CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.211/10

Thursday this the 23rd day of June 2011

C O R A M :

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

Ajayakumar Poovathumchal,
S/o.P.Kannan,
Senior Accountant,
Office of the Accountant General (A&E),
Kerala, Thiruvananthapuram.
Residing at Souparnika, SGRA 28, Souhridagramam,
Nemom PO, Thiruvananthapuram – 695 020. ...Applicant

(By Advocate Mr.T.C.Govindaswamy)

V e r s u s

1. The Comptroller & Auditor General of India,
   Government of India, New Delhi.

2. The Senior Deputy Accountant General (Admn.),
   Office of the Principal 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. ...Respondents

(By Advocate Mr.V.V.Asokan)

This application having been heard on 23rd June 2011 this Tribunal on the same day delivered the following :-

O R D E R

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER

This is a case where the applicant an employee in the office of the Accountant General (A&E), Thiruvananthapuram, was imposed with a minor punishment under Rule 16 of the CCS (CCA) Rules, 1965 by

Annexure A-1 dated 30.9.2008 of withholding of all increments of pay for a period of three years as specified in Rule 11 (iv) of the CCS (CCA) Rules. It is further ordered that he will not earn any increment during the currency of penalty. The applicant preferred a departmental appeal which is also dismissed by Annexure A-2 . Impugning Annexure A-1 and Annexure A-2 the present OA is filed. It is prayed that Annexure A-1 and Annexure A-2 be quashed and direct the respondents to grant the applicant all the consequential benefits including arrears of pay and allowances as though Annexure A-1 and Annexure A-2 has not been issued.

2. One of the grounds urged impugning Annexure A-1 and Annexure A-2, is that the employee having denied the charges, it is obligatory on the part of the Disciplinary Authority to proceed with an inquiry. Admittedly, since no inquiry was held before imposing the punishment, the order is vitiated. According to the applicant, factual situation demands that an inquiry is required to be held and, therefore, imposition of the penalty without holding an inquiry is bad in the present case insofar as the discretion vested with the authority to hold an inquiry has been exercised in a capricious and arbitrary manner.

3. Before we go into the merits of the contentions regarding as to whether this is a fit case where an inquiry is required to be held or not, we may address the question that is raised as to whether it is incumbent on the Disciplinary Authority to proceed to hold an inquiry in all cases where the charges are denied. Learned counsel appearing on behalf of the respondents placed reliance on the decision of the Apex Court in

Food Corporation of India, Hyderabad and others Vs. A.Prahalada Rao and another [2001 (1) SCC 165] wherein the Apex Court in a similar situation has considered a similar rule and held that it is not incumbent on the Disciplinary Authority to hold an inquiry in every case merely for a asking for it by the employee. Therefore, it is contended that the Disciplinary Authority, in the present case, being satisfied with the nature of the evidence available which points to the involvement of the applicant having committed the misconduct and, therefore, he has exercised the discretion not to hold an inquiry either expressly or impliedly in the correct perspective which does not warrants interference.

4. We have heard both sides. In order to answer the question posed before us it is necessary to refer to the relevant provisions contained in Rule 16 of the CCS (CCA) Rules, 1965 which is extracted hereunder :-

> **16. PROCEDURE FOR IMPOSING MINOR PENALTIES:**
>
> (1) Subject to the provisions of sub-rule (3) of rule 15, no order imposing on a Government servant any of the penalties specified in clause (i) to (iv) of rule 11 shall be made except after -
>
> (a) informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him reasonable opportunity of making such representation as he may wish to make against the proposal;
>
> (b) holding an inquiry in the manner laid down in sub-rules (3) to (23) of rule 14, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;
>
> (c) taking the representation, if any, submitted by the Government servant under clause (a) and the record of inquiry, if any, held under clause (b) into consideration;

(d) recording a finding on each imputation or misconduct or misbehaviour; and

(e) consulting the Commission where such consultation is necessary.

(1-A) Notwithstanding anything contained in clause (b) of sub-rule (1), if in a case it is proposed after considering the representation, if any, made by the Government servant under clause (a) of that sub-rule, to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government servant or to withhold increments of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period, an inquiry shall be held in the manner laid down in sub-rules (3) to (23) of Rule 14, before making any order imposing on the Government servant any such penalty.

