

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 127 of 2011
with
O.A. Nos. 130/2011, 131/2011 & 136/2011

Thursday, this the 20th day of September, 2012

CORAM:

HON'BLE Mr. JUSTICE P.R. RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

1. O.A. No. 127/2011

G. Mohanan Nair, S/o. (late) K. Gopala Pillai,
Senior Accountant,
Accountant General's Office (A&E), Kerala,
Branch Office Kottayam,
Residing at Karthikeyam, G.P. Road,
Ettumanoor, Kottayam – 686 631.

- Applicant

(By Advocate Mr. T.C. Govindaswamy)

Versus

1. The Comptroller and Auditor General of India,
Government of India, New Delhi – 110 012.
2. The Senior Deputy Accountant General (Admn.),
Office of the Accountant General (A&E),
Kerala, Thiruvananthapuram – 695 001.
3. The Accountant General (A&E),
Kerala, Thiruvananthapuram – 695 001.
4. V. Raveendran,
Principal Accountant General (A&E),
Andhra Pradesh, Hyderabad – 560 004.

- Respondents

(By Advocate Mr. V.V. Asokan (Iyer & Iyer))

2. O.A. No. 130/2011

P.K. George, S/o.(late) Kalab,
Senior Accountant,
Accountant General's Office (A&E). Kerala,
Branch Office Kottayam,
Residing at Payippattu House,
Chowoor (P.O), Munnilavu,
Kottayam – 686 586.

- Applicant

(By Advocate Mr. T.C. Govindaswamy)

Versus

1. The Comptroller and Auditor General of India, Government of India, New Delhi – 110 001.
- 2 The Senior Deputy Accountant General (Admn.), Office of the Accountant General (A&E), Kerala, Thiruvananthapuram – 695 001.
- 3 The Accountant General (A&E), Kerala, Thiruvananthapuram – 695 001.
- 4 V. Raveendran,
Principal Accountant General (A&E), Andra Pradesh, Hyderabad – 560 004. - Respondents

(By Advocate Mr. V.V. Asokan (Iyer & Iyer))

3. O.A. No. 131/2011

Mathew Kuruvilla, S/o.(late) K.M. Kuruvilla,
Senior Accountant,
Accountant General's Office (A&E), Kerala,
Branch Office Kottayam,
Residing at Karuvadiyil House,
Villoonni (P.O), Arpookkara,
Kottayam – 686 008.

- Applicant

(By Advocate Mr. T.C. Govindaswamy)

Versus

1. The Comptroller and Auditor General of India, Government of India, New Delhi – 110 012.
- 2 The Senior Deputy Accountant General (Admn.), Office of the Accountant General (A&E), Kerala, Thiruvananthapuram – 695 001.
- 3 The Accountant General (A&E), Kerala, Thiruvananthapuram – 695 001.
- 4 V. Raveendran,
Principal Accountant General (A&E), Andra Pradesh, Hyderabad – 560 004. - Respondents

(By Advocate Mr. V.V. Asokan (Iyer & Iyer))

4. O.A. No. 136/2011

M.V. Thomas, S/o. M.A. Varghese,
 Senior Accountant,
 Accountant General's Office (A&E), Kerala,
 Branch Office Kottayam,
 Residing at Mukramannil, Malayil,
 M. North (P.O), Puramattom,
 Mallapalli Taluk,
 Pathanamthitta District – 689 666.

- Applicant

(By Advocate Mr. T.C. Govindaswamy)

Versus

1. The Comptroller and Auditor General of India,
 Government of India, New Delhi – 110 012.
2. The Senior Deputy Accountant General (Admn.),
 Office of the Accountant General (A&E),
 Kerala, Thiruvananthapuram – 695 001.
3. The Accountant General (A&E),
 Kerala, Thiruvananthapuram – 695 001.
4. V. Raveendran,
 Principal Accountant General (A&E),
 Andra Pradesh, Hyderabad – 560 004.

- Respondents

(By Advocate Mr. V.V. Asokan (Iyer & Iyer))

These applications having been heard on 10.09.2012, the Tribunal on
20-09-12 delivered the following:

ORDER

HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

Having common facts and issues, these O.As were heard together and are disposed of by this common order. The applicants in O.A. Nos. 127/11, 131/11 and 136/11 are Senior Accountants and the applicant in O.A. No. 130/11 is an Accountant in the branch office of the Accountant General (A&E), Kerala, at Kottayam. The penalties of reduction by a lower stage in the time scale of Rs. 5500-9000 / Rs. 4500-7000 were inflicted on them for 3/2

years, as the case may be, without cumulative effect with effect from 01.11.2007. The penalty orders were confirmed in appeal and revision. Aggrieved, they have filed these O.As for quashing the impugned orders at Annexures A-1, A-2 and A-3 in their respective O.As and for a direction to the respondents to grant them all consequential benefits as if they were not issued at all, on the following grounds.

