CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.157/2010

Wednesday this the 20th day of October, 2010

CORAM:
HON'BLE MR.JUSTICE K.THANKAPPAN,JUDICIAL MEMER
HON'BLE MR.K.GEORGE JOSEPH,ADMINISTRATIVE MEMBER

Manuel K.A,TC 27/2049,
CRRA 16, Chirakulam Road,
Thiruvananthapuram-695 001
(Under orders of dismissal from the post of
Section Officer, Office of the Principal
Accountant General(Audit),
Audit Bhavan, Kerala,
Thiruvananthapuram. ..Applicant

By Advocate:Mr.M.K.Damodaran,Sr.
Mr.P.K.Vijayamohan

vs.

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

2. The Comptroller & Auditor General of India,
10, Bahadur Shah Zafar Marg, New Delhi.

3. The Deputy Comptroller & Auditor General of India,
(Appellate Authority),10, Bahadur Shah Zafar Marg,
New Delhi.

4. The Principal Accountant General(Audit),
Kerala, Thiruvananthapuram.

By Advocate: Mr. Sunil Jacob Jose, SCGSC(R1)
Mr.O.V.Radhakrishnan, Sr. with
Mr.V.V.Asokan(R2-4)

The Application having been heard on 24.09.2010, the Tribunal on
20.10.10 delivered the following:-

ORDER

HON'BLE MR.JUSTICE K.THANKAPPAN,JUDICIAL MEMBER:

Aggrieved by the dismissal order dated 5th March,2009 and the Appellate Order dated 24.11.2009 the applicant has filed this Original Application praying that the above orders may be quashed and the applicant may be reinstated in service with all the consequential benefits.

2. The backdrop of the case is as follows. While the applicant was working as Section Officer, redesignated as Assistant Audit Officer, he was served with a memo dated 21.03.2007 directing the applicant to file his explanation within seven days of the receipt of the Memo why he has physically manhandled Sri VK Praveen, a Group D staff of A&E Office on 30.11.2006 at 6.15 P.M. For the above memo, the applicant had filed his representation on 27th March,2007. Subsequently another memo dated 16.4.2007 has been issued to the applicant alleging that the applicant committed serious misconduct in violation of the provisions contained in Rule 3(1)(ii) & (iii) and Rule 7 of the CCS(Conduct)Rules, 1964 by participating in the agitation in the office premises from 19th December 2006 to 22nd December,2006 in connection with the suspension of one S.V.Santhoshkumar, Sr.Accountant of AG(A&E) Office, Main Office, Thiruvananathapuram. The applicant also filed

his stand, in the reply dated 7.5.2007 on denying the allegations levelled against him. Subsequent to the above two memos, a charge memo dated 30.7.2007 has been served on the applicant proposing an enquiry under Rule 14 of the Central Civil Services (Classification, Control and Appeal)Rules,1965 along with the Statement of Imputations/Allegations as Annexure I in which it is alleged that the applicant while functioning as Section Officer in the Office of the Principal Accountant General(Audit), Kerala,Thiruvananthapuram abused, threatened and physically assaulted Shri VK Praveen, a Group D staff of Office of the Accountant General (A&E),Kerala on 30th November, 2006 at 6.15 P.M. and thereby indulged in indiscipline and committed misconduct in a manner unbecoming of a Government servant thereby violated clause(iii) of sub rule (1) of Rule 3 of CCS(Conduct) Rules,1964. Four other detailed charges were also there. The above charge memo contains detailed Statement of Imputations of misconduct in respect of the Articles of Charges framed against the applicant. The applicant filed an explanation to the above Articles of Charges on 29.9.2008 denying all the charges levelled against him. However, an enquiry has been ordered and on appointing an Enquiry Officer, an enquiry has been conducted and a report dated 29.9.2008 has been furnished and on the basis of the findings entered into by the Enquiry Officer, the

Disciplinary Authority passed a penalty of dismissal from service as per the order dated 5th March, 2009, dismissing the applicant from service. Against the said order of dismissal, the applicant filed an appeal before the Appellate Authority. The Appellate Authority on considering the appeal confirmed the order passed by the Disciplinary Authority as per the Appellate Order dated 23rd October,2009. Aggrieved by the above orders of punishment and the Appellate Order, the applicant filed the present Original Application.

3. The Original Application has been admitted by this Tribunal and notice has been ordered to the respondents. In pursuance of the notice received from this Tribunal, a reply statement has been filed on 13th May, 2010, justifying the orders impugned. Further along with the reply statement, the respondents have filed Annexures R1(a) to R1(d) , a copy of the show cause dated 21.2.2002 issued to the applicant, a copy of the memo dated 24.6.2002, a copy of the memo dated 18.9.2008 and a copy of the memo dated 31.10.2008. The definite stand taken in the reply statement is that as per the report of the Inquiring Authority the applicant had abused, threatened and physically assaulted Sri V.K.Praveen, a Group D staff of the A&E Office on 30.11.2006 in connection with the agitational activities undertaken by the Associations

demanding revocation of suspension order issued against one Santhoshkumar, a Senior Accountant and the charges framed against the applicant have been proved and on the basis of the findings entered into in the enquiry report, the penalty order has been passed. Further it is stated in the reply statement that it is not mandatory under the provisions of the CCS(CC&A) Rules, 1965 to hold any preliminary enquiry before initiating disciplinary proceedings. In spite of that, a preliminary enquiry was also conducted during May to June,2007 and thereafter the charge memo dated 30.07.2007 has been issued against the applicant. Further it is stated in the reply statement that the enquiry has been held strictly in accordance with the provisions of Rule 14 of the CCS(CC&A)Rules, 1965 and it is not necessary to examine the complainant at the time of enquiry and if the preliminary enquiry conducted would show that a prima facie case has been proved, the enquiry can be conducted. It is further stated in the reply statement that the provisions of Article 311(2) of the Constitution of India regarding giving an opportunity to the delinquent officer has been substantially complied with and the evidence adduced during the enquiry in support of the charges levelled against the applicant is sufficient to hold him guilty of the charges. The applicant was furnished with a copy of the enquiry report and even if any mistake or omission has been occurred in

producing and marking the documents which the authority wants to rely on, cannot be considered as a ground to reject the enquiry report, as such enquiry has not been vitiated. Further it is stated that regarding the non-examination of the complainant has been never raised by the applicant during the enquiry and the entire disciplinary proceedings were conducted in compliance with the provisions of Rules 14 and 15 of the CCS (CC&A)Rules,1965 and there was no violation of the provisions of these Rules. Further it is stated in para-30 of the reply statement that there is evidence to show that the applicant engaged in dharna/Demonstration and in participating such dharna or Demonstration, the applicant had committed a misconduct alleged against the applicant.

