

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 103 of 2010

Tuesday, this the 5th day of October, 2010

CORAM:

**HON'BLE Mr. JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

Anil Kumar. M,
Chithrakootam, House No. 2,
Parvathy Nagar, Kaudiar,
Thiruvananthapuram. ... Applicant.

(By Advocate Ms. Bindu C.V.)

versus

1. Union of India, represented by its
Secretary, Ministry of Finance,
New Delhi.
2. The Accountant General (A&E) Kerala,
Thiruvananthapuram & Appellate Authority.
3. The Deputy Accountant General (Admn.),
Office of the Accountant General (A&E) Kerala,
Thiruvananthapuram.
4. Senior Deputy Accountant General (Admn.),
Office of the Accountant General (A&E) Kerala,
Thiruvananthapuram (Disciplinary Authority).
5. The Comptroller and Auditor General,
(Revising Authority)
Office of the Comptroller & Auditor General of India,
10, Bahadur Shah Zafar Marg,
New Delhi : 110 124 ... Respondents.

(By Advocate – Mr. V.V. Asokan for R2-5 and
Mr. George Joseph for R1

The application having been heard on 29.09.2010, this Tribunal
on 05.10..2010 delivered the following:



ORDER

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

Aggrieved by the initiation of disciplinary action for unauthorised absence and consequential removal from service, the applicant has filed this O.A.

2. The applicant who was working as Senior Accountant under the Accountant General (A&E), Kerala, had applied for leave without allowance on personal ground from 05.08.2005 to 29.12.2006 with permission to suffix holidays on 30.12.2006 and 31.12.2006. The applicant who is an amateur artist, engaged himself in some artistic work utilizing the leave granted to him. On 29.08.2006, a telegram was sent to the applicant intimating that the extra ordinary leave sanctioned earlier had been cancelled and that he was directed to report for duty immediately. He filed a representations requesting to allow him to continue on the sanctioned extra ordinary leave, which were rejected. A memorandum proposing to hold an enquiry against the applicant under Rule 14 of CCS (CCA) Rules, 1965, was served on him on 6.3.2007 to which he made a reply with request to drop the proceedings initiated against him. However, an enquiry was conducted and a copy of the enquiry report with a note of disagreement by the Disciplinary Authority was forwarded to him vide letter dated 13.12.2007. The applicant submitted a representation dated 30.12.2007 praying to drop the proceedings initiated against him and for a personal hearing, which was granted on 15.01.2008. He was removed from service with effect from 29.01.2008. The appeal and the revision



petition filed by the applicant against his removal from service were rejected by orders dated 24.12.2008 and 05.11.2009 respectively.

3. The applicant submits that the leave availed by him on personal ground was cancelled without assigning any reason. There was no administrative exigency which warranted presence of the applicant in the office at that time. The sudden cancellation of the leave of the applicant, who was engaged in artistic work, put him in peril and he could not rejoin the duty immediately. The Disciplinary Authority disagreed with the enquiry report and imposed the punishment of removal from service on the applicant without accepting the explanations. The punishment imposed on the applicant is not in proportion with the charges leveled against him. Under the circumstances, the O.A. should be allowed.

4. The O.A. was contested by the respondents. In their reply statement, it was submitted that the applicant was absenting himself unauthorisedly from duty from 05.08.2005. Only on 24.11.2005 he had applied for leave without allowance from 05.08.2005 to 24.11.2005. In consideration of the applications for leave submitted by him, the leave applied for by him from 5.8.2005 to 29.12.2006 was sanctioned. The applicant was not permitted to take up any employment/office of profit during the leave period. Due to administrative exigency, he was informed vide telegram dated 29.08.2006 that the extra ordinary leave sanctioned earlier had been cancelled with immediate effect. He was directed to report for duty forthwith. Instead of rejoining duty, he made a representation which was rejected. The wilful absence from duty

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disobeying the directions of the competent authority tantamounts to misconduct. The applicant did not rejoin duty even after the expiry of the leave period. Therefore, disciplinary action was initiated against him. The Enquiry Officer clearly stated that the applicant is guilty of misconduct. While the Enquiry Officer found the applicant guilty of unauthorised absence from 1.1.2007, the Disciplinary Authority after recording reasons found the applicant guilty of unauthorised absence from duty from 29.08.2006. The disciplinary authority, the Appellate Authority and the Revisional Authority had considered his contentions carefully and passed speaking orders. It is not necessary for the competent authority to spell out what constitutes exigencies of public service. The applicant misused the leave sanctioned to him for the purpose of unauthorised acting in television serials. The Disciplinary Authority has completely followed the prescribed procedure and his actions cannot be treated as arbitrary. The applicant himself had admitted that he was acting in television serials and inspite of specific directions, he could not join duty as he had to fulfil his commitment with the producers. He failed to recognise that being a Government servant, he is bound to perform his official duties. By wilfully absenting from duty unauthorisedly, the applicant had committed grave misconduct and rendered himself liable for initiation of disciplinary proceedings against him. The orders of the Disciplinary Authority and the Appellate Authority are based on unflinching evidence adduced during the course of enquiry and in strict compliance with the rules provided under the CCS (CCA) Rules, 1965. The respondents relied on the decisions of Apex Court in **Parma Nanda vs. State of Haryana and Others**, (1989) 2 SCC 177, **State Bank of India vs. Samarendra Kishore Endow**, (1994) 1 SLR