2. The penalty of reduction by a lower stage is totally unworkable in the revised pay structure implemented with effect from 01.01.2006. Without prejudice to above, the reduction in the basic pay of the applicant by 3% has resulted in loss of amounts higher than monetary loss arising out of reduction by one stage in their respective pay scale as was originally contemplated by the disciplinary authority. The allegation in the memo that by wilful, repeated and active participation in the unlawful actions which disturbed the peace at the place of the employment and which were unauthorised and disorderly, will not come under the Rule 7(i) of the CCS (Conduct) Rules, 1964. There is no case of any wilful misconduct nor any act unbecoming of a Government servant on the part of the applicants. The action against the applicants was taken at the instance of the 4th respondent out of personal bias and prejudice. As the facts of charge memos were disputed, the disciplinary authority ought to have conducted an enquiry under Rule 16(1)(b) of the CCS (CCA) Rules, 1965. The failure to do so by the authority deprived the applicants of an opportunity to defend the cases against them and thus there is a violation of principles of natural justice. The penalty of reduction by one stage in the instant cases would result in withholding of annual increments for a period of 36 / 72 months and therefore, has to be considered as a major penalty. In

identical cases, lighter penalties have been imposed and the denial of such concession in the instant cases is arbitrary and discriminatory. The applicants were not on unauthorised absence on 23.08.2007 and, therefore, the said day being treated as dies non does not arise. The applicants relied on the decision of this Tribunal in O.A. No. 200//2010 in support of their arguments.

3. The respondents in their reply statement submitted that the disciplinary proceedings were initiated against the applicants for participating in illegal agitation within the office premises during duty time despite specific instructions issued by the competent authority to desist from participating in the agitation. The applicants themselves have conceded that they did indeed participate in the agitation. Vacating one's place of duty to join an illegal demonstration and thereby sabotaging the normal functioning of the office was prejudicial to public order. The competent authority found the applicants guilty of violation of Rule 7 (i) and 3(1)(iii) of the CCS (Conduct) Rules, 1964, and imposed the penalties under challenge. The respondents relied on the judgements of Hon'ble Supreme Court in **Parma Nanda vs. State of Haryana**, (1989) 2 SCC 177, **State Bank of India vs. Samarendra Kishore Endow**, 1994 (2) SCC 537, **Tota Ram vs. Union of India and Others**, (2007) 14 SCC 801 and **Praveen Bhatia vs. Union of India and Others**, (2009) 4 SCC 225, to buttress their arguments that jurisdiction of this Tribunal is limited in the matter of quantum of punishment or to sit in appeal over the findings in a departmental enquiry.

4. We have heard Mr. T.C. Govindaswamy, learned counsel for the

applicants and Mr. V.V. Asokan, learned counsel appearing for the respondents and perused the records.

5. For the sake of convenience, the relevant part of the charge against the applicant in O.A. No. 127/2011 is extracted as under:

" Inspite of the warning issued to him in respect of his participation in the dharna as above, Shri Mohanan Nair G, Senior Accountant, had, along with a group of employees, also participated in an unauthorised demonstration in the office building on 23.08.2007, shouting slogans which were insubordinate in nature, tone and content.

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 Mohanan Nair G, 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 CCS (Conduct) Rules, 1964 which stipulates that every government servant shall do nothing which is unbecoming of a Government servant."

6. Similar are the charges against other applicants too in the respective O.As. The applicants are charged with participation in an unauthorised and disorderly demonstration in the office building on 23.08.2007, shouting slogans which were insubordinate in nature, tone and content, disturbed the peace at the work place thereby violating the Rules 7(i) and 3(1)(iii) of the CCS (Conduct) Rules, 1964. The applicants in their replies to the memo of charges did not deny participation in the demonstration on 23.08.2007, but contended that it was quite peaceful and therefore, not violative of the aforesaid provisions of the CCS (Conduct) Rules, 1964.