4. We have heard the learned Sr.Counsel appearing for the applicant Shri M.K.Damodaran. Shri Sunil Jacob Jose, SCGSC(R1) and Shri O.V.Radhakrishnan learned Sr.Counsel alongwith Shri V.V.Asokan for the respondents 2 to 4.We have also perused the documents produced in the O.A. Firstly, the counsel submits that the applicant entered in the service as Lower Division Clerk on 1.5.1987 and was promoted as Section Officer redesignated as Asstt.Audit Officer on 11.1.2005 and he has got a total period of more than 22 years of unblemished service under the Govt. of India. While the applicant was working as Section Officer , the Govt. of

India introduced a modified pension scheme called One Rank One Pension and for implementation of that scheme the then Accountant General(A &E), Kerala was planning to entrust the work of the office to outside agencies. To take a protest against the proposal to outsource the work of One Rank One Pension, the Employees Association Service Organizations discussed the matter and decided to resort a peaceful means of protest and on the basis of such protest a peaceful agitation was organized and in connection with that agitation one Santhosh Kumar, a Senior Accountant has been suspended, which also caused for an agitation and an agitation at the organizational level and as a matter of fact, the proposal to outsource the work of One Rank One Pension Scheme has been dropped and thereafter the Accountant General was keeping animosity against the applicant as he being one of the members of the Association of the employees who caused the agitation against the proposal of the Accountant General. With the said animosity the Accountant General was keeping towards the applicant and such other employees foisted certain cases against them and the personal Group D peon of the Accountant General, Praveen was made a tool to grind the axe against the applicant and thereby created a complaint as if received from the said Praveen and issued the memos dated 21.3.2007, a copy of which was produced and

marked as Annexure A1, a memo dated 16.4.2007 and the charge memo dated 30.7.2007. To the above memos the applicant had given his replies. But the respondents proceeded with an enquiry on the basis of the charge memo dated 30.7.2007. The alleged enquiry has been conducted without following the procedure prescribed under Rule 14 of the Central Civil Services (Classification, Control & Appeal)Rules,1965(hereinafter be referred to as the CCS(CC&A Rules).Further the learned counsel submits that in pursuance to the proposal for entrusting the work of modified pension scheme, namely, One Rank One Pension to the outside agency, has been objected to by the Employees Associations and Service Organizations of the Office protesting the proposal to outsource the work as well as the suspension of one employee, there was a Dharna during the period from 19th December,2006 to 22nd December,2006 and 26th December,2006. The suspension ordered was withdrawn and on the protest shown by the employees Association, the proposal to outsource the Scheme was also withdrawn which shows that the protest was justifiable and peaceful and further there was an incident in which the Accountant General (Audit Accounts & Entitlement),Kerala misbehaving with the women employees which was given rise to them filing complaint before the in-house committee and to the Women's Commission and one of the such women employees

become the wife of the applicant, one Elsamma. Because of all these things, the applicant was victimized by issuing such memos and finally the charge memo dated 27.4.2007 , a copy of which is produced and marked in the O.A. as Annexure A3.The learned counsel further submits that the alleged enquiry conducted by the Inquiring Authority is only a camouflage and the procedure prescribed under Rule 14 of the CCS(CC&A) Rules has not been followed. There is no evidence against the applicant to prove the charge against him. No documents were proved legally and all the documents marked only through the Enquiry Officer and no witness has been examined to prove any of the documents relied on by the Inquiring Authority to prove the charges framed against the applicant and there was no legally acceptable evidence whereas the Inquiring Authority has simply stated that the charges have been proved by examining 3 witnesses and these witnesses are not giving any evidence to prove the charges framed against the applicant. If so, the evidence now accepted by the Inquiring Authority to hold that the charge framed against the applicant has been proved is without following the principles laid down by the Apex Court reported in 1998(2) SCC 394 in Commissioner and Secretary to the Govt. and Others vs. C.Shanmugam, 1999(8) SCC 582 in Hardwari Lal vs. State of U.P.and Others,2006(5) SCC 88 in M.V. Bijlani vs. Union of India and Others and in 2009(2) JT 176 in Roop

5. The next contention of the learned counsel for the applicant is that the complainant Praveen has not been examined and the original of the complaint has not been marked, only a copy of the complaint has been produced before the Inquiring Authority. The alleged complaint has been filed on 1.12.2006 whereas it has reached the Accountant General only on 9.3.2007. The delay in taking into account of the complaint itself is doubtful . The alleged incident was on 30.11.2006. The complainant Praveen,the author of Annexure A2 complaint has been never examined and even not cited as a witness in the charge sheet or the list of witnesses submitted by the authorities for examination. This would show that the respondents never intended to examine the complainant Praveen and the source of the complaint itself was not proved. Even as per the copy of the complaint it is alleged that the applicant threatened and assaulted the complainant Praveen on 30.11.2006 whereas the complaint has been seen taken into consideration by the Accountant General only on 9.3.2007. That delay itself creates a doubt regarding the source of the complaint or the alleged misconduct of assault committed by the applicant on 30.11.2006.Further the counsel submits that none of the 3 witnesses, namely PWI to PW3, the Assistant Caretaker and the

other two officials did not say anything about the incident alleged to have been taken place on 30.11.2006. Even in the evidence of PW3 it is the only case that the complainant Praveen told him that the applicant assaulted him on 30.11.2006. With regard to the evidence of other witnesses PWI only states that he has given only a report to the Accountant General regarding the incident alleged to have been taken place on 30.11.2006, but that report is not even produced before the Inquiring Authority. If so, the very source of the alleged complaint itself is doubtful. A photocopy of the original has been produced by the Presenting Officer and marked through him by the Inquiring Authority and marking of this complaint itself is not in accordance with the provisions of the Evidence Act pertaining to the marking of a document in a case.