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516, **Praveen Bhatia vs. Union of India and Others**, 2009 (4) SCC 225 and **Tota Ram vs. Union of India and Others**, (2207)14 SCC 801, in support of their case. Under the above circumstances, the O.A. should be dismissed, the respondents prayed.

5. In the rejoinder, it was submitted that the applicant never held any office of profit during the leave period. He never received any remuneration other than his travelling allowances. Two other employees of the same office who admitted the charges of unauthorised absence levelled against them, were imposed with the punishment of compulsory retirement with all service benefits.

6. Arguments were heard and the documents perused.

7. The leave sanctioning authority can cancel the leave already sanctioned in public interest. It is not necessary to spell out what constitutes public interest to the satisfaction of the employee on leave. It is not left to an employee to decide whether there is any administrative exigency which warrants his presence in the office at a particular time or not, when his superior officer asks him to report for duty.

8. It is evident that the applicant was on unauthorised leave and was engaged in acting in television serials. The Enquiry Officer had complied with all the requirement of CCS (CCA) Rules, 1965 in conducting the enquiry. The Enquiry Officer held that there is wilful absence from 01.01.2007 on the part of the applicant, which is proved beyond doubt.

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The Disciplinary Authority disagreed with the finding of the Enquiry Officer on the ground that as per provisions under Rule 7 of CCS (Leave) Rules, 1972, leave cannot be claimed as a matter of right and leave of any kind may be refused or revoked by the authority competent to grant it and the leave sanctioning authority has every right to cancel the leave already sanctioned. In a reasoned order, he held that the applicant absented himself from duty from 29.08.2006 onwards and that the provisions of paragraph of the Manual of General Procedure of the office and the provisions of Rules 3(1)(ii) and 3(1)(iii) of the CCS (Conduct) Rules, 1964 are violated. There is nothing illegal or improper in the note of disagreement of the Disciplinary Authority which is concerned only with the extent of unauthorised absence, not unauthorised absence itself. Taking into account the gravity of misconduct and lack of devotion to duty, the Disciplinary Authority imposed the punishment of removal from service on the applicant. The Appellate Authority confirmed the penalty imposed by the Disciplinary Authority as commensurate with the nature of misconduct perpetrated by the applicant. The Revisional Authority upheld the order of the Appellate Authority as just and adequate. All the concerned authorities had followed the rule book meticulously. We do not find any illegality or denial of natural justice in the entire departmental proceedings.

9. The applicant has all the right and freedom to pursue his vocation in life. He may devote his time and attention to be an artist but not at the cost of his duty as a Government employee. The authorities cannot let the applicant take the government job he holds as granted and allow him to attend office when it suits him. Perhaps, the artist in the applicant is not

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amenable to the discipline of a government job. By his removal from service, the authorities have only set the artist in him free from the prison of office, to soar high in the open sky. The frequent and long spells of leave without salary show that he does not depend on the government job for a living.

10. With regard to quantum of punishment, the power of the Tribunal is rather restricted. In *Praveen Bhatia vs. Union of India and Others* (supra), the Hon'ble Apex Court held that "the power of the Court to interfere with the quantum of punishment is extremely restricted and only when relevant factors have not been considered, the Court can direct reconsideration or in an appropriate case to certain litigation, indicate the punishment to be awarded and that can only be in very rare cases." We do not find the quantum of punishment shockingly disproportionate to the gravity of the charge against the applicant.

11. The contention of the applicant that two other employees charged with unauthorised absence like the applicant, were imposed with only compulsory retirement which gave them all service benefits, whereas he was given a higher punishment of removal from service, is not sustainable. The Disciplinary Authority has full discretion to award punishment which it considers appropriate in the facts and circumstances of a given case. Facts and circumstances can vary from case to case even when the charge is same. Even so, we do hope that the respondent authorities would be gracious to grant the applicant whatever compassionate allowance or benefit that can be granted in their discretion, considering his



long years of service, apparently blemishless but for the unauthorised absence for which he is now penalised.

12. In the result, we do not find any reason to interfere with the disciplinary proceedings initiated against the applicant culminating in his removal from service. Accordingly, the O.A. is dismissed having no merit. No order as to costs.

(Dated, the 5th October, 2010)


(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER


(JUSTICE K. THANKAPPAN)
JUDICIAL MEMBER

cvr.