

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 586 OF 2010

Wednesday, this the 10th day of August, 2011

CORAM:

**HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

Ayyappan K.P.
Senior Gestetner Operator
Office of the Accountant General (A&E)
Jawahar Nagar, Ernahippalam PO, Kozhikode – 06
Residing at Kalarikkal Parambil, Thiruvalli P.O
Wandoor Via Malappuram ... Applicant

(By Advocate Mr. TCG Swamy)

versus

1. The Comptroller & Auditor General of India
Government of India, New Delhi
2. The Senior Deputy Accountant General (Admn)
Office of the Principal Accountant General (A&E) Kerala
Thiruvananthapuram
3. The Accountant General (A&E) Kerala
Thiruvananthapuram
4. Shri V Ravindran
Principal Accountant General (A&E)
Andhra Pradesh, Hyderabad ... Respondents

(By Advocate Mr. V.V.Asokan)

The application having been heard on 10.08.2011, the Tribunal on the same day delivered the following:

ORDER

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER

The applicant seeks to challenge Annexure A-1 minor Penalty Advice by which he was imposed a penalty of reduction to a lower stage in the time scale of ₹ 3050-4590 by one stage for one year without cumulative effect with effect from 01.11.2007. Though he preferred an



appeal the same was confirmed by Annexure A-2. Though subsequently a revision was filed only that portion of the order treating the two days, viz., 17.04.2007 and 24.08.2007 as dies non have been deleted but the punishment imposed has been confirmed. Impugning the orders, Annexures A-1, A-2 and A-3, the present OA is filed.

2. The charge against the applicant as per Annexure A-9 is as follows:-

MEMORANDUM

Shri. Ayyappan K.P, Senior Gestetner Operator, Office of the Accountant General (A&E), Branch Office, Kozhikode is hereby informed that it is proposed to take action against him under Rule 16 of CCS (CCA) Rules 1965. A statement of the imputations of misconduct or misbehaviour on which action is proposed to be taken as mentioned above is enclosed.

2. *Shri. Ayyappan K.P, Senior Gestetner Operator is hereby given an opportunity to make such representation as he may wish to make against the proposal.*

3. *If Shri. Ayyappan K.P, Senior Gestetner Operator fails to submit his representation within 10 days of the receipt of this memorandum it will be presumed that he has no representation to make and orders will be liable to be passed against him ex-parte.*

4. *If Shri. Ayyappan K.P, Senior Gestetner Operator wishes to be heard in person, he may put in his request within 10 days of the receipt of this memorandum.*

5. *The receipt of this memorandum should be acknowledged by Shri Ayyappan K.P, Senior Gestetner Operator .*

Statement of imputations of misconduct or misbehaviour on which action is proposed to be taken against Shri Ayyappan K.P. Senior Gestetner Operator, Office of the Accountant General (A&E), Branch Office, Kozhikode.

In the wake of a call for dharna agitation issued by a group of employees calling itself the Audit and Accounts Association, specific warning was Issued by the Deputy Accountant General (Admn.) vide Circular dated 16.04.2007 against participation in the dharna on 17.04.2007. Inspite of the warning, Shri. Ayyappan K.P, Senior Gestetner Operator, Office of the Accountant General (A&E), Branch office, Kozhikode had participated in the dharna held in the office premises of Branch Office, Kozhikode on 17.04.2007. A memorandum dated 23.04.2007 was issued to him for taking part in the unauthorised agitation programme. In his reply to

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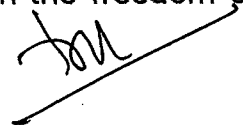
the said memorandum, Shri Ayyappan K.P, Senior Gestetner Operator had stated that he was attending to a call issued by the Association after taking leave. He had further stated that the allegations contained in the memorandum are factually and legally incorrect.

The explanation submitted by the official that he was attending to a call issued by the Association is untenable as the participation in any sort of agitation programme was unauthorised, illegal and not supported by the provisions contained in the CCS (Recognition of Service Associations) Rules, 1993 and Government of India orders issued in this regard.

Inspite of the memorandum issued to him in respect of his participation in the dharna as above, Shri. Ayyappan K.P, Senior Gestetner Operator had, along with a group of employees, also participated in the demonstration held in the office premises on 24.08.2007 and shouted slogans which were insubordinate in nature, tone and content.

By his willful, repeated and active participation in these unlawful acts which disturbed the peace at the place of his employment and which were unauthorised and disorderly, Shri Ayyappan K.P, Senior Gestetner Operator acted in a manner unbecoming of a Government servant. He has, therefore, contravened the provisions of Rule 7 (i) of the CCS (Conduct) Rules, 1964 which states, inter-alia that no Government servant shall engage himself or participate in any demonstration which is prejudicial to public order and thereby violated the Rule 3 (1)(iii) of the CCS (Conduct) Rules, 1964 which stipulates that every government servant shall do nothing which is unbecoming of a Government servant.

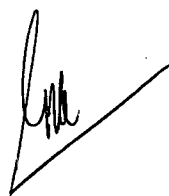
3. He submitted a reply Annexure A-10 denying the charges but admitted that he had participated in the peaceful Dharna organized by the employees. The short question that arises for consideration is as to whether participation in Dharna by itself is a misconduct. We have already considered the question in similar cases. We have already held as per order dated 05.07.2011 in OA 895/09 that participation in Dharna beyond office hours is not a misconduct. We have followed the Apex Court's decision in AIR 1962 SC 1166, **Rameshwar Prasad and Others vs. State of Bihar and Another**, that a peaceful and orderly demonstration would fall within the freedom of speech.



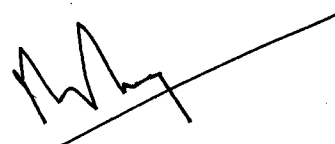
4. Even though it is contended by the counsel for respondents that he had submitted a leave application stating a wrong reason, we do not find any charge in Annexure A-9 charge memo. As such, this contention is outside the purview of the proceedings. In the result, we quash Annexures A-1, A-2 and A-3 imposing penalty on the applicant. We direct the respondents that the applicant may be restored with the benefit as though impugned orders were not passed.

5. OA is allowed as above. No costs.

Dated, the 10th August, 2011.



K GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R. RAMAN
JUDICIAL MEMBER

VS