6. The further contention of the learned counsel regarding the evidence of the witnesses pertaining to the previous statements alleged to have been recorded during the preliminary enquiry it is also not recorded in accordance with the provisions of the Evidence Act as the Inquiring Authority has not marked any of the preliminary statements as proved through the witness when PW I-3 are examined by the Inquiring Authority. When PW 1-3 are examined by the Inquiring Authority, the Presenting Officer simply read the preliminary statements alleged to have been given by the witnesses

and asked the witnesses whether they have given such statements or not. Though the witnesses admitted that they have given such statements, that preliminary statements were not marked or produced as part of the deposition of any of the witnesses. If so, there is no proper recording or marking of the preliminary statements alleged to have been given by the witnesses during the preliminary enquiry or investigation. Hence, according to the counsel for the applicant, there is no evidence regarding the incident of 30.11.2006, as stated in the charge memo or any preliminary statement of the witnesses has been properly recorded.

7. The next contention of the Sr.Counsel Mr. M.K.Damodaran is that as per the charge memo, the applicant committed the misconduct of violation of Rules 3 and 7 of the CCS Conduct Rules by participating in the agitation/Dharna during 19th December to 22nd December, 2006. Rule 7 of the Conduct Rules only prohibits to engage himself or participate in any demonstration which is prejudicial to the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or which involves contempt of Court, defamation or incitement to an offence. Sub rule 2 of Rule 7 prohibits only any form of strike or coercion or physical

duress in connection with any matter pertaining to his service or the service of any other Government servant. The reply statement filed by the applicant would clearly indicate that a peaceful agitation has been called by the employees association and there was no duress or physical coercion so as to attract any violation of the above rules. Every trade union is permitted to have peaceful agitation or Dharna with notice to the authorities. The learned counsel also relies on judgments of the Apex Court reported in AIR 1960 SC 633, AIR 1962 SC 1166 and AIR 1963 SC 822,to prove this aspect. The evidence now discussed by the Inquiring Authority would not show that there was any physical duress or attempt to cause disturbance of public tranquility at the premises of the office of the Accountant General because of the call of the agitation made by the employees association.

8. The next contention of the counsel for the applicant is that the finding of the Inquiring Authority that the applicant participated in the Dharna or agitation called by the employees association in connection with the suspension of one Santhosh Kumar, a Senior Accountant from 19th to 22nd December,2006, is without any evidence and it is only on surmises and speculation. The counsel submits that even the reply statement and the explanation given by the applicant would show that during the relevant days the

applicant was on outdoor duty and he has not participated in the Dharna, as alleged in the charge. The conclusion of the Inquiring Authority that the applicant participated in the Dharna/demonstration held from 19.12.2006 to 22.12.2006 is based on no evidence and the reliance placed by the Inquiring Authority to come to such a conclusion is on the ground that PW 2 & 3 were not cross-examined by the applicant to prove his participation in the Dharna, at the same time there is records to show that the applicant had submitted his TA bills claiming ordinary T.A for his journey from Trivandrum to Kannur on 21.12.2006 and the T.A bills were also sanctioned by the authority. The Inquiring Authority missed the case of the applicant that the applicant was on transit to the District Police Office, Kannur on 22.12.2006 and he attended duties there. The Inquiry Officer also missed the fact that as per the defence document B3 the tour diary of the week ending 23.12.2006 signed by the applicant has been countersigned by the supervising officer in the audit party and the Attendance Register D3B would also prove that the applicant was not present at Trivandrum or participated in the Dharna held on 19th to 22nd December,2006. Hence the finding entered into by the Inquiring Authority is perverse and not based on any evidence at all.

9. Finally the learned counsel appearing for the applicant

contends that the Appellate Authority while considering the appeal filed by the applicant has not properly appreciated the grounds urged in the Appeal Memorandum and the Appellate Order does not contain any reasons for dismissing the appeal. The applicant has urged more than 22 grounds in the Appeal Memorandum and none of these grounds considered by the Appellate Authority. A reading of the Appellate Order does not show that the Appellate Authority considered the appeal as per Rule 27 of the CCS (CC&A)Rules by applying his mind and given answer to the grounds urged in the Appeal Memorandum. The appellant has specifically alleged that Annexure A2 complaint is a false one and nobody proved the same as the complainant V.K.Praveen himself was not examined at the time of the enquiry. Even the handwriting of the said complainant Praveen is entirely different from that of produced in Annexure A2 complaint. The copy of the complaint produced and marked as Annexure A2 did not bear the initials of the Disciplinary Authority or the complainant or even the superior officer who alleged to have been received the same. Further in the Appeal Memorandum the applicant had taken a definite contention that to prove the charges 3,4 and 5, no document has been produced and marking of even the documents produced through the Presenting Officer is not in accordance with the provisions of the Evidence Act or even the rules and procedure prescribed under

the CCS(CC&A) Rules. Further it is specifically contended in the Appeal Memorandum that no evidence was produced to prove the incident alleged to have been taken place on 30.11.2006 at 6.15 p.m. at the premises of the office of the Accountant General. It is also urged in the Appeal Memorandum that Rule 14 of the CCS (CC&A) Rules has been violated by the Inquiring Authority while recording the evidence against the applicant. None of these grounds were discussed or even given any reason for rejecting the appeal filed by the applicant on confirming the Penalty Order by the Disciplinary Authority.