(2) The record of the proceedings in such cases shall include -

(i) a copy of the intimation to the Government servant of the proposal to take action against him;

(ii) a copy of the statement of imputations of misconduct or misbehaviour delivered to him;

(iii) his representation, if any;

(iv) the evidence produced during the inquiry;

(v) the advice of the Commission, if any;

(vi) the findings on each imputation of misconduct or misbehaviour; and

(vii) the orders on the case together with the reasons therefor.

5. As per the above rule, a Government servant, against whom penalties specified in Clause (i) to (iv) of the Rule 11 is made, is to be informed in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken and giving him reasonable opportunity of making such representation as he may wish to make against the proposal. As per Clause (b) of Rule 16 (1) such punishment could be imposed after holding an inquiry in the

manner laid down in sub-rules (3) to (23) of Rule 14, in every case in which the Disciplinary Authority is of the opinion that such inquiry is necessary. Thus, holding an inquiry in the manner laid down in sub rules (3) to (23) of Rule 14 is required only in cases in which the Disciplinary Authority is of the opinion that such inquiry is necessary. The contention on behalf of the applicant that if the charges are denied, it is incumbent on the Disciplinary Authority to hold an inquiry is opposed to the express language of Rule 16 (1) (b) as aforesaid quoted.

6. We may, in this connection, notice that even in the matter of imposing certain types of minor punishments covered by Clause (1-A) of Rule 16 mandates holding of an inquiry. In other words, whenever a rule making authority thought fit that it is imperative to hold an inquiry such cases are carved out from the remaining cases by virtue of Clause (1-A) of Rule 16. It is only in other types of punishments of minor nature the discretion is vested with the Disciplinary Authority to decide as to whether the inquiry is to be held or not. In other words, a mere asking for an inquiry by itself does not compel the Disciplinary Authority to hold an inquiry unless a opinion is formed by the Disciplinary Authority considering the materials available on record and exercise its discretion in a reasonable manner and take a decision as to whether this is a case where an inquiry is to be held or not. Being a discretion vested with the authority statutorily, necessarily such discretion is to be exercised in a reasonable manner and not capriciously or arbitrarily. In case the decision rendered by him not to hold an inquiry is found to be arbitrary or capricious certainly it is subject to judicial review. In this connection, we may refer to the decision of the

Apex Court in **Food Corporation of India, Hyderabad and others Vs. A.Prahalada Rao and another (2001 [1] SCC 166)** wherein in para 4 of the judgment the specific contention as raised on behalf of the appellants were stated thus :-

> "4. Learned counsel appearing on behalf of the appellants submitted that while interpreting Regulation 60, the High Court has added a proviso by stating that when the employee disputes his liability after receipt of the show cause notice, it is incumbent upon the disciplinary authority to conduct a detailed enquiry as provided for major punishment. It is his contention that in case of negligence in discharge of duties or loss occurred to the Corporation by not following the directions issued by the Corporation for taking precautions, there is no question of holding full-fledged departmental enquiry before imposing minor penalty as provided in Regulation 54. As against this, respondent No.2-Joint Secretary, Food Corporation of India Executive Staff Union who appeared in person submitted that under the guise of imposing minor penalties, the Management of appellant is dispensing with holding of regular departmental enquiry in cases where charges cannot be proved. He further pointed out that there is large scale misuse of powers under the said Regulation and, therefore, the interpretation given by the High Court to the said Regulation does not call for any interference."

