

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCHO.A No.608 /2007Monday, this the 26th day of May, 2008.

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HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

M.Vasudevan Nair,
Vasitha, TC 81/621,
Pappanamcode,
Thiruvananthapuram.Applicant

(By Advocate Mr Vishnu S Chempazhanthiyil)

1. The Deputy Manager
and Inquiry Officer,
SPCC, Bangalore-1.
2. Director of Accounts (Postal),
Karnataka Circle,
Bangalore-1.
3. Chief Post Master General,
Karnataka Circle,
Bangalore-1.
4. T.N.Padma,
Junior Accountant,
O/o Director of Accounts(Postal),
Bangalore GPO, Bangalore-1.Respondents

(By Advocate Mr. TPM Ibrahim Khan, SCGSC for R.1 to 3)

This application having been finally heard on 15.4.2008, the Tribunal on 26.5.2008 delivered the following:

ORDER**HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

The applicant retired as a Senior Superintendent of Post Offices, RMS TV Division on 31.5.2003. Thereafter, he has been permanently residing at Pappanamcode, Thiruvananthapuram. According to him, he was being engaged in various disciplinary proceedings as Assisting Government Servant (AGS for



short) to defend the charged employees in various Central Government Departments. In connection with the departmental enquiry under Rule 14 of the CCS (CCA) Rules, 1965, one T.N.Padma, Junior Accountant, GPO Complex, Bangalore (4th respondent) approached him seeking his assistance in the matter. He expressed his willingness to assist her in the proceedings. He has also informed about his acceptance to the disciplinary authority/enquiry authority. Thereafter, the respondents issued the Annexure A-4 series of notices dated 13.1.2006, 23.1.2006, 1.5.2006, 8.6.2006 and 7.7.2006 to him to appear in the disciplinary proceedings being held against the aforesaid Smt Padma as her AGS. On completion of the enquiry proceedings, he submitted his TA Bill along with the certificates of attendance to the 2nd respondent for sanctioning the same vide Annexure A-2 23.1.2007. However, the 2nd respondent rejected his request vide Annexure A-3 letter dated 7.3.2007 stating that he was permitted to act as AGS to Smt Padma on the basis of the undertaking given by her that she will bear his TA expenses. Aggrieved by the aforesaid Annexure A-3 letter or rejection, he submitted Annexure A-4 representation dated 13.3.2007 to the 3rd respondent, viz, Chief PMG, Karnataka Circle, Bangalore. In the said representation, he has stated that he was unaware of the unjustified and unwarranted understanding reached between the 4th respondent and the disciplinary authority and that at no point of time it was intimated to him. He has also brought the Decision Nos. 6, 7 and 12 in "Chapter 15 of Swamy's Manual on Disciplinary Proceedings" to the notice of the said respondent which in unequivocal terms state that the TA bills of the retired officers engaged as AGS should be borne by the department. The aforesaid representation was also rejected by the Annexure A-5 letter dated 24.7.2007 and the applicant was informed that his nomination made by Smt Padma was not accepted by the enquiry authority in the first instance as he was staying in Kerala State and Bangalore being a Metro City with the Headquarters of large number of

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Central/State Government Offices, she could avail of the services of many efficient Central/State Government Officers/Officials residing in Bangalore itself. However, Smt Padma made a request to the respondent-department stating that she will bear the TA expenses payable to the applicant who is residing at Kerala State and it was on the basis of the said request that the disciplinary authority permitted her to avail the applicant's service with the condition that she should bear his expenses for the entire proceedings. The aforesaid decision of the disciplinary authority to permit the applicant to assist her was also communicated to her.

2. The applicant has challenged Annexure A-4 and A-5 letters stating that they are violative of the rules governing the eligibility of travelling allowance etc. to AGS/Retired Government servants. He has contended that the facility of having AGS as provided in Rule 14(8) of CCS(CCA) Rules is part of the principles of "*the reasonable opportunity*" as enshrined in Article 311 of the Constitution of India to civil servants. He has also relied upon the letter No.F.16/122/56-AVD of the Government of India, Ministry of Home Affairs dated 18.8.1960 and the OM No.35014/I/77-Ests(A) dated 24.8.1977 contained in Chapter 15 of the Swamy's Compilation of CCS(CCA) Rules regarding "Orders regarding grant of Travelling Allowance etc. to various persons during disciplinary proceedings." The aforesaid letter dated 18.8.1960 deals with the manner in which the payment of travel and other expenses to the persons appearing as witnesses in departmental enquiries set up by the Government of India is to be regulated. According to para 3(i) of the aforesaid letter, the AGS is entitled to receive payment of TA as on tour under FR 154. According to the aforesaid letter dated 24.8.1977, the retired Government servant concerned will be deemed to belong to the grade of Government servants to which he belonged immediately before his retirement for the purpose of these instructions. He has