10. Shri O.V.Radhakrishnan, learned Sr.Counsel appearing for the respondents, has tried to meet the contention of the learning Sr.Counsel appearing for the applicant, one by one. Learned Sr.Counsel reiterating the stand taken in the reply statement submitted that as per the charge memo dated 30.7.07 (Annexure A5) the entire imputations and allegations levelled against the applicant have been stated and the main charges namely the participation of the applicant in the agitation programme held in the main premises of both the Accountant General(A&E),Kerala and the Principal Accountant General(Audit) on 19th December to 22nd December, 2006 in connection with the suspension of one Santhosh Kumar, a Senior Accountant of Accountant General (A&E)

office has been specifically stated. Further as per the charge memo it is alleged that the applicant while functioning as Section Officer in the office of the Principal Accountant General(Audit),Kerala, Trivandrum abused, threatened and physically assaulted Sri V.K.Praveen, a Group D staff of office of the Accountant General (A&E) on 30th November,2006 at 6.15 p.m. and thereby committed the misconduct of violating clause (iii)of sub rule 1 of Rule 3 of CCS (Conduct)Rules,1964 and further committed the violation of Rule 7(1) of the same rules. All the 5 charges framed against the applicant, according to the learned counsel for the respondents have been enquired into by the Inquiring Authority and found that all the 5 charges were proved. If so, the contention of the learned counsel appearing for the applicant that the charge itself is a victimization of the applicant is not tenable. The counsel further submits that with regard to the contention that there is no evidence to prove the charges levelled against the applicant is not correct as the Inquiring Authority relied on the oral evidence of PW 1 to 3 and also the documentary evidence Exhibits A1 to A7. None of the 3 witnesses examined before the Inquiring Authority has been properly cross-examined to destroy the evidence given by these witnesses or to cause any doubt regarding the veracity of the evidence given by these witnesses. PW 1 to 3 had specific cases before the Inquiring authority that they have given previous statements regarding the

incident which were recorded at the time of preliminary enquiry and further that statements of the witnesses were read over to them and they have admitted the fact that they have given such statements at the time of the preliminary enquiry. These statements of the witnesses could not have been discredited as these witnesses were not cross-examined or discredited by effective cross-examination by the applicant. Hence the Inquiring Authority is justified in accepting the previous statements of the witnesses as evidence on record. With regard to the contention of the cross-examination of the complainant Sri Praveen,learned counsel for the respondents submits that as the evidence of PW 2 and 3 would clearly indicate that the applicant was present on the relevant day and Sri Praveen has been assaulted by the applicant at the premises of the Accountant General and the incident also has been spoken to by PW 3 who could be treated as an eye witness to the incident. If so, the non-examination of the complainant Praveen is not the reason to reject the evidence of the witnesses regarding the incident of assault. The learned counsel also relies on the judgments of the Apex Court reported in 2006(2) SCC 584, 2007(9) SCC 86 and AIR 1977 SC 1512 to prove that it is not necessary to examine the complainant to prove an incident, if the incident is proved otherwise. The learned counsel further submits that the contention that the presence of the applicant on the day of the

incident and his participation in the dharna or agitation from 19th December to 22nd December,2006 are not proved, is not tenable. The Inquiring Authority has categorically found in the enquiry report that the applicant deserted his office and duty and participated in the demonstration from 19th December to 22nd December, 2006 held in the office premises in connection with the suspension of Sri Santhosh Kumar. A definite finding has been entered by the Inquiring Authority that the applicant was present during the demonstration from 19th to 22nd December,2006 on the basis of the evidence given by PW I who had reported to the Sr.Accountant General and further the Inquiring Authority found that as per the documents produced from the defence side itself would show that the applicant was physically present in Trivandrum in order to carry out his work at Police Headquarters and the evidence of PW 3 would also show that the complaint Sri Praveen had told him that the applicant was present on 30.11.2006 at 6.15 p.m. and assaulted him and this evidence also has been considered by the Inquiring Authority. With regard to the marking of the documents produced by the Presenting Officer, the counsel for the respondents submits that as per the decisions reported in AIR 1969 SC 966 and AIR 1965 SC 311, the provisions of the Indian Evidence Act is not applicable in the departmental enquiry with regard to the evidence or marking of evidence or documents. Further the

counsel submits that even if any defect in the marking of the documents or conduct of the enquiry as per the principles laid down by the Apex Court reported in 1993 (4) SCC 727 and 2006(2) SCC 584, this Tribunal can only remand the case for a de novo trial and this Tribunal is not expected to quash the punishment order passed by the Disciplinary Authority. The learned counsel further submits that it is not necessary to give reasons for the Appellate Authority at the time of confirming an order passed by the Disciplinary Authority. It is only proper for the Appellate Authority to consider the conclusions arrived at by the first authority and it is not mandatory to give the reasons to confirm the order passed by the first authority. To substantiate the above contention, the learned counsel for the respondents also relies on 2006(4)SCC 713 and 2008(3)SCC 469.

11. On an anxious consideration of the contentions raised by the counsel appearing for the parties and on perusal of the documents furnished, this Tribunal has to consider whether the impugned orders are to be upheld or not. Before answering the main arguments of the counsel appearing for the parties, the admitted background of the cases are to be looked into. During the relevant period the Government of India introduced a modified pension scheme called One Rank One Pension and for the implementation

of that scheme the then Accountant General(Accounts & Entitlement), Kerala proposed to entrust the work of the office to outside agencies. The said proposal was objected to and protested by the employees associations and service organizations and they discussed the matter in detail and on the basis of the decision arrived at by the service organizations and associations decided to resort a peaceful means of protest by way of peaceful agitation. In connection with the above proposed agitation one Santhosh Kumar, a Senior Accountant, has been suspended and on suspension of that official an agitation on the organizational level has been called on and in persuasion of the agitation designed to protest against the suspension of Santhosh Kumar the alleged incident of misconduct levelled against the applicant has been occurred, if so, the first question to be considered is that whether the agitation or Dharna conducted from 19th December to 22nd December, 2006 was a peaceful or legal strike as against the Conduct Rules which prohibits any of the illegal strike or dharna in violation of Rule 3 or Rule 7 of the CCS Conduct Rules, 1964, hereinafter be referred to as the CCS (Conduct) Rules and further question to be considered is that whether the applicant was present in the office premises of the Accountant General and participated in the dharna or agitation and whether on 30.11.2006 at 6.15 p.m, the applicant assaulted Shri V.K.Praveen or not. Under the above

