



GOVERNMENT OF KERALA

Abstract

Agriculture Department-Order dated 26/02/2020 of the Honb'le Kerala Administrative Tribunal in OA (EKM) 1803/2016 filed by Sri.Martin Thomas- Complied with- Orders issued.

AGRICULTURE (EA) DEPARTMENT

G.O.(Rt)No.1024/2022/AGRI Dated,Thiruvananthapuram, 21-11-2022

- Read 1. Circular No. 15/90/Fin dated 20/03/1990
2. G.O(Rt)No.1210/03/AD dated 29.08.2003
3. G.O(Rt)No.227/ 2008/AD dated 05.02.2008
4. G.O(Rt)No.51/2010/AD dated 12.01.2010
5. Order dated 26/02/2020 of the Honb'le KAT in OA[EKM]-1803/2016

ORDER

Sri.Martin Thomas Agricultural Officer,Krishi Bhavan,Kudayathoor filed OA[EKM]-1803/2016 before the Kerala Administrative Tribunal aggrieved by Annexure A8 and A10 orders issued by the first respondent (The State of Kerala, represented by Principal Secretary,Agriculture Dept.) rejecting his request for pay and allowances for the period he had to wait compulsorily for posting orders. The Hon'ble Tribunal by its order read as 5th paper above had set aside Annexure A8 and A10 orders and directed the 1st respondent to take back Annexure A7 (representation dated 27/3/2010 submitted by the applicant) on record and to pass appropriate orders in accordance with the observations therein and the relevant rules and the orders governing the matter, after affording an opportunity of personal hearing to the applicant. As ordered by the tribunal, the Deputy Secretary,Agriculture Department heard the applicant.

Sri.Martin Thomas, while working as Agricultural Officer at Krishi Bhavan,Vattavada of Idukki district, was granted Leave Without Allowance for 5 years, to take up employment abroad, as per order read as 2nd paper above. He availed the leave from 12/09/2003. The Hon'ble Special Judge I, CBI Court Ernakulam had issued a non-bailable arrest

warrant against Sri.Martin Thomas, Agricultural Officer in connection with case No.Rc.12/N 2004 KER CC No.17/05 and requested to recall the Officer from Leave Without Allowance and direct him to report before the Hon'ble Court of Special Judge. Government vide order read as 3rd paper above, had ordered to recall Sri.Martin Thomas, Agricultural Officer to duty, invoking Rule 70 of Part 1, KSR.

Later on, the Superintendent of Police, CBI, SPE, Cochin has intimated that Sri.Martin Thomas, Agricultural Officer had appeared before the court and was released on bail and he has not been detained either by the CBI or by any other court. Accordingly, vide order read as 4th paper above, Government ordered to reinstate Sri.Martin Thomas, into service pending criminal case against him in the CBI Court, Emakulam and directed to give necessary posting to the incumbent with immediate effect. Subsequently, as per order dated 14.01.2010 of the Director of Agriculture, Sri.Martin Thomas, Agricultural Officer was allotted to Principal Agricultural Officer, Idukki for suitable posting.

The Applicant had submitted a representation dated 27.03.2010 (Annexure A7) before the 1st respondent, requesting to treat the period from 8.7.2008 (the date of his reporting before the Head of Department on compulsory recalling to duty) to 16.01.2010 (actual date of joining the post) as duty and to provide leave salary authorised to him for the said period accordingly, as provided under Rule 70, Part I KSR. After examining the same, Government as per letter dated 11.06.2010 (Annexure A8) informed the 2nd respondent that the period from 12.09.2008 to 15.01.2010 is regularized as non duty without forfeiture of past service as no eligible leave can be granted in continuation of Leave Without Allowance under Appendix XII A, Part I KSR and the period from 08.07.2008 to 11.09.2008 need not be regularized, as the leave already sanctioned cover this period also. As per Circular No.15/90/Fin dated 20.03.1990 the time lag between the date of request/reporting and the actual date of rejoining duty will be treated as extension of LWA in the case of those who returned before expiry of sanctioned leave. Posting order could not be issued in this case within the 3 months time due to the fact that the appointing authority required clarifications on his eligibility for readmission in the context of CBI case. Hence the Director of Agriculture had been directed to forward the proposal for extension of leave without allowance in respect of Sri.Martin Thomas for the period from 12.09.2008 to 15.01.2010 under Appendix XII A Part I

KSR.

Sri.Martin Thomas again submitted a representation before Government(Annexure A9) with a request for regularising the period from 08/07/2008 to 16/01/2010 as duty and for payment of leave salary as provided in Rule 70. The same was also rejected (Annexure A10) on the following ground:

"The applicant is not entitled to get the benefits under Rule 70 of Part I KSRs, as the compulsory recalling was not on administrative exigencies but for appearing before the CBI court in connection with a corruption case.He was compulsorily recalled consequent on the non-bailable arrest warrant issued by the CBI Court in connection with corruption case. Hence of there is no violation of fundamental right of the applicant. Rule 70 of part 1 KSR provides that compulsory recalling of an Officer before the expiry of leave shall be treated as duty and the officer is entitled to get leave salary. But Sri. Martin Thomas is not entitled to get the benefit of Rule 70 part, 1 KSRs, since he was recalled from leave due to the non-bailable arrest warrant against him and it does not come within the purview of Rule 70 of Part I KSR."

Government have examined the matter in detail. The incumbent was recalled by Government from LWA consequent to a non-bailable arrest warrant issued by the Hon'ble Court. Before issuing posting orders, the appointing authority had to examine all the legal aspects and seek the advice of Government in Law, Finance and P&AR Departments regarding his re-entry into service. This resulted in delay in issuing posting orders. Besides, Sri. Martin Thomas is not entitled to the benefits under Rule 70, Part I, KSRs, as compulsory recall of the officer was not on administrative exigencies, but for appearing before the CBI Court consequent to a non-bailable arrest warrant.

In view of the facts detailed above, the prayer of the petitioner in Annexure A7 representation is devoid of any merit and hence rejected.

Order dated 26/02/2020 of the Honb'le Kerala Administrative Tribunal in OA (EKM) 1803/16 is thus complied with.

(By order of the Governor)
PRASEETHA K C

DEPUTY SECRETARY

To:

The Advocate General, Ernakulam.

Director of Agriculture Development and Farmer's Welfare

Sri.Martin Thomas, Agricultural Officer (Through Director of
Agriculture)

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

Stock File/ Office Copy. AGRI-EA2/41/2018-AGRI

Forwarded /By order

Section Officer