also relied upon the Rule 14(8) of the CCS(CCA) Rules and submitted that all Government servants are entitled to the assistance of a Government servant during the enquiry proceedings. Further, he has submitted that the alleged agreement as between the charged officer and the disciplinary authority is opposed to the Government of India instructions on the subject and thus the said agreement has no force of law and is beyond the jurisdiction and competency of the disciplinary authority. Moreover, he was totally unaware of the condition imposed by the disciplinary authority on the respondent No.4 in engaging him as her AGS. He has therefore, sought the following reliefs:

- i) Call for the records leading to the issue of Annexure A-3 & A-5 and set aside Annexure A-3 & A-5.
- ii) Declare that the applicant is entitled to sanction of the TA bill submitted by him along with Annexure A-1.
- iii) Direct the respondents to consider sanction of the TA bill submitted by the applicant in terms of the Government of India instructions governing the subject.

3. Respondents 2 & 3 have filed their reply. Respondent No.1, being a formal party, did not file any reply. Though notice was served upon the 4th respondents, she did not file any reply or appeared herself or through any authorised agents/lawyer.

4. In the reply filed by the 2nd and 3rd respondents, it has been submitted that initially when the 4th respondent nominated the applicant as her AGS and produced his letter of willingness dated 3.6.2005, the enquiry authority directed the 4th respondent to avail the services of any other officials stationed at Bangalore itself and rejected her request proposing the applicant as her AGS on the ground that he was residing in Kerala at Trivandrum. The 4th respondent, thereafter, filed a "bias petition" dated 13.8.2005 before the Chief PMG, Karnataka Circle against the aforesaid orders of the enquiring authority but the same was rejected vide memo dated 28.10.2005 on the ground that the enquiry



authority has strictly adhered to the rules and instructions on the subject and directed the enquiry authority to continue with the inquiry proceedings. Thereafter, the 4th respondent made the representation dated 21.11.2005 to the 2nd respondent to accept her nomination of the applicant as her AGS with the specific condition that she should meet his TA. On the basis of the aforesaid condition, the 2nd respondent vide Annexure A-3 letter No.1858.Admn/Per V/Rule 14/TNP dated 12/15.12.2005 allowed her request and granted permission to appoint the applicant as her AGS with the condition that all his travel expenditure would be met by her. According to the respondents, in the above circumstances, the applicant could not have contended that he was unaware of such an agreement between the 4th respondent and the 2nd respondent. The respondents have produced a copy of the representation dated 21.11.2005 (Annexure R-2) submitted by the 4th respondent in this regard which reads as follows:

"From

Dt.21.11.2005

T.N.Padma,
Jr. Accountant,
O/o DAP, Bangalore.

To

The Director,
Postal Accounts
(Disciplinary Authority),
GPO Building,
Bangalore-560 001.

Sub: Nomination of Assisting Govt. servant.

Kindly refer to your memo No.2520/Admn/Per.V/Rule 14/TNP/05
dt.4.3.2005

Madam,

With reference to the above memo, at the time of rule 14 inquiry, I have nominated Shri M Vasudevan Nair Trd. SSPO, Kollam now residing at Pappanamcode, Thiruvananthapuram, being my AGS on seeing his name the IA flared up and made many castigating and insinuating remarks against both of us because of the IA's association with a sexual harassment enquiring



committee. When her anger subsided she told me to nominate Shri Ravindran Nair formerly working as Wilson garden PO. I very politely expressed my anxiety over the gravity of the allegations made against me and hence the necessity of getting a capable person to defend my case. Then IA motivated me to nominate any other person other than Mr M Vasudevan Nair. There upon I narrated my difficulties to get a suitable person stationed at Bangalore. I also explained that being a retired person Shri Nair would be readily available for the speedy completion of the inquiry. Then the IA told me that his nomination would be accepted in case myself meet his TA expenditure. At that time I could not give a positive reply. The IA also did not show any hesitation to divulge that she would not be daunted to hold me guilty even if Mr Nair was appearing on my behalf.

Despite my earnest efforts, I could not find out a suitable person. As the IA is not disinterested and impartial and showing the propensity of exhibiting unsevere attitude I do not expect that she will dispense justice to me. Therefore in order to build confidence I should be provided atleast with an AG's of my choice and it will not hamper the inquiry and interest of the department in anyway. Hence it is earnestly prayed that the nomination of Shri M Vasudevan Nair may kindly be accepted. I further state that I will be meeting his TA expenditure as suggested by the IA.