circumstances the charge memos dated 21.3.2007(Annexure A1), 16.4.2007(Annexure A3) and 30.7.2007(Annexure A5) have to be analysed. As per Annexure A1 memo it is alleged that on 30.11.2006 at 6.15 p.m. the applicant hit with his leg on the abdomen of Shri Praveen and the applicant threatened him with dire consequences once AG is transferred from the place , while the latter was returning to the section after keeping the bag of the Accountant General in the Staff Car. The action of the applicant amounts to a misconduct coming under clause (iii) of Sub Rule 1 of Rule 3 and Rule 7 of the CCS(Conduct)Rules, 1964. In Annexure A3, it is further directed to explain within 10 days of the receipt of the memo to show cause why disciplinary action under the CCS (CC&A) Rules,1965 and administrative action as contemplated in FR 17-1and FR 17-A should not be taken against him. Apart from the allegations contained in Annexures A1 and A3 , it is alleged in Annexure A5 charge memo that the Principal Accountant General and Disciplinary Authority proposed to hold an enquiry against the applicant under Rule 14 of the CCS(CC&A)Rules,1965 and directed the applicant to submit his written statement within 10 days from the date of receipt of the charge memo. Along with the memo dated 30.07.2007 5 separate Articles of Charges have been framed against the applicant. On the basis of the above charge memo, the Statement of Imputations of misconduct in respect of the Articles

of Charges framed against the applicant was also narrated. The Articles of above 5 charges reiterate rather combined allegations contained in Annexure A1 and Annexure A3 memos . For Annexure A1 and Annexure A3 memos the applicant had filed his explanations denying the allegations levelled against him as per the explanations offered by the applicant dated 27th March,2007 and 7th May,2007 respectively. However an enquiry has been ordered and the applicant on receipt of the notice from the Inquiring Authority filed his written statement reiterating his stand taken in the explanations furnished to the memos received by him. To answer the first question whether there was any illegal strike or any agitation as alleged in the charge memo from 19th December to 22nd December, 2006 in connection with the suspension of Santhosh Kumar, the Inquiring Authority found that as per Exhibit A6 there was an unauthorized dharna conducted without permission of the authorities. Conducting a meeting/demonstration within the office premises without the permission of the authorities is prohibited one and there is evidence to show that the dharna conducted was illegal one. But to substantiate this finding the Inquiring Authority relies only on Exhibit A6, Memo No.C. Cell/Audit/Tr.48 dated 27.4.2007 and this is not proved by adducing any admissible evidence. Exhibit A6 was marked through the Presenting Officer and this document Exhibit A6 produced along

with the charge memo has not been properly proved to show that the so-called dharna or agitation was irregular, illegal or without any permission. The written statement of the applicant in this context has not been analyzed properly by the Inquiring Authority or the Disciplinary Authority. The specific case set up by the applicant in his written statement is that there was no agitation in the office, as alleged and there was no illegal strike,coercion or physical duress in connection with any matter pertaining to the service of any Government servant. There was a call from the Audit and Accounts Association of Kerala office, which is a unit of the All India Audit and Accounts Association, recognized by the Government of India under the CCS (RS) Rules and there was a call for peaceful demonstration and dharna and the same was very peaceful. There was no complaint against the demonstration and dharna from employees except from some interested corners. In the light of the above stand by the applicant it is the duty of the Inquiring Authority and the Disciplinary Authority to prove that the strike or the dharna or demonstration staged from 19th December to 22nd December,2006, was illegal and without permission, whereas the agitation was a peaceful one and within the rights of the trade unions resorting collective bargain to stop the proposal for outsourcing the work of One Rank One Pension scheme and the suspension followed by such protest. The Inquiring Authority

found that the applicant deserted his duties and participated in unauthorized demonstration/dharna. On the basis of the evidence of DW I who had stated that the dharna was in connection with the suspension of Santhosh Kumar and the dharna was an unauthorized mass dharna in which a large number of not less than 100 persons participated. Further it is concluded by the Inquiring Authority that even if there is no evidence to show that there was a call for strike of any association during December, 2006 it is clear that dharna of 19th to 22nd December,2006 will tantamount to striking work by the participants since such large number abstaining from work would naturally result in slowing down work and as per the Government of India Office Memorandum No.25/23/66-Estt(A) dated 9th December,2006, actions which would fall under the definition of strike would include stay-in, sit-down etc. The further finding of the Inquiring Authority is that it is clear that the unauthorized dharna/demonstration by such a large number or over such a long period was a coercive strike to pressurize the administration of the office to take certain steps such as revoking the suspension of Shri Santhosh Kumar. Thus the applicant participated in an unauthorized strike or dharna or demonstration and thereby violated clause (ii) of Rule 7 of the CCS (Conduct) Rules, 1964. On a careful reading of the depositions given by PWs 1 to 3, and the documents proved through the

Presenting Officer would show that there was no evidence to hold that the demonstration or dharna was illegal or any coercive steps have been taken place. Whereas the evidence of DWs I to 3 and the explanation given by the applicant would show that there was a peaceful agitation/dharna in connection with the suspension of Sri S.V.Santhosh Kumar and there is no evidence to show that the said agitation was illegal or it could be called as a strike or cessation of work in the office of the Accountant General. No witness has stated that any office work has been paralyzed or affected by the agitation spoken to by DWs 1 to 3. Even if such a violent demonstration or strike occurred and the applicant participated therein, it should be proved by legally acceptable evidence. Staging a dharna or an agitation on the call made by the Service Associations of Employees Organizations is not in violation of Rule 7 of the CCS(Conduct) Rules. At the same time to have an association or to have a collective bargaining on the organizational level is permissible and within the fundamental right of the employees guaranteed as per Article 19 of the Constitution of India as well as the Service Rules permitting the Government employees to have a trade union or an organization to protect their grievance or to show protest against any order or action on the side of the employer and this is clear from the judgments of the Apex Court reported in AIR 1962 SC 1166; Kameshwar Prasad &

others vs. State of Bihar and AIR 1963 SC 822; O.K.Ghosh and another vs. E.X.Joseph. In the first case, the Apex Court considered Rule 4 of the Bihar Government Servants Conduct Rules,1956 which prohibits any form of demonstration and against resorting to strike. The Apex Court on considering the issue raised therein held in paragraph 13 of the judgment, as follows:-

> " (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 society .... as 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 recognized 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)(a) & 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."