And the Apex Court with reference to the said contention in para 5 held as under :-

> "5. In our view, on the basis of the allegation that Food Corporation of India is misusing its power of imposing minor penalties, the Regulation cannot be interpreted contrary to its language. Regulation 60(1)(b) mandates the disciplinary authority to form its opinion whether it is necessary to hold enquiry in a particular case or not. But that would not mean that in all cases where employee disputes his liability, a full-fledged enquiry should be held. Otherwise, the entire purpose of incorporating summary procedure for imposing minor penalties would be frustrated. If the discretion given under Regulation 60(1)(b) is misused or is exercised in arbitrary manner, it is open to the employee to challenge the same before the appropriate forum. It is for the disciplinary authority to decide whether regular departmental enquiry as contemplated under Regulation 58 for imposing major penalty

should be followed or not. This discretion cannot be curtailed by interpretation which is contrary to the language used. Further, Regulation 60(2) itself provides that in a case if it is proposed to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of retirement benefits payable to employee and in such other cases as mentioned therein, the disciplinary authority shall hold enquiry in the manner laid down in Regulation 58 before making any order imposing any such penalty. Hence, it is apparent that High Court erroneously interpreted the regulation by holding that once the employee denies the charge, it is incumbent upon the authority to conduct enquiry contemplated for imposing major penalty. It also erred in holding that where employee denies that loss is caused to the Corporation either by his negligence or breach of order, such enquiry should be held. It is settled law that Courts power of judicial review in such cases is limited and Court can interfere where the authority held the enquiry proceedings in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of enquiry and imposing punishment or where the conclusion or finding reached by the disciplinary authority is based on no evidence or is such that no reasonable person would have ever reached. As per the Regulation, holding of regular departmental enquiry is a discretionary power of the disciplinary authority which is to be exercised by considering the facts of each case and if it is misused or used arbitrarily, it would be subject to judicial review."

7. The above is a clear answer to the contention raised by the applicant. Therefore, we proceed to hold that in cases where the proposed punishment to be imposed is of a minor nature and not specified under Clause (i) to (iv) of Rule 11, there is a discretion vested with the Disciplinary Authority to decide as to whether an inquiry should be held in the given set of facts or not. Such decision should be reasonable and should not be capricious or arbitrary. In case, it is decided in a capricious or arbitrary manner the same is subject to judicial review.

8. The Bombay Bench of the Tribunal has considered a similar issue in O.A.No.157/2007 decided on 12th April, 2011. Though the consideration thereunder was with reference to Rule 10(b) of the All India Services (Discipline & Appeal) Rules, 1969 which is similar to Rule 16(1) of the CCS(CCA)Rules, 1965, under examination. The Tribunal referred to the decision of the Apex Court in Food Corporation of India case(2001)1 SCC 165) and after taking into consideration of the relevant rules held:-

> "Even though holding an inquiry in the manner as in sub-rule 23 of Rule 8 is mandatory if the punishment proposed is to withhold increments of pay for a period exceeding 3 years or with cumulative effect for any period or has to adversely affect the amount of pension payable to him. There is, however, a discretion vested with the Disciplinary Authority to hold an inquiry in other cases. In other words, not only in the case of imposing a major penalty, but also in the case of imposition of a minor penalty of barring of increment with cumulative effect or which has got the effect of affecting the amount of pension etc., the same procedure as contemplated for imposing a major penalty is required to be taken. In other types of penalty proposed to be imposed which are minor in nature, there also an inquiry at the discretion of the officer would be held provided the Disciplinary Authority is of the opinion that such inquiry is necessary. Thus, the opinion to be formed by the Disciplinary Authority being one conferred on him by Rule it is necessarily to be exercised in an objective manner and not subjective. Even though a right as such in express term is not conferred on an employee to request for conducting any such inquiry in the type of cases as falling under the last limb of Rule 10(b), it is settled law that when a discretion is vested with the authority to form an opinion as to whether an inquiry should be held or not, either he can exercise his powers suo moto or such powers can be invoked by a person who may be proceeded with on a disciplinary action. In that event, the Disciplinary Authority is bound to apply his mind on the request made by the employee which is only inviting the Disciplinary Authority to exercise his discretion to form an opinion as to whether an inquiry should be held or not. Once he is invited to decide whether an inquiry should be held or not, there is no two alternative, but to express an opinion with reference to the factual situation and the materials on record and say whether in his opinion an inquiry as requested by the delinquent is required to be held or not. This opinion is to be supported by reason so that if the decision made is

> capriciously taken or without application of mind or for extraneous consideration as may be turned out, which are normal grounds available to attack in quasi judicial order, then a judicial review is permissible on the decision so taken. Therefore, when such an order is passed, which is amenable to judicial review, it is incumbent on the Disciplinary Authority to pass an order, in other words, by not passing an order thereby takes away the right of the employee to question the order if passed, on valid grounds."

