CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 419/2010

Monday, this the 27th day of June, 2011.

CORAM

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms. K NOORJEHAN, ADMINISTRATIVE MEMBER

V.Sreekumar,
Sr. Accountant,
O/o the Accountant General(A&E) Kerala,
Trichur. ....Applicant

(By Advocate Mr TC Govindaswamy)

v.

1. The Comptroller & Auditor General of India,
Government of India,
10, Baharur Sah Zafar Marg,
New Delhi-110 124.

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

3. The Sr. Deputy Accountant General(Admn),
O/o the Accountant General (A&E) Kerala,
Thiruvananthapuram.

4. Shri V Ravindran,
Principal Accountant General(A&E),
Andhra Pradesh, Hyderbad.

5. The Deputy Comptroller & Auditor General of India,
O/o the Comptroller & Auditor General of India,
Government of India,
10, Baharur Sah Zafar Marg,
New Delhi-110 124. ....Respondents

(By Advocate Mr V.V.Asokan)

This application having been finally heard on 27.6.2011, the Tribunal on the same day delivered the following:

ORDER

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER, JUDICIAL MEMBER

The cause of action in this case arises from one and the same incident which has been dealt with in O.A.No.873/2009, 437/2010, 440/2010 and 441/2010. These O.As have already been decided vide order dated 30.3.2011. In fact according to the counsel for the parties, this O.A could have been dealt with along with the aforesaid O.As but had been omitted to be so decided.

2. Counsel for the applicant submits that in view of the identity of facts and law points involved in this case as well as in the other decided cases, an order in the same fashion as in the aforesaid O.As would meet the ends of justice. Counsel for respondents has no objection for such an order being passed.

3. In the aforesaid O.As, the Tribunal has dealt with the legal issue as well as the factual positions as hereunder:

> 2. The primary facts are as follows: It appears that the Accountant General of Kerala was visiting Thrissur Branch Office on official work on 30.4.2007. It appears that the applicant and others were aggrieved by some service matters for which they had submitted a representation. As soon as they came to know that the A.G will be visiting Thrissur on 24.4.2007, they requested for permission to meet him and discuss the matter with him. Apparently on 30.4.2007 at about 3.P.M, the AG(A&E) along with Deputy A.G (A&E), Thrissur and Assistant Caretaker of the Branch Office entered the chamber of the Deputy A.G. and at that time the applicant in O.A.873/2009 along with six others entered the chamber of the Deputy A. G and preferred a representation to him. It would appear that the A.G refused to accept it and there seems to be insistence on the part of the employees for him to receive it. It has come out in evidence that they thereupon placed the memorandum on the table and apparently following the directions of the A.G went out of the office room of the Deputy AG and apparently when they were outside, shouted slogans like " A.G do justice" which was considered to be a breach of decorum and disruption of office and charges were levelled

against the concerned employees. Thereafter an enquiry was held and the enquiry report having concluded the enquiry officer submitted a report finding that the charges were proved. Following this, the disciplinary authority imposed punishment as he thought appropriate and the appellate authority have also confirmed the said punishment and thereon the applicants have challenged the said punishment imposed on them and have approached this Tribunal.

3. The crucial aspect relating to the issue is available in Annexure A-11 wherein the questions and answers put to PW-1 and PW-2 in the enquiry are discussed. The PW-1 is Deputy AG and PW-2 is the Assistant Caretaker who according to the A.G were in the room along with him and therefore could be termed as an eye witnesses. PW-1 would say (1) when Association has given written representation stating some point for discussion with A.G, the paper was put up to A.G only after he came to the office on 30.4.2007. (2) Permission was not granted for discussion but it was not communicated to the Association. (3) Office bearers of the recognized Association can submit representation to Head of Office in matters of common interest. (4) When Association representatives entered the room of the AG, no one prevented them by words or gesture (5) One among the group was carrying a paper and tried to hand over the paper to the A.G. (6) When the A.G rejected it they tried to give it a second time or third time. (7) **There was no physical force applied. When the A.G refused they left after arguments.** PW-2 seem to have said so in the inquiry. **"I do not remember where was Velayudhan's position in the group, whether in forefront, in middle or in the back? I do not remember the exact person who tried to place the memorandum. I did not see Velayudhan shouting slogans.** One of the slogans was **"AG do justice".** Further, PW-1 in its cross examination has stated that the group did not shout any slogans inside the chamber. The exact word of the slogan could not be heard in the room. He is not therefore not in a position to remember whether Velayudhan shouted slogans or not. The matter was over in 2/3 minutes and the functioning of the office was not disrupted due to the incident. Therefore, a rational and logical conclusion of this examination of 2 witnesses was that:

i. Permission was sought for by the Association to meet the A.G.
ii. Permission was not expressly denied. It was also not impliedly denied.
iii. The normal practice appears to be for the Association Office Bearers to meet the A.G directly whenever situation requires.

iv. No one had prevented them by any methods from entering the room.
v. There was no physical interaction between anybody.
vi. Employees offered representation which the A.G. Refused to accept. They seems to have been further requested him to accept and after 2/3 requests they seem to have placed it on the table and walked out. There was no further incident in the chamber.
vii. The witnesses say that they could hear slogans being shouted outside the room of the A.G, beyond the closed door and PW-2 could recollect the word "AG do justice."

