

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 592 of 2010
Original Application No. 596 of 2010
Original Application No. 605 of 2010
Original Application No. 609 of 2010
Original Application No. 624 of 2010
Original Application No. 767 of 2010
Original Application No. 796 of 2010

Friday, this the 02nd day of September, 2011

CORAM:

Hon'ble Mr. Justice P.R. Raman, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

1. Original Application No. 592 of 2010 -

Hassan T.A., aged 49 years, S/o. Ali P.V.,
 Assistant Accounts Officer (Adhoc),
 Office of the Accountant General (A&E),
 Thrissur Branch, Presently Residing at : Palikuzhi House,
 Krishnapuram, Ollukara P.O., Thrissur-680 011.

Applicant

2. Original Application No. 596 of 2010 -

Nandakumaran A., aged 48 years,
 S/o. Raman Nair T., Assistant Accounts Officer,
 Office of the Accountant General (A&E), Kerala,
 Branch Office, Thrissur, Residing at : Ambat House,
 Arimpur, Thrissur - 680 620.

Applicant

3. Original Application No. 605 of 2010 -

Sreevalsan M., aged 45 years, S/o. Late T. Purushothaman Nair,
 Assistant Accounts Officer, Office of the Accountant General (A&E),
 Branch Office, Thrissur, Residing at : Nandanam, Karama East,
 Kolazhy P.O., Thrissur - 680 542.

Applicant

(By Advocate - Mr. T.C.G. Swamy in OAs Nos. 592, 596 & 605 of 2010)

V e r s u s

1. The Comptroller & Auditor General of India,
 Government of India, New Delhi.
2. Deputy Comptroller & 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
in OAs Nos. 592,
596 & 605 of 2010

(By Advocate – Mr. V.V. Asokan in OAs Nos. 592, 596 & 605 of 2010)

4. **Original Application No. 609 of 2010 -**

Venugopalan M, aged 49 years, S/o. Manian V.,
Senior Accountant, Office of the Accountant General (A&E),
Kerala, Thrissur Branch Office, Residing at : Chaithram,
Chuduvallathur, Shornur, Palakkad.

Applicant

5. **Original Application No. 624 of 2010 -**

C.A. Majeed, aged 49 years, S/o. C.A. Abdul Khader,
Senior Accountant, Office of the Accountant General (A&E),
Thrissur Branch, Presently Residing at : No. E1-AG's Office
Staff Quarters, Pullazhi P.O., Thrissur-680 012.

Applicant

(By Advocate – Mr. T.C.G. Swamy in OAs Nos. 609 & 624 of 2010)

V e r s u s

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 in
OAs Nos. 609 &
624 of 2010

(By Advocate – Mr. V.V. Asokan in OAs Nos. 609 & 624 of 2010)

6. **Original Application No. 767 of 2010 -**

Balakrishnan P, aged 49 years, S/o. (late) Kanaran T.H.,
Section Officer (Adhoc) (Assistant Accounts Officer),
Office of the Accountant General (A&E) Kerala,
Kozhikode Branch, Residing at : Thekkayil House,
Nadakkuthazha P.O., Vatakara,
Kozhikode District.

..... **Applicant**

7. **Original Application No. 796 of 2010 -**

Leeladharan P.V., aged 44 years, S/o. (Late) Ramaperuvannan
Vadiyer P.V., Assistant Accounts Officer, Office of the
Accountant General (A&E), Kerala, Kozhikode Branch,
Residing at : Maruppacha, Madhuravanom Road,
Civil Station P.O., Kozhikode-6.

..... **Applicant**

(By Advocate – Mr. T.C.G. Swamy in OAs Nos. 767 & 796 of 2010)

V e r s u s

1. The Comptroller & Auditor General of India,
Government of India, New Delhi.

2. The Deputy Accountant General (A&E)
Office of the Accountant General (A&E), Kerala,
Branch : Kozhikode.

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

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

..... **Respondents**
in OAs Nos. 767
& 796 of 2010

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

..... **5th respondent in**
OA No. 796/2010

(By Advocate – Mr. V.V. Asokan in OAs Nos. 767 & 796 of 2010)

These applications having been heard on 10.08.2011, the Tribunal on

02-09-11 delivered the following:

ORDER

By Hon'ble Mr. K. George Joseph, Administrative Member -

As common questions of law and facts arise for consideration in the above Original Applications, they are disposed of by this common order.

2. The applicants in OA Nos. 592, 596, 605, 609 & 625 of 2010 are employees of Accountant General's office at Trichur and the applicants in OA Nos. 767 & 796 of 2010 are employees of Accountant General's office Kozhikode. They were charge sheeted for violating the provisions of Rule 7(i) and 3(1)(iii) of CCS (Conduct) Rules, 1964 by participating in demonstrations on various dates during the period from December, 2006 to August, 2007.
3. The charge memo issued to the applicant in OA No. 596 of 2010 reads as follows:-

"MEMORANDUM

Shri Nandakumaran A, Section Officer, 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 Nandakumaran A, Section Officer is hereby given an opportunity to make such representation as he may wish to make against the proposal.
3. If Shri Nandakumaran A, 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 Nandakumaran A, Section Officer.