So also the same question was considered by the Apex Court in O.K.Ghosh's case, cited supra, wherein the Apex Court upheld the fundamental right guaranteed under Article 19 of the Constitution of India can be claimed by the Government servants. In the above judgment in paragraphs 10 and 11, the Apex Court held as follows:-

> " (10)This argument raises the problem of construction of cl.(4).Can it be said that the rule imposes a reasonable restriction in the interests of public order ? There can be no doubt that Government servants can be subjected to rules which are intended to maintain discipline amongst their ranks and to lead o an efficient discharge of their duties. Discipline amongst Government employees and their efficiency may in a sense, be said to be related to public order. But in considering the scope of cl.(4), it has to be borne in mind that the rule must be in the interests of public order and must amount to a reasonable restriction. The words "public order"occur even in cl.(2),which refers, inter alia, to security of the State and public order. There can be no doubt that the said words must have the same meaning in both cls.(2) and (4). So far as cl.(2) is concerned, security of the State having been expressly and specifically provided for, public order cannot include the security of State, though in its widest sense it may be capable of including the said concept. Therefore, in cl.(2), public order is virtually synonymous with public peace, safety and tranquility. The denotation of the said words cannot be any wider in cl.(4). That is one consideration which it is necessary to bear in mind. When cl.(4) refers to the restriction imposed in the interests of public order, it is necessary to enquire as to what is the effect of the words "in the interests of". This clause again cannot be interpreted to mean that even if the connection between the restriction and the public order is remote and indirect the restriction can be said to be in the interests of public order. A restriction can be

said to be in the interests of public order only if the connection between the restriction and the public order is proximate and direct. Indirect or far-fetched or unreal connection between the restriction and public order would not fall within the purview of the expression "in the interests of public order". This interpretation is strengthened by the other requirement of cl.(4) that, by itself, the restriction ought to be reasonable. It would be difficult to hold that a restriction which does not directly relate to public order can be said to be reasonable on the ground that its connection with public order is remote or far-fetched. That is another consideration which is relevant. Therefore, reading the two requirements of cl. (4), it follows that the impugned restriction can be said to satisfy the test of cl.(4) only if its connection with public order is shown to be rationally proximate and direct. That is the view taken by this Court in Superintendent,Central Prison, Fatehgarh v. Dr.Ram Manohar Lohia AIR 1960 SC 633. In the words of Patanjali Sastri J.in Rex v. Basudev, 1949 FCR 657 at p 661:(AIR 1950 FC 67 at p.69)"the connection contemplated between the restriction and public order must be real and proximate, not far-fetched or problematical." It is in the light of this legal position that the validity of the impugned rule must be determined.

(11) It is not disputed that the fundamental rights guaranteed by Art.19 can be claimed by Government servants. Art.33 which confers power on the Parliament to modify the rights in their application to the Armed Forces, clearly brings out the fact that all citizens, including Government servants, are entitled to claim the right guaranteed by Art.19. Thus, the validity of the impugned rule has to be judged on the basis that the respondent and his co-employees are entitled to form associations or unions. It is clear that R.4-B imposes a restriction on this right. It virtually compels a Government servant to withdraw his membership of the Service Association of Government servants as soon as recognition accorded to the said association is withdrawn or if, after the association is formed, no recognition is accorded to it within six months. In other words, the right to form an association is conditioned by the existence of the recognition of the said association by the Government. If the association obtains the recognition

> and continues to enjoy it, Government servants can become members of the said association; if the association does not secure recognition from the Government, or recognition granted to it is withdrawn, Government servants must cease to be the members of the said association. That is the plain effect of the impugned rule. Can this restriction be said to be in the interests of public order and can it be said to be a reasonable restriction? In our opinion, the only answer to these questions would be in the negative. It is difficult to see any direct or proximate or reasonable connection between the recognition by the Government of the association and the discipline amongst, and the efficiency of the members of the said association. Similarly,t is difficult to see any connection between recognition and public order.

12. The next point we have to consider that the finding entered into by the Disciplinary Authority that the applicant participated in the demonstration alleged to have been conducted from the 19th to 22nd December,2006 and the applicant threatened and assaulted Shri V.K.Praveen, on 30.11.2006 at 6.15 p.m. at the office premises of the Accountant General, are supported by any acceptable evidence or material. In this regard the Inquiring Authority relied on the evidence of PWs 2 and 3. But these 2 witnesses have not given any evidence to prove that the applicant has participated in the dharna from the 19th to the 22nd December,2006 or assaulted Shri V.K.Praveen on 30.11.2006. What they have stated is that they have given some statements at the time of preliminary enquiry held on 16th May,2007 before the Sr.Deputy Accountant General,Kerala in which they have stated that the applicant had

physically assaulted Shri V.K.Praveen and verbally abused and threatened him. To accept the previous statements of these witnesses the Inquiring Authority found that these witnesses were not cross-examined at the time of the enquiry. But the specific case set up by the learned counsel appearing for the applicant is that none of the previous statements alleged to have been recorded by the Sr.Deputy Accountant General has been legally proved or even marked at the time of the enquiry. Instead the witnesses were asked in the chief whether they have such a statement on reading the alleged previous statements to the witnesses which the witnesses admitted, but there is no recording of such previous statements as evidenced in their depositions. If the reliance placed by the Inquiring Authority on the previous statements, alleged to have been given by the witnesses during the preliminary enquiry, cannot be accepted as legal evidence. Further the Inquiring Authority held that the documents produced and proved through the Presenting Officer marked as Annexures A1, A5 and A6 would show that the applicant was present and participated in the dharna held between 19th and 22nd December,2006. When we analyze these documents, which would show that Annexure A1 is only a note of the Dy.Accountant General dated 9.3.2007 and Annexure A5 is another note of the Dy.Accountant General dated 19.1.2007 and Annexure A6 is the copy of the memo dated

