenged person and hence a lenient

approach is to be taken in his matter. In the present case, the Tribunal, after evaluating the relevant facts and circumstances arrived at a conclusion

that the enquiry conducted was flawless and the punishment imposed was proper. The Tribunal went further and observed that though the disciplinary

authority initially proposed a penalty of dismissal from service it later decided to modify the same and to limit the penalty to barring of three increments

with cumulative effect. Considering the gravity of the acts alleged against the petitioner, we find no reason to reduce the penalty imposed by the

Government. As held in Gunasekaran's case (supra), this court can go into the proportionality of punishment only when it shocks the conscience of the

court. The present punishment is not of such a magnitude.

In the result, the original petition is dismissed.