7. In the penalty orders, it was stated that "Marching enmasse through the

buildings of the office during duty hours, disrupting the work of other employees and shouting slogans in the highest pitch of voice cannot, by any measure, be termed as peaceful. On the contrary, vacating one's place of duty to join an illegal demonstration and dharna and thereby sabotaging the normal functioning of the office was, without question, prejudicial to public order." The disciplinary authority further held that by making themselves a party to massive abstention from work during office hours, they have behaved in a manner unbecoming of a Government servant. The Appellate Authority held that evidence or record proves that dharna/demonstration held in the office premises were unmistakably violent, disorderly and disturbed public tranquility. Further, the Appellate Authority held that the Disciplinary Authority merely clarified and amplified what has been mentioned in the statements of imputation of charges. The Revisional Authority while confirming the appellate orders observed that the contentions of the parties "that no such things like disruption of the office work etc. were mentioned in the statement of imputations or penalty order are not tenable", and held that the period of unauthorised absence and its treatment as 'dies non' were not the subject matter of charge sheet issued and therefore, the competent authority may take separate administrative action in this regard.

8. There can be peaceful demonstration with no disruption of work outside the office without affecting public order. Such a demonstration may not be a misconduct, but participation in an unauthorised demonstration in the office building cannot be said to be a fundamental right of an employee. The statements of imputation in the instant cases do not allege that the demonstration was violent. The evidence or record, if any, to prove that the

unauthorised demonstration on 23.08.2007 in which the applicants participated was violent, is not made evident in any of the impugned orders. Disruption of the office work, shouting slogans in the highest pitch of voice, vacating one's place of duty, being a party to massive abstention from work during office hours are not imputed against the applicants in the memos dated 11.09.2007. The above findings in the impugned orders are not supported by the allegations in the aforesaid memos. To the extent conclusions are not supported by the allegations in the memos of charges against the applicants, they are liable to be set aside. Since the penalties imposed are based on the findings which are not supported by allegations made against the applicants, the penalties cannot be said to be commensurate with the misconduct committed by them. Therefore, the penalties imposed on the applicants are required to be reconsidered by the Disciplinary Authority.

9. The contention of personal bias and prejudice on the part of the 4th respondent is not substantiated. The fact of participating in an unauthorised demonstration is not denied by the applicants. If the penalty is commensurate with the admitted allegation only, then the question of conducting an enquiry does not arise. The other grounds raised by the applicants pertain to punishment which is to be reconsidered and, therefore, are not reverted to in this order.

10. In O.A. No. 200/2010, this Tribunal considered the same issue as herein and held as under :

"9..... According to him there were peaceful and collective action to highlight the demand. Therefore, it is not as though the applicant was totally innocent. His admission proves beyond doubt of his participation in dharna and it is impliedly admitted by him of having shouted slogans but according to him it was not subversive

of discipline. Beyond the admission as aforesaid there is no other material to support the conclusion regarding blockage of the passage or that the conduct on the part of the employee in participating in demonstration or shouting the slogans in any manner affected the work of other employees in the office. To the extent the findings made in Annexure A-1 are not supported by the allegations as contained in Annexure A-11. Accordingly, the order of penalty to that extent is liable to be set aside. Since the penalty imposed under Annexure A-1 is based on the finding as contained therein to which reference is made earlier, and since part of the findings are not supported by the allegations in Annexure A-11 it cannot be said that the penalty imposed is commensurate with the misconduct found proved. When the finding that the shouting slogans was in the highest pitch and there was an illegal demonstration sabotaging the normal functioning of the office etc. being prejudicial to the public order and blockage of free passage of officers and staff as found in Annexure A-1 is vacated, what would be the appropriate punishment for having participated in any demonstration during the office hours, is a matter which is required to be reconsidered by the disciplinary authority.....

11. Following the decision of this Tribunal in the aforesaid O.A, the case is remanded to the Disciplinary Authority to consider appropriate punishment, if any, to be inflicted on the proven charges only. The revised orders should be passed as expeditiously as possible, at any rate within a period of four months from the date of receipt of a copy of this order, failing which the disciplinary proceedings stand dropped and the respondents shall grant the applicants all the benefits as if no punishment was imposed on them. To facilitate the same, the impugned orders in the respective O.As are set aside.

12. The O.As are allowed to the extent indicated above. No order as to costs.

(Dated, the 20th September, 2012)

sd/-
K GEORGE JOSEPH
ADMINISTRATIVE MEMBER

sd/-
JUSTICE P.R.RAMAN
JUDICIAL MEMBER

cvr.