

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 200 of 2010

Tuesday, this the 16th day of August, 2011

CORAM:

Hon'ble Mr. Justice P.R. Raman, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

P.G. Saseendran Nair, aged 55 years,
 S/o. M.K. Govindan Nair, Sr. Accountant,
 Office of the Accountant General (A&E) Kerala,
 Branch Office: Kaloore, Manappattiparambu,
 Cochin-17, Residing at Ponnakudam,
 Vadacode P.O., (Via) Kangarappady,
 Cochin-682 021, Ernakulam District.

..... **Applicant**

(By Advocate – Mr. T.C. Govindaswamy)

V e r s u s

1. The Comptroller & Auditor General of India,
 Government of India, 9,
 Deen Dayal Upadhyaya Marg,
 New Delhi – 110 124.
2. The Sr. Deputy Accountant General (Admn.),
 Office of the Accountant General (A&E) Kerala,
 Thiruvananthapuram.
3. The Accountant General (A&E) Kerala,
 Thiruvananthapuram.
4. Shri V. Ravindran,
 Principal Accountant General (A&E),
 Andhra Pradesh, Hyderabad.
5. The Deputy Accountant General (A&E),
 Office of the Accountant General (A&E) Kerala,
 Branch Office, Ernakulam.

..... **Respondents**

(By Advocate – Mr. V.V. Asokan)

This application having been heard on 05.08.2011, the Tribunal on 16.8.2011 delivered the following:

ORDER

By Hon'ble Mr. Justice P.R. Raman, Judicial Member -

The applicant is working as Senior Accountant in the Cochin Branch Office of the 3rd respondent. In a disciplinary proceedings initiated against him he was imposed a penalty of reduction to a lower stage in the time scale of Rs. 5500-9000/- by one stage for three years without cumulative effect from with effect from 1.11.2007 by Annexure A-1 order dated 24.10.2007 issued by the second respondent. This was confirmed in appeal by Annexure A-2 order dated 19.12.2008. Impugning Annexures A-1 and A-2 this Original Application is filed.

2. According to the applicant after the 4th respondent taking charge as Accountant General (A&E) at Trivandrum, certain dispute arose and to vindicate the grievances, the members of one of the employees association has resorted to a peaceful agitation programme by conducting dharna from 19 to 22nd December, 2006 and on 26/12/2006. That the applicant was issued a memo dated 25.1.2007 by the 5th respondent. A copy of which is produced is Annexure A-6 wherein it was alleged that the applicant while functioning as Senior Accountant in the AG's office at Ernakulam has taken part in the agitational programme and full day dharna on various dates mentioned therein and to show cause as to why disciplinary proceedings be not taken against him for taking part in the agitation/dharna. The applicant submitted his reply at Annexure A-7 in which he stated that he being an



elected member of the executive committee of the association was only implementing the collective decision of the association on the various dates referred to in the memo and that he was participating in the programme after availing leave and requested not to proceed further in the matter. Annexure A-7 is the copy of the reply. Thereafter, the applicant was issued with another memo Annexure A-8 dated 25.1.2007 in which it is alleged that he has taken part in the relay fast and dharna held on 18.1.2007 despite the warning given in the circular dated 18.12.2006 that no government servant shall resort to or in any way abet 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. By participating in the dharna and relay fast the applicant has violated the provisions of Rule 7(ii) of CCS (Conduct) Rules and he was asked to show cause why disciplinary action should not be initiated against him. Yet another memo was issued vide Annexure A-9 alleging that group of employees have went around the sections in the office in demonstration and shouted slogans from 10.30AM onwards on 17.4.2007 and sat in the corridor in front of DAG (Central)'s cabin in the first floor of the building. The illegal congregation shouted slogans that were derogatory and insubordinate in nature up to 12.45 PM. That the applicant participated in the above said mass dharna on 17.4.2007 from 10.30 AM to 12.45 PM and he was asked to show cause why disciplinary action shall not be initiated against him as contemplated in FR 17(1) and 17(A). To the aforesaid memo he submitted Annexure A-10 reply wherein he contended that on 17.4.2007 the Audit and Accounts association has organized a mass dharna to highlight certain burning issues and the association insisted that