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

Shri Nandakumaran. A, Section Officer, Office of the Accountant General (A&E), Branch Office, Thrissur had participated in the agitation programme held in the Branch Office, Thrissur on 19.12.2006. 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 said memorandum, Shri Nandakumaran. A had stated that, as a member of the Association, he was attending to a call issued by the Association and he did not mean any violation of the conduct rules. He had also requested to accept the explanation and not to proceed further in the matter.

The explanation submitted by the official that he was attending to a call by the Association was examined by the competent authority and found 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. However, taking a lenient view, the competent authority restricted its action and vide order No. DAG(A)/C.Cell/Dharna/TCR/06-07 dated 09.05.2007 warned Shri Nandakumaran A, Section Officer that he should desist from any such or similar misbehaviour in future, failing which appropriate disciplinary and other action under the rules will be taken against him.

In spite of the warning issued, Shri Nandakumaran A, Section Officer along with a group of employees participated in an unauthorised mass rally held in the office premises on 23.8.2007, shouting slogans and marching through the office buildings.

By his wilful, 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 Nandakumaran A, 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 the 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. Similar charge memos have also been served on the applicants in the

other OAs under consideration here. In their reply statements the applicants have denied the charges but admitted that they have participated in the demonstrations. They were imposed with the penalty of reduction to a lower stage. The penalty orders were confirmed in the appeal. Applicants in OA No. 624 & 767 of 2010 preferred revision petitions. The revisional authority also confirmed the penalty order. Aggrieved by the orders of the disciplinary authority, appellate authority and revisional authority as the case may be the applicants have filed these OAs.

5. We have heard the learned counsel for the applicants Mr. T.C.G. Swamy and learned counsel for the respondents Mr. V.V. Asokan and perused the records.

6. The applicants have admitted participation in the demonstrations on various days as stated in the charge sheets. The applicant in OA No. 592, 605, 609, 624, 767 and 796 had taken leave on 17.4.2007. In a number of OAs we have already made clear that mere participation in demonstration by itself will not amount to misconduct following the decision of the Apex Court in AIR 1962 SC 1166 - Kameshwar Prasad & Ors. Vs. State of Bihar & Anr. It was held in the Apex Court judgment that peaceful and lawful demonstration would fall within the frame of freedom of speech. The relevant extract of the aforesaid decision of the Apex Court is reproduced as under:-

"(13) The first question that falls to be considered is whether the right to make a "demonstration" is covered by either or both of the two freedoms guaranteed by Art. 19 (1)(a) and 19(1)(b). A

"demonstration" is defined in the Concise Oxford Dictionary as "an outward exhibition of feeling, as an exhibition of opinion on political or other question especially a public meeting or procession". In Webster it is defined as "a public exhibition by a party, sect or societyas by a parade or mass-meeting". Without going very much into the niceties of language it might be broadly stated that a demonstration is a visible manifestation of the feelings or sentiments of an individual or a group. It is thus a communication of one's ideas to others to whom it is intended to be conveyed. It is in effect therefore a form of speech or of expression, because speech need not be vocal since signs made by a dumb person would also be a form of speech. It has however to be recognised that the argument before us is confined to the rule prohibiting demonstration which is a form of speech and expression or of a mere assembly and speeches therein and not other forms of demonstration which do not fall within the content of Art. 19(1)(a) or 19(1)(b). A demonstration might take the form of an assembly and even then the intention is to convey to the person or authority to whom the communication is intended the feelings of the group which assembles. It necessarily follows that there are forms of demonstration which would fall within the freedoms guaranteed by Art. 19(1)(1) & 19(1)(b). It is needless to add that from the very nature of things a demonstration may take various forms; it may be noisy and disorderly, for instance stone-throwing by a crowd may be cited as an example of a violent and disorderly demonstration and this would not obviously be within Art. 19(1)(a) or (b). It can equally be peaceful and orderly such as happens when the members of the group merely wear some badge drawing attention to their grievances."

(emphasis supplied)

7. There is no specific allegation that the demonstrations were held during office hours in the charge memos or that the applicants have deserted their work. In certain cases where there was specific allegation of having participated in demonstrations during office hours we have sustained the charges in the absence of any specific denial thereto. Admittedly in these cases the allegation is only participation in demonstration. Hence, going by the earlier decisions of this Tribunal as well as decision of the Hon'ble Apex Court, the penalty orders, appeal orders and revisional orders as the case may be are not sustainable. Accordingly, we quash these orders and the

benefits stands restored to the applicants.

8. Original Applications are allowed accordingly. No costs.

(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER

(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

"SA"