4. This seems to be the sum and total of the incident. The enquiry officer cited from the Presenting Officer and the Defence Assistant the summary of case. The Presenting Officer seem to have stated that PW-1 and PW-2 have confirmed the presence of the charged officer in the group of seven and that the charged officer did not obey the command of the A.G to leave the chamber **at once.** He further **said no explicit permission was given for discussion.** He also stated that PW-2 has said that **at first** the group did not obey the order of the A.G. The crux of the presentation of the Presenting Officer seems to be **at once** and **at first.** The **immediacy of obedience to the AG's command,** according to him is the crux of the charge. He does not seem to have elaborated the factum of force which according to the evidence available seems to be only an embellishment.

5. In the summary of the defence assistant as noted by the enquiry officer in his report, it was noted that the non granting of permission of meeting was not communicated to the Association, nobody had prevented them from entering the room, there was no physical force and both witnesses are not sure who shouted slogans. He seems to have analysed the depositions and found that when they tried to have the paper handed over to the A. G they tried to repeatedly hand-over the paper and on his refusal to accept it placed the paper on the table and left.

6. Let us try to understand what is the force which the employee seem to have employed. Admittedly there was no physical interaction between any of them. There was no force to accept representation other than as oral request to accept. It may be that there was further request following rejection and they placed the representation on the table and went out. No element of force is found sustainable in this context and what

is discernible is supplication and request even though repeated request.

7. The Enquiry Officer relies on both the witnesses and found that the credibility of the witnesses was not challenged by the defence at any point of time. This is quite understandable, as at no point. Could the defence assail credibility of both witnesses as going by the deposition of those two witnesses, They seem to support the defence version. No reasonable man can come to the same conclusion with the Enquiry Officer. The enquiry officer further says that orders of superior officers are to be obeyed not only in words but also in spirit. He also found that by offering a paper to the AG the employees had prevented AG from discharging his duties. Both witnesses do not appear to have said anything against the employees. Thus, the findings of the enquiry officer seems to be more in the realm of imagination than based on facts.

8. One only hopes that greater wisdom and sensitiveness pervades higher officialdom. Lack of sensitivity and inordinate arrogance seems to be bright in display.

9. A detailed reply affidavit is filed by the respondents and they quote judgment of Hon'ble Supreme Court in the case of **Parma Nanda v. State of Haryana** [1989(2) SCC 177] which canvas a view that an enquiry consistent with the rules and in accordance with principles of natural justice is what is called for and the punishment would be exclusively within the jurisdiction of the competent authority. It further says that if the punishment is based on evidence and that it is not arbitrary, malafide or perverse, no judicial interdiction is called for. **Therefore, by necessary implication, when punishment is based on no evidence and the process is arbitrary, malafide and perverse, the Tribunal has to necessarily intervene**. Several other cases are also mentioned especially wherein the Apex Court has canvassed a view that for insubordination based on constitutional freedoms no exception can be granted. It is in respect of **M.H.Devendrappa v. Karnataka State Small Industries Development corporation** [(1998) 3 SCC 732] wherein the concerned employees has sent a representation to the Government requesting action against higher officials for corruption. But then much water has flown the bridge. **We have now recognized the value of whistle blower to the society.** The Hon'ble Apex court had held that such disclosures on the basis of public good and welfare must be encouraged. Therefore, the primary question is that what is of benefit to the general public. The government and its functionaries not exist for their personal enhancement or benefit but for the general