those who participated in the dharna should take leave and accordingly he participated in the dharna and the demonstrations and slogans were based on the issues referred to above and no slogans were raised against any individual. No attempt was made from any employee to restrict the freedom of movement and functioning of the office of the DAG(Central) nor inhibit the passage of officials and visitors to the chamber of the DAG (Central). The allegations are factually and legally incorrect and he requested to drop the proceedings. Thereafter, Annexure A-11 charge sheet was issued under dated 11.9.2007. It is supported by the statement of imputation of misconduct against the applicant. It refers to the previous memos issued in this regard and alleges that despite the memorandum issued to him he participated in the dharna from 19.12.2006 to 22.12.2006 and on 26.12.2006 and despite the circular dated 16.4.2007 he participated in the dharna on 17.4.2007. Further it is stated in the statement of imputations that his participation in the dharna on the various dates and shouting slogans are insubordination in nature, tone and content and by the aforesaid act it disturbed the peace at the place of his employment and therefore amounts to contravening the provisions of Rule 7(i) of the CCS (Conduct) Rules which inter alia states that no government servant shall engage himself or participate in any demonstration which is prejudicial to public order and thereby violating Rule 3(1)(iii) of the CCS (Conduct) Rules. The applicant gave his reply Annexure A-12 denying the charges but stated that the dharna held in various dates were part of the organizational action and it was peaceful. He denied of having shouted any slogans which were insubordination in nature, tone or content. He also denied of having



participated in any unauthorized demonstration in front of the cabin of DAG on 23.8.2007. According to them they were part of the peaceful action to highlight the demand of the association. Notwithstanding the denial of the facts, according to the applicant Annexure A-1 order of penalty was issued. Further it is also ordered to treat the various dates on which he participated in the dharna as dies non and not to be counted for any service benefits including pension.

3. According to him Annexures A-1 and A-2 are illegal and wrong and that despite the denial of the charges by Annexure A-12 reply the authority did not conduct any inquiry and given an opportunity to the applicant to prove his defence. According to him the disciplinary authority is bound to decide under Rule 16(1)(b) whether or not an inquiry is necessary on the factual situation and whether the non-conduct of the inquiry is violative of the principle of natural justice and also Rule 16 of the CCS (CCA) Rules, 1965. According to him treating certain period as dies non is arbitrary as it does not approve as penalty imposable as per rules. The appellate authority's order is also opposed to Rule 27 of the CCS (CCA) Rules for non-consideration of the various aspects required to be considered therein. It is also contended that the quantum of penalty has become harsher after the recommendation of the 6th Pay Commission came into effect on 1.1.2006 and in such situation the penalty imposed will become harsher than what is intended.

4. In the reply statement filed by the respondents it is contended among



other things that disciplinary action was initiated against the employees including the applicant based on unflinching evidence substantiating his participation in the illegal agitation on the various dates mentioned in the charge sheet Annexure A-11. In fact records clearly reveal that the agitations started with suspension of an employee of the office for gross insubordination and publicly disobeying the head of the department and were called off when the suspension was withdrawn following the issue of charge sheet and recommenced when administrative and disciplinary actions were continued/initiated against the agitators who had indulged in gross indiscipline in violation of the CCS (Conduct) Rules, 1964. The mere fact that the applicant had involved in a collective action by itself is not immune from any disciplinary action. It is pointed out that the situation was so tensed that they have to approach the Hon'ble High Court for necessary Police protection. They support Annexure A-1 order of penalty as passed strictly in accordance with law and it was necessitated for the participation of the applicant in illegal activities during office time within the office premises. It is also contended that disciplinary proceedings were initiated against all those staff who have indulged in gross indiscipline in blatant violation of the conduct rules. It is further contended that the formal inquiry in the case of minor penalty is warranted only in the event of disciplinary authority is of the opinion that such inquiry is necessary. Here by Annexures A-7 and A-10 replies of the applicant, he himself have admitted of having participated in the agitation. Hence, Annexures A-1 and A-2 are beyond challenge on any sustainable grounds.



