

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 142 of 2010

Friday, this the 12th day of March, 2010

CORAM:

Hon'ble Mr. Justice K. Thankappan, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

P. Balakrishnan (No. 3) Clerk/Typist, Office of the Accountant General (A&E) Kerala, Branch Thrissur now residing at 7/335, "Mammy Dady" Near Government Hospital, Choondupalaka, PO Kattakada, Thiruvananthapuram.

Applicant

(By Advocate – Mr. K.K. Mohammed Ravuf)

V e r s u s

1. The Union of India, represented by Secretary, Ministry of Finance, New Delhi.

2. The Accountant General (A&E), Appellate Authority, Kerala, Thiruvananthapuram.

3. The Senior Deputy Accountant General (Admn.), Office of the Accountant General (A&E) Kerala, Thiruvananthapuram.

Respondents

(By Advocate – Ms. Resmi G. Nair for Mr. P. Nandakumar)

This application having been heard on 12.3.2010, the Tribunal on the same day delivered the following:

O R D E R

By Hon'ble Mr. Justice K. Thankappan, Judicial Member -

The applicant has filed this Original Application with the following prayers:-

"(i) to set aside Annexure A27, A29 and A30.

(ii) to pass appropriate orders setting aside the entire proceedings pursuant to Annexure A-27, A-29 and A-30.

68

(iii) to pass such other orders which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

(iv) toward the cost of the proceedings."

2. The case set up by the applicant is that as per Annexure A-29 charge memo dated 12.8.2009 a disciplinary proceedings has been initiated against him on the charge of unauthorised absence from duty for the period mentioned therein and the department has already appointed an inquiry officer to consider the charge against him and now the immediate provocation for the applicant to approach this Tribunal is that the inquiry officer has issued Annexure A-30 notice dated 9th February, 2010 stating that the preliminary hearing of the inquiry will be held on 22nd February, 2010 at 11:15 AM and the applicant is required to attend the hearing along with his defence assistant, if any, and it is also stated in the said notice that no witnesses will be examined on that date.

2.1 It is the further case of the applicant that in two similar proceedings initiated against him among one the applicant was found guilty and the appeal filed in that order has also been dismissed and finally this Tribunal set aside the said orders and subsequent to the said orders the present charge has been filed against him. The applicant has also filed Annexure A-27 explanation, explaining his case setting up his defence.

3. When the Original Application came up for admission on 22.2.2010, on hearing the counsel appearing for the applicant, we have directed the counsel appearing for the respondents in notice to get instructions in the

88

matter. Today, we have heard the counsel appearing for the applicant as well as the counsel appearing for the respondents.

4. The main case of the applicant as contended by the counsel appearing for the applicant is that the applicant is being victimized by issuing the charge memo under Annexure A-29. Especially there were two earlier charges of similar nature and in one the department itself stopped and the other though the applicant was found guilty, the said order has been set aside by this Tribunal and in the same manner, the present charge is also filed without any substance and without looking to the facts of the case. In the above circumstances, the counsel for the applicant prays that this Tribunal may interfere in the matter and issue orders as prayed in the OA.

5. To the above argument the counsel appearing for the respondents submits that the charge now framed against the applicant as per Annexure A-29 is for unauthorized absence for the period stated therein and the inquiry has already been started and the inquiry officer is also appointed thereby issuing Annexure A-30 notice for the preliminary hearing of the case. At this juncture the counsel for the respondents also brought to the notice of this Tribunal that the earlier order passed by this Tribunal has got stayed by the Hon'ble High Court of Kerala. The applicant has already filed his explanation and inquiry has been started. Thus, it is only proper for the applicant to go to the inquiry officer and prove his case and what he has in his defence and this Tribunal is not expected to interfere with the notice issued or the proceedings initiated as this Tribunal has no jurisdiction to

QD

consider the grounds now set up in the Original Application at this stage at all.

6. We have considered the contentions of the counsel appearing for the parties and also perused the documents produced before this Tribunal. It is clear from Annexure A-29 charge dated 12.8.2009 that the department had initiated disciplinary proceedings against him alleging the misconduct of unauthorized absence for the period stated therein with supporting materials and it is also to be noted that the department without hesitation of issuing the charge, the inquiry officer has already been appointed and the proceedings is continuing. At this stage we will not be justified in interference unless it is stated that the charge sheet given against the applicant is without any evidence or it is a victimization or it is without any substantial evidence before the inquiry officer. Apart from that as the jurisdiction of this Tribunal is very limited and it should be exercised in exceptional circumstances. In the case in hand only a show cause notice has been issued under Annexure A-30 by the inquiry officer. If we interfere at this stage, it will be disruption of the power of the department to conduct any inquiry against any employee. Apart from this, we have already noted though ~~allegedly~~ inquiry already continued and ended in the guilt of the applicant has been set aside by this Tribunal against which the Writ Petition is pending and the Hon'ble High Court has already issued a stay order against the order passed by this Tribunal. Considering all these aspects, at this stage, we are not interfering in this matter and there is no material canvassed or any evidence canvassed before us to warrant such interference.

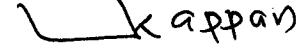
68

However, we observe that inquiry started has to be continued on regular basis and to conclude as early as possible. The applicant shall also co-operate with the department to conclude the inquiry at the earliest.

7. Accordingly, with the above observation this Original Application is dismissed at the admission stage itself. No order as to costs.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE K. THANKAPPAN)
JUDICIAL MEMBER

"SA"