public. **The office decorum, discipline in office and other principles are enunciated not for the enhancement of the concerned officials prestige but for betterment of prospects of the general public. There seems to be misreading of functions and power in this respect.** The respondents have explained in paragraph 5 of rely what the respondents have meant by forcible entry. They would say that since explicit permission was not yet granted the entry of employees to their superiors room constitute forcible entry. They have not commented upon the case of the applicant that it was the accepted and the current practice for the Association Office Bearers to meet the AG when they wanted a specific matter to be discussed with him. Nothing prevented him from giving them another time if he was busy at that time since he was there on official business and it would have been wiser on his part to listen to those grievances. He has every right to reject those grievances But, in the best practices of man management and sensitivity in administration there cannot be any doubt that the AG should have received a representation from his subordinate employees whether or not he though such grievances were to be deemed as correct or not. In paragraph 13 of the reply statement, they would say that the findings of the enquiry authority are supported by evidence. Having gone through the evidence we find it to be contrary and **evidence given by both PW-1 and PW-2 are against the case put forward by the department.** The enquiry authority has never acted judiciously and judicially. They would say that the applicant had not pointed-out any procedural lapse on the part of the enquiry authority. But it is available from the records that he had pointed out the fact that no man can be his own judge in any cause. In paragraph 16 the respondents would say that the superior officer can be met only after getting a specific oral or written permission. But the evidence of the Deputy AG is that normally the current practice is that they can meet the superior officer to put forward their grievances. Since it was a consistent practice followed regularly, if the concerned officer wanted a change in procedure it can only be by accepted means. Since the representation was handed over to the concerned official 3 days prior to it, it can only be assumed that the recipient of such request was also under the bonafide believe that the normal custom would be followed. Otherwise, he would have pointed out-that the present AG is not desirous of meeting them in the 3 days which elapsed between submitting of the representation and the meeting with the AG.

10. Based on the pleadings and the submissions of the counsel what appears is that and the pleadings as well as Annexure A-9 nothing more be said about the report of the enquiry officer other than it appears to be more situated in the

realm of imagination. It is more of a functional theoretical position than actual expression of events as available from the evidence in question. **Interpretation of evidence is one thing but suppression of evidence is another. The evidence of PW 1 &2 clearly makes the prosecution solely untenable. It does not bring about any element of force rather it brings-out it supplication and request.** The shouting of slogans of persons standing outside the corridor can only create a suspicion against the officials belief but to accept it as a pointer against the applicant would be against justice as for some one else's mistake no one can be held responsible as apparently almost 30 others were waiting outside. The slogan, if we look at it is hardly derogatory. The whole incident lasted only 2 to minutes and going through the enquiry officers report and the orders it seems that the focus is established to be on the word **at once** and **at first.** Military Discipline need not be expected in an ordinary Government office. The grievance .of authorities would thus appear to be on the refusal to accept the representation that they have requested thrice more before placing the representation on the table and walking out. More than a mountain is seem to be built from mobhill. The Hon'ble Apex Court had considered such issues in **Mohd. Yunus Khan v. State of Uttar Pradesh and others [(2010)10SCC 539].** The Hon'ble Apex Court held that prejudices against an illegal order may not be termed as misconduct in every case. It is significant to note that this relate to the police force wherein higher degree of discipline is necessary for the requirement of the force. The Apex Court held that none can be the judge of one's own conduct. The AG himself is one among the eye witnesses to the incident. He could not have participated in the inquiry in any manner other than as a witness. The excuse of the respondents seems to be that none of the applicants protested against him. This seems to be incorrect as documentation would contradict this view of the respondents. Besides even without specific prodding in this regard authorities are required to act fairly and to be seen as acting fairly. Therefore, having found that the report of enquiry officer is vitiated by non-application of mind, suppression of actual evidence and there being no rational nexus between the evidence available and the findings, the enquiry report cannot be accepted as valid in law and justice. Before parting with this matter, we must focus our attention to Annexure A-1 a wherein the Presenting Officer asked the PW-1, what is the dictionary meaning of "barged". He would say it has seven meanings but in this context "the entry without permission or appointment. **No man however high is phonetically so proficient as to be able to quote dictionary meaning from memory. This alone would say that enquiry rates some stage management.** The evidence in such inquiry is to be assessed

more severely. The questions of presenting officer were leading questions. No one had any case that anybody barged into the room. Even during the cross examination the presenting officer seems to have interposed and asked (PW-1). "You said one among the group handed over paper to the A.G,. Could it not be, Velayudhan? (PW.1). I cannot say whether it was Velayudhan or someone else." Then he further asked "did they insist that the A.G receive the paper they brought" and the PW.1 answered they came to hand over the paper to the A.G. Then he asked that by placing the paper on the table, did it not amount to forcing the memorandum on A.G? and PW.1 said A.G was not willing to take it at hand. As he refused to accept it by hand they put it on the table. The rest of it also make interesting reading. Even the enquiry officer is required to act impartially and without bias. It is surprising that these intervention were allowed by the enquiry officer. But even then nothing came in; which would discredit the applicants. In Page No.9 of Annexure A-10 the presenting officer had asked whether it is becoming of a Government servant and is it good conduct for getting into an argument with Head of Office even by 2/3 minutes only and PW.1 answers that the intention was only to give the representation. **It is interesting reading when you consider that Annexure A-10 is the presenting officers summary of charges. .**