5. We have heard the learned counsel for both sides.

6. The specific charge against the applicant contained in Annexure A-11 is that he participated in the agitation programme held in the branch office at Ernakulam from 19.12.2006 to 22.12.2006 and on 26.12.2006. Again on 18.1.2007 he participated in the relay fast observed by a group of employees and his unauthorized absence on that date was ordered to be treated as dies non resulting break in service. Despite memo issued to him for participating in the dharna from 19.12.2006 to 22.12.2006 and on 26.12.2006 and the specific warning issued by the DAG (Admn.) vide circular dated 16.4.2007, the applicant had again participated in the illegal dharna held on 17.4.2007. The applicant submitted his explanation stating that he was attending to a call issued by the association after availing a leave which is untenable as participation in the agitation programme itself was unauthorised and illegal. He also participated in the dharna in the office premises on 31.7.2007, 1.8.2007 and 2.8.2007 and shouted slogans which were insubordination in nature. On 23.8.2007 also he participated in the unauthorized demonstration shouting slogans which were insubordination in nature, tone and content. Thus he contravened rule 7(i) read with Rule 3(1)(iii) of the conduct rules. In Annexure A-1 order of penalty it is held that marching in mass through the buildings of the office during duty hours, disrupting the work of other employees and shouting slogans in the higher pitch of voice cannot be termed as peaceful rather vacating one's place of duty to join an illegal demonstration or dharna thereby the applicant sabotaged the normal functioning of the office was without question, prejudicial to the public



order. There is a further finding that participation in the dharna held on various dates and the demonstration on 23.8.2007 congregating outside shouting slogans and blocking the free passage of officers and staff has been evidenced by reports of the responsible officers. The participation in such unauthorized and indecorous dharnas and demonstrations were subversive of discipline. No doubt in the charge sheet there is no charge of congregating outside, shouting slogans and blocking free passage of the officers and staff. There were also no allegations that dharna has caused obstruction in the working of the other employees and whether indulging in such activities it disrupted the work of the other employees. Highlighting these aspects it is contended by the applicant that the finding of guilt and imposing the punishment certainly is for misconduct more than what has been alleged in the charge sheet as such to the extent there was no imputation of any misconduct in Annexure A-11, the order is illegal and liable to be set aside. It is also contended that the appellate authority is none other than the officer whose action was questioned in the collective action of the employees and as such the order passed by the appellate authority is illegal as it was biased. It is also contended that the report of the officers evidencing the allegation do not find place in the charge sheet nor was any opportunity given for going through such statement of the officers. At any rate Rule 7(i) of CCS (Conduct) Rules is not at all attracting as none of the action had prejudiced the public order. Reliance is also placed on the decision of the Apex Court in 1984 SC 1356 in support of the contention regarding bias.



7. Per contra the counsel appearing for the respondents would contend that the disciplinary authority is a different officer and there is no personal allegation against the officer concerned. The dharna was against a policy decision and as such the contention that the appellate authority order is biased has no ground to stand. It is also contended that preceding the charge sheet several memos were issued which read in conjunction with the charge sheet would clearly show that the allegations raised are with due notice to the applicant and it is virtually admitted by him of having participated in the dharna and as such further proof regarding his involvement in the misconduct is not required for imposing a minor penalty as contemplated by the rules.

8. We shall first deal with the ground alleging bias against Annexure A-2 order passed by the appellate authority. Admittedly, the appellate authority in the present case is the Accountant General and he had only exercised as an appellate authority while passing Annexure A-2 order. That the very agitation by a section of the employees was against the policy decision taken by the then Accountant General and there is nothing personal about it. Merely because a policy decision taken as the head of the department against which employees resorted to some collective action to protest against the decision, does not by itself disqualify the appellate authority in considering as to whether the punishment imposed by the disciplinary authority is proper. In this case all that the appellate authority held is that the right to hold demonstration cannot be exercised in violation of the right to property of some one else. That there is no fundamental right to resort to



strike and that in a democratic set up they have to resort to the machinery provided under different statutory provisions for redressal of the grievance. To say so he has relied upon the judgement of the Apex Court in T.K. Rangarajan vs. Government of Tamil Nadu – 2003 AIR SCW 3807. Whether or not the charges are proved are also decided with regard to the reply submitted by the applicant. Further the cause for the dharna and the agitation as we have already stated is not against any government officer and according to the applicant himself he has not shouted any slogans against any personnel in the office. Thus, we do not find that the order Annexure A-2 passed by the appellate authority is in any way vitiated on the ground of bias.