27.4.2007 to the applicant and all these documents would not show that the applicant was actually present or participated in the dharna as found by the Inquiring Authority and further Annexure A5 would show that it is a note showing the name of the applicant who was signatory to the note for calling a dharna but that does not mean that the applicant was actually present at the spot or participated in the dharna held on the 19th to 22nd December,2006.Annexure A5 itself is a part of the notice dated 9.1.2007 and the call for agitational steps by the audit and accounts associations notice is dated 18.12.2006 If so, the appearance of the name of one Manuel, even without identifying that is the applicant, cannot be accepted as an evidence to prove that the applicant was present at the premises of the Accountant General office and participated in the dharna held on the 19th to 22nd December,2006. At the same time the explanation given by the applicant would show that he was on outdoor duty during the relevant time and he claimed TA&DA for the the relevant days which were granted by the authorities. But the Inquiring Authority answered the said case set up by the applicant stating that the defence has not proved any evidence to support its claim that the charged officer was not present at the alleged scene of occurrence of the incident in question. It is also of the case of the applicant that the applicant was on official duty allotted to him in outside

audit wing on 19th and 20th December,2006 and he was on outside audit duty at the Police Headquarters, Trivandrum on the 21st December,2006 and he was on transit to District Police Office, Kannur on 22nd December,2006 To prove this fact the applicant produced D3 series which would dhow that the tour diary of the week ending 23.12.006 signed by the applicant and countersigned by the supervising officer in the audit party, the attendance register of the audit party and watch register maintained at SRA headquarters and all these documents would show that the applicant was present at the spot as found by the Inquiring Authority. To overcome these documentary evidences the Inquiring Authority held that marking one's attendance on a particular day in the Attendance Register cannot be considered as a conclusive proof that he attended the office during the entire day and told as the applicant admitted that he was at Trivandrum on the 20th December,2006 to carry out the work at the Police Headquarters, the Inquiring Authority came to the conclusion that the applicant was present or might have been present at the premises of the office of the Accountant General and participated in the dharna. But these findings are not supported by any material or evidence as acceptable for entering such a finding. It is also to be noted that the Inquiring Authority considered the copy of the complaint alleged to have been filed by Shri V.K.Praveen regarding

the assault made by the applicant and the evidence of PW 3 to support the finding that the applicant was present at the spot and assaulted Sri V.K.Praveen. In this context the very inception of P2 the complaint alleged to have been filed by Shri V.K.Praveen itself is doubtful as the author of the complaint has not been examined or even cited for examination at the time of enquiry. To avoid the examination of Shri V.K.Praveen no explanation is forthcoming from the prosecution side and that apart the said complaint filed by Shri V.K.Praveen is dated 1.12.2006, whereas it has reached the Accountant General or acted on by the Accountant General only on 9.4.2007 and such a long delay for not taking any action in the complaint filed by Shri V.K.Praveen is enough to discard this document as a genuine one. In this context the learned counsel for the respondents relies on the judgements of the Apex Court reported in 1998(7) SCC 97; Director General, Indian Council of Medical Research and others vs. Dr.Anil Kumar Ghosh and another and 1999(8)SCC 582; Hardwari Lal vs. State of U.P. & others. In the first case, it is held by the Apex Court that the genuineness of documents produced during the enquiry was not in dispute and therefore their authors need not be examined and if opportunities are given to the delinquent officer to inspect the documents during the course of enquiry omission to mark such exhibits during the course of the enquiry did not vitiate the enquiry. In the second case

the Apex Court taken the view that if there are other materials sufficient to come to a conclusion one way or the other, observing the impact of the complainant's testimony could not be visualised and also evidence of other witnesses are sufficient to prove the charge against the delinquent officer, the non-examination of the complainant will not vitiate the enquiry. But when analyzing the evidence of the case in hand, the facts considered by the Apex Court in the above two cases are entirely different from that the facts under discussion. If the evidence of Shri Praveen is excluded and what other witnesses namely PWs 1 to 3 given, by itself is not enough to conclude that the applicant was present and assaulted or threatened Shri V.K.Praveen. In this regard the evidence of PW I would show that he had given a report to the Dy.Accountant General regarding the incident and what is the contents of that report is not spoken to by any witness before the Inquiring Authority. Sri Praveen had told him that the applicant threatened and and assaulted him on 30.11.2006. But the evidence of these witnesses is not substantial or corroborated by other evidence and being an unsupported piece for concluding that the applicant was present at the spot and assaulted Shri V.K.Praveen. If so, a close reading of the documentary evidence produced and marked through the Presenting Officer and the evidence of PWs 1 to 3 are not legally acceptable evidence to prove any of the charge levelled against

the applicant. Hence the finding entered into by the Inquiring Authority is a perverse finding. If there is no acceptable evidence to prove the charges against the applicant it is only proper for us to take a conclusion that the charges levelled against the applicant are not proved by any legally acceptable evidence. The same is the principle involved in other cases also. So we are not accepting the same in the light of the facts of the case in hand. Non-examination of the material witness can draw an adverse inference as per the judgment of the Apex Court held in AIR 1968 SC 1402 in Karnesh Kumar Singh and others vs. State of U.P.

