

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

**O.A. NO. 590 OF 2010
&
O.A. NO. 669 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**

1. O.A. NO. 590 OF 2010

Velayudhan K.C
Section Officer
Office of the Accountant General (A&E), Kerala
Branch Office, Thrissur
Residing at Kakkunnathu House
Karikkad – 680 519 ... Applicant

(By Advocate Mr. TCG Swamy)

versus

1. The Comptroller & Auditor General of India
Government of India, New Delhi
2. The Deputy Comptroller and Auditor General
Office of the Comptroller & Auditor General of India
Government of India, New Delhi
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)

2. O.A. NO. 669 OF 2010

K.B.Suresh Kumar
Section Officer (Ad-hoc) (Assistant Accounts Officer)
Office of the Accountant General (A&E), Kerala
Thiruvananthapuram
Residing at 17/1956/2, Palace View Road
Poojapura PO, Thiruvananthapuram - 12 ... 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 applications 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

Common question of law and facts arise for consideration in the above OAs, hence they are disposed of by this common order.

2. The applicants are employees in the A.G's office at Thrissur and Trivandrum and respectively. They are aggrieved by the penalty order Annexure A-1 imposing a penalty of reduction to a lower stage by one stage in the time scale of ₹ 6500-10500 for a period of two years in the case of Applicants in OA 590/10 and for a period of three years in the case of applicants in OA 669/10 without cumulative effect with effect from 01.11.2007. In the appeal the Appellate Authority by Annexure A-2 modified the order and substituted the penalty of withholding of one increment becoming due after issue of penalty order dated 11.10.2007 for one year without cumulative effect in the case of applicants in OA 590/10 and for two years in the case of applicants in OA 669/10. Aggrieved by these orders, the present OAs are filed.



3. It is contended that there was some common issue affecting the employees which led to a series of action including dharna on several days in the A.G's office. He was issued with a charge memo alleging the following charges. Annexure A-3 in OA 590/10 is as under:-

MEMORANDUM

Shri. Velayudhan K.C., Section Officer, Office of the Accountant General (A&E), Kerala, Thiruvananthapuram 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. Velayudhan K.C., Section Officer, is hereby given an opportunity to make such representation as he may wish to make against the proposal.*

3. *If Shri. Velayudhan K.C., Section Officer, 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. *The receipt of this memorandum should be acknowledged by Shri Shri. Velayudhan K.C., Section Officer,*

Statement of imputations of misconduct or misbehaviour on which action is proposed to be taken against Shri. Velayudhan K.C., Section Officer, Office of the Accountant General (A&E), Kerala, Thiruvananthapuram.

On 23.08.2007 at around 12.45.PM, Shri.Velayudhan K.C, Section Officer along withg a group of employees shouting slogans marched towards the chamber of the Accountant General (A&E) and on reaching there continued with their slogans which were insubordinate in nature, tone and content. The shouting outside the chamber of the Accountant General (A&E) continued for about 15 minutes. By their illegal demonstration and grouping they restricted the freedom of movement and functioning of the Secretariats of the Accountant General (A&E) and the Senior Deputy Accountant General (Admn) and inhibited the passage of officials and Visitors.

By his willful and active participator in this unlawful act which disturbed the peace at the place of his employment and which was disorderly and which prevented free movement and functioning of the Secretariats of the Accountant General (A&E) and Senior Deputy Accountant General (Admn) and inhibited the passage of officials and visitors, Shri Velayudhan K.C, Section Officer 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

By his willful and unlawful act of participating in the illegal demonstration in front of the chamber of the Deputy Accountant General (Admn), which was disorderly and which prevented free movement and functioning of the Secretariats of the Accountant General (A&E) and Senior Deputy Accountant General (Admn) and inhibited the passage of officials and visitors, Shri.Velayudhan K.C, Section Officer has contravened the provisions of Rule 7 (i) of the CCS (Conduct) Rules, 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.

4. The applicants submitted A-4 reply wherein they admitted of having participated in the dharna but denied that they had not marched towards the chamber of the Accountant General on 23.08.2007 nor he prevented the passage of Accountant General and Deputy Accountant General. According to them the demonstration was peaceful and that free passage / movement of any one including the visitors were blocked. He also denied shouting of any slogans which were insubordinate in nature, tone and content. But not being convinced of the reply, the Disciplinary Authority imposed the punishment by Annexure A-1 and modified by the Appellate Authority to which reference is already made.

5. It is contended by the counsel for applicants that the order of penalty by Annexure A-2, the appellate order is not sustainable in the eye of law. In so far as the Disciplinary Authority have relied on the deposition of certain video recordings, without even mentioning those materials in the charge memo and copies of the depositions and video recordings, the findings arrived at against the applicants is behind their back and this denied them the reasonable opportunity. According to him, the only charge admitted by them is of having

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participated in the dharna and in the factual situation, cannot be treated as misconduct.

6. In the reply statement filed by the respondents it is contended that the applicant behaved in a disorderly manner and shouted of slogans and marched towards the chamber of A.G during office hours and even blocked the passage of senior officers. It is further contended that what is imposed is penalty of minor nature and what is contemplated under the rules is to take factual and legal aspects before imposing punishment considering the nature of the misconduct alleged to have been proved. It is further contended that the punishment was finally sustained by the Appellate Authority is fully justified and no interference is necessary. Similar are the charges against the applicant in OA 669/10 and the contentions raised are the same.

7. We have heard both sides. Admittedly, in the absence of any enquiry held, the order imposing the penalty should disclose as to how the guilt is found. The allegation raised against the applicants as such is not admitted by them. They have denied shouting of slogans which are insubordination in nature, tone and content. He also denied of having marched towards the A.G's office, and in the wake there should be something on record to show that they have committed these misconducts. Admittedly, the materials relied on by the Disciplinary Authority are depositions and video tape recordings. But no mention is made in the charge sheet of these materials nor are made available to the applicants before imposing the penalty. Therefore, a reasonable opportunity as contemplated under Rule 16 of CCS(Conduct) Rules, 1964 is not fully complied with. However, the fact that they had participated in the dharna at 12.45P.M is not specifically denied. That is, their participation is during office hours. This charge stands proved. But the penalty imposed is comprehensive for all the charges and not merely for participation in dharna during office hours. But the



nature and quality of the dharna was stated to be peaceful. Hence the sheer allegation raised in the charge sheet cannot be sustained with the available materials on record. However, appropriate punishment for the sole charge of having participated in dharna during office hours could be imposed.

5. In the circumstances, we allow these OAs and set aside the penalty order as modified by the Appellate Authority and remand the case to the Disciplinary Authority to consider and pass appropriate orders on the punishment. This shall be done as expeditiously as possible within three months from the date of receipt of a copy of this order. The status quo as on today will be maintained and will be subject to the final orders to be passed by the Disciplinary Authority, in case Disciplinary Authority find lesser punishment to impose necessarily to that extent benefit already lost shall be restored. In case final orders are not passed as aforesaid, then the Disciplinary Authority shall restore the benefits to them as though Annexures A-1 and A-2 are not passed.

6. OAs are allowed as above. No costs.

Dated, the 10th August, 2011.



K GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R. RAMAN
JUDICIAL MEMBER

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