9. However, we find that the allegations raised in Annexure A-11 and the order imposing the penalty in which certain findings to which reference is already made above vary as there is no allegation of any action on the part of the applicant causing any adverse effect on the disruption of the work of the other employees. There is also no allegation that he shouted slogans in high pitch and for that normal functioning of the office was sabotaged, to call it an action prejudicial to public order. Further there was no allegation that the applicant had blocked the free passage of the officers and staff. Nothing is mentioned regarding the reports of the responsible officers referred to in the penalty order based on which findings were recorded. Applicant was also not given any copy of the report of the officers made mentioned of in the penalty order. True that the applicant had admitted having participated in the dharna on the various dates mentioned in the



charge sheet. In Annexure A-12 there is a clear admission that the organizational action was to highlight the demand and that he was a member of the association which called for the organizational action. That the dharna was held at the branch office at Ernakulam which are part of the organizational action and it was peaceful. He had to say that he did not shout any slogans which were insubordinate in nature, tone and content. In other words there was no denial of having shouted any slogans. According to him the slogans were not insubordinate in nature. He also denies of having participated in any unauthorized demonstration. 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. Though we had held in some of the earlier case that participation in the demonstration or dharna beyond the office hours by itself may not amount to misconduct, here the specific allegation is that the dharna commenced from 10.30 AM onwards up to 12.45 PM (see Annexure A-9). According to the reply Annexure A-10 to the show cause memo he participated in the dharna after availing leave on 17.4.2007. But admittedly going by his own admission in Annexure A-13 on 19.12.2006 to 22.12.2006, 26.12.2006 and 2.8.2007 even though he applied for leave the same was rejected and disciplinary action was initiated against him. Therefore, participation in the dharna in these dates were not after availing any leave and there is no case for the applicant that he participated in the dharna or strike during interval or after office hours. In such circumstances the finding by the disciplinary authority that he participated in the dharna or strike on 19.12.2006 to 22.12.2006, 26.12.2006 and 2.8.2007 cannot be interfered with process of judicial review of the administrative action. To that extent, no interference should be made by this Tribunal. It is true that participation in demonstration by itself may not amount to misconduct in the light of the decision of the Apex Court in AIR 1962 SC 1166 – Rameshwar Prasad & Ors. Vs. State of Bihar & Anr. but participation during working hours in any form of dharna and shouting



slogans during working hours cannot be said to be a fundamental right.

10. In the circumstances, what appropriate punishment should be inflicted on the limited charge sustained for participation in the dharna held on 19.12.2006 to 22.12.2006, 26.12.2006 and 2.8.2007 and shouted slogans during office hours is a matter for consideration by the authorities. The dies non awarded has already been set aside by the appellate authority by Annexure A-2. For the slogans shouted whether derogatory, insubordinate in nature, tone and content is not supported by the materials available on record and in the absence of any inquiry such finding could not be supported. We would have perhaps held that in order to sustain any such allegation at least an inquiry ought to have been held and the discretion not to hold an inquiry in the factual situation to sustain the allegation as to the derogatory nature of the slogans are concerned are not supported by the available material on record and an inquiry ought to have been held to sustain those aspects.

11. In the result we allow the OA and set aside the order at Annexure A-1 to the extent it refers to the allegations not contained in Annexure A-11. The penalty imposed is also set aside so as to enable the disciplinary authority to re-consider the appropriate punishment if any to be inflicted on the charges as found of having admitted by the employee namely of having participated in the demonstration on 19.12.2006 to 22.12.2006, 26.12.2006 and 2.8.2007 and shouted slogans during office hours. Revised orders shall however be passed as expeditiously as possible at any rate within a period



of four months failing which the respondents shall restore the benefits imposed by Annexure A-1 on the expiry of the aforesaid period of four months.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

"SA"