11. It is a well settled rule of Administrative Law that an executive agency must be rigorously held to the standards by which it professes its action to be judged and it must scrupulously observe those standards. Thus spoke **Justice P.N.Bhagwati in Ramana Dayaram Shetty Vs. The International Airport Authority of India and Other's case reported in AIR 1979 SC 1628** and thus, the Article 14 of the Constitution had proved to be a valid tool contrasting what has been trained in as unfettered discretion. Thus, the Courts have demanded that administrative discretion must not adopt arbitrariness and its exercise must be based on reasonable and relevant criteria and not on vague and uncertain guidelines. The dictum that subordinate officers must be allowed to complain without any restraint is based on best man-management principles. When a superior officer denies this opportunity to its workmen, needless arises. It is the part of managerial responsibility to attend to the grievances of its workmen and when the managerial personnel correctly applied this function a jurisdiction vested in him is being used and otherwise thereby misused. We have found that the current practice was for the workmen to meet their superior officers if they have any grievance. That seems to be the sum and substance of the testimony of P.W.-I the Deputy Accountant General as well. Thus following the above Apex Court rulings

the standards of man management expected in senior officers cannot be seem to be diminished for arbitrary reasons and personal preferences.

12. To add to this, the maxim of nemo judex in causa sua, i.e. a judge should not adjudicate upon a cause in which he is interested is of cardinal importance. It is all the more recognizable in the present issue. It constitutes a very important principle of determination of administrative action even in enforcing discipline.

13. But, in this context, the question of 'official bias' has also assumed prominence whether there may be or not personal ill-will, present, but there may be evidence of an abnormal desire to uphold a particular departmental policy which would prevent an impartial adjudication of the dispute. A similar situation was considered by the Hon'ble High Court of Madras in **Venkatachalam Iyer Vs. State of MP** reported in AIR 1957 Madras 623. The Hon'ble Apex Court in **A.K. Kraipak Vs. UOI** reported in AIR 1970 SC 150 at page 155 had said, " the real question is not whether he was biased. It is too difficult to prove the state of mind of a person, therefore, what we have to see is, whether there is reasonable ground for believing that he was likely to have been biased. There must be a reasonable likelihood of **bias"**.

14. In the instant case, the functional role played by the Accountant General cannot be discounted. From the position of a witness he assumed the post of a judge and an **inquiry report which suppressed crucial evidence and glossed over specific statement made by the witnesses were accepted in toto.** Therefore, we have to hold that the total process from the inquiry to the appellate order was vitiated by bias, non application of mind and suppression of evidence. The policy of invoking wider powers under the constitutional provisions is pregnant with the principle of consequences. The Courts have repeatedly asserted that where there is a right there is a remedy. The Hon'ble Supreme Court of India had stated that as far as possible the anxiety and endeavour of the Court ought to be to remedy an injustice rather then deny relief on purely technical and procedural grounds. Thus where a petitioner seeks a relief it is always open to the Court to grant him appropriate reliefs. This is more high-lighted and illustrated by the Hon'ble Apex Court decision rendered in **Bandhua Mukti Morcha Vs. UOI & Ors**. decision reported in AIR 1984 SC 802.

15. Thus considering cumulatively the entire process adopted by the respondents it seem to have resulted in a great

injustice. A small matter was made- up into a very large entity. To cap this, the enquiry which ought to have been impartial and unbiased became a farce of the proceedings wherein even during the cross examination and that too found in recorded statements, the Presenting Officer would intervene and asked clarificatory questions and answers will be recorded. He was permitted to ask leading questions and the way in some of the questions are answered leaves much to be desired. It is an expression of stage managed production and thus held to be vitiated through-out. It may not be out of place to observe that more prudence is required when an official performs quasi-judicial duty.

16. Since the Annexure A-1 and A-2 being the result of consideration of the enquiry report which is vitiated by suppression of evidence, non application of mind, arbitrary, whimsical and opposed to law and justice in every sense, it is hereby quashed. We direct that all the applicants be restored to their former positions forthwith. We further direct that if in the interregnum if any promotional avenues are also opened to the applicants then they are entitled to it. All the O.As are allowed with no order as to costs."

4. In view of the fact that the issues are identical and facts are the same, this O.A is also allowed and the impugned orders vide Annexure A-1 dated 30.5.2008, Annexure A-2 dated 2.1.2009 and Annexure A-3 dated 3.3.2010 are quashed and set aside. The applicant shall be restored to his former position forthwith. If in the interregnum, any promotional avenues were opened to the applicant, he is entitled to it as well.

5. No costs.

K NOORJEHAN
ADMINISTRATIVE MEMBER

Dr K.B.S.RAJAN
JUDICIAL MEMBER

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