CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 591 OF 2010
&
O.A. NO. 593 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. 591 OF 2010**

Sreekumar
Senior Accountant
Office of the Accountant General (A&E)
Branch Office, Thrissur
Residing at Annekot House, Triprayar PO
Valapad, Thrissur – 680 020 ... 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 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)

2 **O.A. NO. 593 OF 2010**

V.Hari
Senior Accountant
Office of the Accountant General (A&E)
Thrissur Branch
Residing at Syamakiranam
Aimpur PO, Thrissur – 680 020 ... 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 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, and hence we dispose of these OAs in a common order.

2. . The applicants are the employees of the A.G's office,Thrissur was initiated with disciplinary action . Annexure A-4 is the charge sheet issued to the applicant in OA 591/10 which reads as follows:-

MEMORANDUM

Shri. Sreekumar V, Senior Accountant, Office of the Accountant General (A&E), Branch Office, Thrissur 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. Sreekumar V, Senior Accountant is hereby given an opportunity to make such representation as he may wish to make against the proposal.

3. If Shri. Sreekumar V, Senior Accountant 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. Sreekumar V, Senior Accountant 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. Sreekumar V, Senior Accountant.

Statement of imputations of misconduct or misbehaviour on which action is proposed to be taken against Shri Sreekumar V, Senior Accountant, Office of the Accountant General (A&E), Branch Office, Thrissur.

Shri. Sreekumar V, Senior Accountant, Office of the Accountant General (A8r.E), Branch office, Thrissur had participated in the agitation programme held in the Branch Office, Thrissur on 19.12.2006 and 26.12.2006. A memorandum dated 30.01.2007 was issued directing him to show cause why action should not be initiated against him for taking part in the unauthorised agitation programme. In his reply dated 22.02.2007 to the memorandum dated 30.01.2007, Shri. Sreekumar V, Senior Accountant had stated that, being an elected member of the executive committee of the Association, he was imptementing a collective decision of the Association on those days after availing leave. He had also requested to accept the explanation and not to proceed further in the matter.

Despite the memorandum issued to him for participating in the dharna on 19.12.2006 and 26.12.2006 and the specific warning issued by the Deputy Accountant General (Admn.) vide Circular dated 16.04.2007 against participation in the dharna on 17.04.2007, Shri. Sreekumar V, Senior Accountant had again participared in the illegal dharna held in the portico of the Main building of the Office of the Accountant General (A&E), Kerala, Thiruvananthapuram on 17.04.2007. A memorandum dated 18.04.2007 was issued for participating in the agitation programme on 17.04.2007. In his explanation dated 01.06.2007 to the memorandum, Shri. Sreekumar V, Senior Accountant 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.
Inspite of the memoranda issued to him in respect of his participation in the dharnas as above, Shri. Sreekumar V, Senior Accountant had, along with a group of employees, also participated in the dharna/demonstration ,held in the office premises on 23.08.2007 and shouted slogans which were insubordinate in nature, tone and content.

The explanation submitted by the official to the memorandum dated 31.01.2007 that being an elected member of the executive committee of the Association, he

was implementing a collective decision of the Association on those days after availing leave 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.

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. Sreekumar V, Senior Accountant 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. They submitted their reply Annexure A-5 denied the charges. But admitted that they were on dharna on various days as alleged in the memo of charges. Annexure A-1 penalty order was imposed by the Disciplinary Authority to a lower stage in the time scale of ₹ 5500-9000 for a period of three years without cumulative effect with effect from 01.11.2007 and to treat 19.12.2006, 26.12.2006, 17.04.2007 and 23.08.2007 as dies non and not to count the same for any service benefits including pension. In appeal the said order was confirmed. Annexure A-2 is the copy of the appellate order. Thereafter they preferred a revision. The Revisional Authority also confirmed but the direction to treat the days as dies non was vacated as it is not a subject matter of charge. Aggrieved by this, the applicants have filed this OA.

4. We have heard both sides. In so far as the only charge sustained being participation in dharna on various days as alleged in the charge

sheet there is no denial of this fact. We have already made clear that mere participation in dharna itself will not amount to 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.

5. There is no specific allegation that the dharna was held during office hours in the charge memo or he has deserted his work. We are referring to this aspect since in some other connected cases, there were specific allegation of having participated in the dharna during office hours. We have sustained the charges in the absence of any specific denial thereof. Admittedly, here the allegation is only participation in dharna. Hence going by the earlier decision it has to be held that the order of penalty Annexure A-1 as confirmed in appeal and revision, are not sustainable. Accordingly, we quash these orders and the benefits stand restored to the applicants.

6. OAs are allowed accordingly. No costs.

Dated, the 10th August, 2011.

K GEORGE JOSEPH
ADMINISTRATIVE MEMBER

JUSTICE P.R.RAMAN
JUDICIAL MEMBER

vs