13. The next point we have to consider is that whether the Disciplinary Authority has applied his mind while passing the impugned order of removal from service on the basis of the enquiry report. The Disciplinary Authority has not given any reason to accept the findings entered into the Inquiring Authority while imposing the penalty order except accepting the report of the Inquiring Authority without assigning any reason. A reading of the impugned order of penalty, namely Annexure AIX order would show that the finding of the Inquiring Authority is simply followed and without giving any reason or applying its mind for issuing the penalty order of dismissal of the applicant, the Disciplinary Authority erred in accepting the evidence of DW I and DW 2 who

had given evidence before the Inquiring Authority that if the applicant was present in the office he would have participated in the congregation. But this finding has been accepted by the Disciplinary Authority on the ground that as there is evidence to show that the applicant was present at the Headquarters on that day and this finding of the Disciplinary Authority is without any basis and further the Disciplinary Authority found that there is reasonable nexus in the evidence of PWs 2 and 3 regarding the incident and their credibility has not been challenged by cross-examining them. We have already discussed the evidence of PWs 2 and 3 regarding the veracity of their evidence and the non-examination of the complainant Shri V.K.Praveen itself was also found as a ground for rejection of the charges levelled against the applicant. But the Disciplinary Authority only had stated that he has only concurred with the finding of the Inquiring Authority and all the charges levelled against the applicant have been thus proved according to the Disciplinary Authority, but we have already discussed each and every evidence adduced before the Inquiring Authority against the applicant and we have concluded that there is no evidence to prove any of the charges levelled against the applicant. In the above circumstances, the impugned order of penalty passed by the Disciplinary Authority is not sustainable. Apart from the above infirmity of the order passed by the Disciplinary

Authority, it could be seen that the applicant has filed an appeal before the Appellate Authority raising various grounds therein, a copy of which was produced and marked in the O.A. as Annexure A10. In Annexure A10 the applicant has raised more than 10 grounds to reject the finding entered into by the Inquiring Authority and also to set aside the order passed by the Disciplinary Authority. But it is surprisingly noted by us that none of the grounds in the appeal memorandum has been considered by the Appellate Authority. No reason has been stated by the Appellate Authority for confirming the penalty order passed by the Disciplinary Authority. In this context the judgements of the Apex Court reported in 2006 (4)SCC 713; in Narinder Mohan Arya vs. United India Insurance Co.Ltd, and 2008(3)SCC 469;Divisional Forest Officer, Kothaguden and others vs. Madhusudhan Rao, are relevant. In the first case, the Apex Court held in paras 32 and 33, as follows:-

> "32. The Appellate Authority, therefore, while disposing of the appeal is required to apply his mind with regard to the factors enumerated in sub-rule (2) of Rule 37 of the Rules. The judgment of the civil court being inter parties was relevant. The conduct of the appellant as noticed by the civil court was also relevant. The fact that the respondent has accepted the said judgment and acted upon it would be a relevant fact. The authority considering the memorial could have justifiably come to a different conclusion having regard to the findings of the civil court. But, it did not apply its mind. It could have for one reason or the other refused to take the subsequent event into consideration, but as he had a discretion in the matter, he was bound to consider the said question. He was required to show that he applied his mind to the relevant facts. He could not have without expressing his mind simply ignored the same.

33. An appellate order if it is in agreement with that of the disciplinary authority may not be a speaking order hut the authority passing the same must show that there had been proper application of mind on his part as regards the compliance with the requirements of law while exercising his jurisdiction under Rule 37 of the Rules."

Further, the Apex Court, in para-36 of the said judgment, while considering Rule 37 of General Insurance (Conduct,Discipline and Appeal)Rules,1975, an analogous provision of Rule 27 of the CCS (CC&A)Rules,1965 held that:-

"The Appellate Authority, when the Rules require application of mind on several factors and serious contentions have been raised, was bound to assign reasons so as to enable the writ court to ascertain as to whether he had applied his mind to the relevant factors which the statute requires him to do. The expression "consider" is of some significance. In the context of the Rules, the Appellate Authority was required to see as to whether (i) the procedure laid down in the Rules was complied with; (ii) the enquiry officer was justified in arriving at the finding that the delinquent officer was guilty of the misconduct alleged against him; and (iii) whether penalty imposed by the disciplinary authority was excessive."

In the 2nd case, the Apex Court while considering Rule 27 of the CCS(CC&A)Rules, held in para-20, as follows:-

"20. It is no doubt also true that an appellate or revisional authority is not required to give detailed reasons for agreeing and confirming an order passed by the lower forum but, in our view, in the interests of justice, the delinquent officer is entitled to know at least the mind of the

appellate or revisional authority in dismissing his appeal and/or revision. It is true that no detailed reasons are required to be given, but some brief reasons should be indicated even in an order affirming the views of the lower forum."

In this context the learned Sr.Counsel appearing for the respondents also brought to the notice of this Tribunal to a judgment of the Apex Court reported in JT 2009(2) SC 176 in Roop Singh Negi vs. Punjab National Bank & Ors, wherein the Apex Court considered the extent of the duty of the Disciplinary Authority or the Appellate Authority and contended that the Disciplinary Authority as well as the Appellate Authority are not bound to give all the reasons in support of their finding. But a reading of the above judgment would show that a decision must be arrived at on some evidence which is legally admissible. Further it is stated that though the provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice should be followed especially when a report of the Enquiry Officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained, since the inferences drawn by the Enquiry Officer were apparently not supported by any evidence. We have already concluded that to prove the charges levelled against the applicant, there were no material or any evidence available on record and if so, the

findings entered into by the Inquiring Authority, basing on which the orders passed by the Disciplinary Authority and confirmed by the Appellate Authority, would become a nullity.

14. In the light of the discussions made in this order and the findings entered, we are of the considered view that the impugned orders are not sustainable and hence they are liable to be set aside and the applicant shall be exonerated from all the charges levelled against him. Accordingly the Application is allowed. Annexure AIX order of the Disciplinary Authority, and Annexure XI order of the Appellate Authority, are hereby set aside and the respondents are hereby directed to reinstate the applicant in service forthwith with all consequential benefits. There will be no order as to costs.

(K.George Joseph)
Member(A)

(Justice K.Thankappan)
Member(J)

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