Yours faithfully,
sd/-
(T.N.PADMA)"

5. Accepting the aforesaid letter of 4th respondent, the Disciplinary Authority issued Anenxure R-3 memo dated 12/15.12.2005 and its relevant part reads as under:

"I have gone through the representation of the alleged official and after careful consideration, it is observed that the charged official has not made out any incontrovertible case as to why only Shri M Vasudevan Nair should be permitted to work as AGS in her case, as there seems to be no dearth of capable Defence Assistants in Bangalore itself being head quarters of many large Central/State Government offices.

However, in the interest of absolute fairness as well as in the interest of providing every reasonable opportunity to the charged official, I hereby allow Shri Vasudevan Nair, Retired SSPOs, Pappanamcode, Kerala to work as Defence Assistant with a proviso that all travel expenses of Defence Assistant connected to the case should be borne by the charged official.

Sd/-
Director &
Disciplinary Authority."



6. As regards the rule position is concerned, respondents have submitted that CCS(CCA) Rules clearly lay down restrictions on the appointment of retired government servants and other employees as defence assistants. According to them, first of all the AGS should be from the headquarter station of the Government servant or from the place where the inquiry is held. However, the enquiry authority may permit an AGS from other stations subject to conditions as laid down in Rule 14(8)(a) of the CCS(CCA) Rules which is reproduced below:

"14(8)(a)The Government servant may take the assistance of any other Government servant posted in any office either at his headquarters or at the place where the inquiry is held, to present the case on his behalf, but may not engage a legal practitioner for the purpose, unless the Presenting Officer appointed by the Disciplinary Authority is a legal practitioner, or, the Disciplinary Authority, having regard to the circumstances of the case, so permits:

Provided that the Government servant may take the assistance of any other Government servant posted at any other station, if the Inquiring Authority having regard to the circumstances of the case, and for reasons to be recorded in writing so permits.

(b) The Government servant may also take the assistance of a retired Government servant to present the case on his behalf, subject to such conditions as may be specified by the President from time to time by general or special order in this behalf."

7. I have heard Shri Vishnu S Chempazhanthiyil counsel for applicant and Shri TPM Ibrahim Khan, SCGSC for respondents 1 to 3. According to Rule 14 (8)(a) of the CCS(CCA) Rules, the Government servant may take the assistance of any other serving Government servant to present his case on his behalf. Under Rule 14 (8)(b), the Government servant can take the assistance of a retired Government servant also. Both these rules have to be read together. The Government servant has no unfettered right to engage any serving or retired Government servant as his/her AGS. However, in view of the special facts and circumstances of the case, it is not necessary to go into the interpretation of these rules in this order. The Inquiry Authority initially disallowed the nomination of the applicant as AGS of the 4th respondent and



directed her to avail the services of any other officials at the headquarters at Bangalore. However, the 4th respondent insisted upon nominating the applicant as her AGS and even filed a bias petition against the Enquiry Authority. When the said bias petition was dismissed by the Disciplinary Authority, she submitted the letter dated 21.11.2005 undertaking that she would meet the entire TA expenditure of the applicant. It was on the basis of her aforesaid letter that the Disciplinary Authority issued Annexure R-3 letter dated 12/15.12.2005 to the 4th respondent permitting the applicant to serve as her AGS on the specific condition that "all travel expenses of the Defence Assistant connected to the case should be borne by the charged official". The 4th respondent is bound by her aforesaid undertaking. As a responsible Government servant, she should have informed the applicant about the undertaking given by her to the respondent-Department and also should have abide by the same. Though the 4th respondent was served with the notice in this case, in an irresponsible manner, she chose not to appear or file any reply. She cannot escape from his responsibility by simply keeping quite. She should have filed her reply and contested the case if she wanted to contradict the submissions made by the respondent-department. Since the applicant has performed his duty and he is not a party to the agreement between the 4th respondent and the Disciplinary Authority, he shall be paid the Travelling Allowance admissible to him under the rules by the 4th respondent herself. I, therefore, direct the 2nd respondent to recover the amount payable to the applicant from the current month's pay and allowances of the 4th respondent and pay the same to the applicant immediately.

8. The O.A is accordingly disposed of. There shall be no order as to costs.

Dated, the 26th May, 2008.

GEORGE PARACKEN
JUDICIAL MEMBER

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