9. We may, in this connection also, refer to a similar view taken by the Coordinate Bench of this Tribunal in **O.A.247/10 and connected cases dated 22.9.2010 – S.V.Santhoshkumar & others Vs. The Comptroller and Auditor General of India & others** and two other decisions of this Tribunal in **O.A.768/10 and connected cases dated 16.11.2010 – Krishnadas A.K & others Vs. The Comptroller and Auditor General of India & others** and **O.A.872/09 dated 16.3.2011 – Santhosh Kumar S.V. Vs. The Deputy Comptroller and Auditor General & others**. In O.A.247/10 and connected cases decided on 22.9.2010 this question was considered and there are observations which also supports the same view as we have taken that the discretion is vested on the Disciplinary Authority to hold an inquiry before imposing a minor penalty not covered by (1-A) of Rule 16. It was held in these two batch of cases, however, after examining the particular facts of these cases that decision not to hold an inquiry is vitiated as circumstances warrants holding of an inquiry. In other words, it was held that the decision not to hold an inquiry in the given set of facts is arbitrary and on that ground the order imposing punishment was set aside leaving open the right of the employer to proceed to hold an inquiry and take appropriate action, if so advised.

10. Therefore, we have to examine as to whether in the present case imposition of the penalty without holding an inquiry can be considered to be a reasonable exercise of the discretion by the authority concerned or is it arbitrary. In O.A.247/10 and connected cases wherein para 8 of the order it was held that even in cases where a minor penalty is imposed, the Disciplinary Authority has to indicate the reasons in writing as to why the inquiry is dispensed with. That is a case where there is a specific request to conduct an inquiry made by the employee but the authority did not hold an inquiry but proceeded to impose the penalty relying on the materials available on records. The materials which were relied on by the Disciplinary Authority were the video recordings and statement made mentioned of in the punishment order. It was the specific contention on behalf of the applicants that the applicants could not prove their innocence. The veracity of the video recordings and statement mentioned in the punishment order could not be verified in the absence of a formal inquiry. In the present case also, the only evidence based on which the punishment is imposed on the applicant are the same statement and the video clippings only. Therefore, on the available materials on record it can very well be said that the decision of the authority not to hold an inquiry and imposing a punishment is arbitrary and is not based on its discretion exercised as contemplated under Rule 16 (1) (b) of the CCS (CCA) Rules, 1965. On the short ground this application is liable to be allowed. It is contended that even the charges as levelled against the applicant are not sustainable in the eye of law. In the above view, we are not going into the merits of the other contentions raised as the final decision to be taken by the authority being subject to such inquiry has to be held as directed, it will be open to the applicant to raise such contentions as and when occasions warrants.

11. In the result, we hold :-

(i) Though it is not incumbent on the Disciplinary Authority to hold an inquiry in every case in which the applicant seeks for such an inquiry to be held nevertheless it is incumbent on him to consider such request and exercise the discretion in a reasonable manner based on materials on record and decide whether an inquiry should be held or not.

(ii) The decision of the Disciplinary Authority in deciding not to hold an inquiry should not be capricious or arbitrary and the orders passed are subject to judicial review.

(iii) The power to hold an inquiry by the Disciplinary Authority can either be exercised suo moto or on the request by the employee concerned. Such request, if made, the authorities are bound to take a decision as to whether an inquiry should be held or not and give his reasons thereof.

12. In the particular facts and circumstances of the case and for parity of reasons as held in O.A.247/10 and connected cases by another Bench of this Tribunal, we hold that based on the materials available on record it has to be held that the decision taken by the authority not to hold an inquiry is arbitrary and, therefore, liable to be set aside. In the result, we set aside the order imposing the punishment leaving open the right of the

respondents to proceed to hold an inquiry from the stage of holding an inquiry and to take a decision in accordance with the law. The applicant will be entitled for restoration of the monetary benefits on the expiry of three months but in case final orders are passed such benefits will be subject to the same.

(Dated this the 23rd day of June 2011)

K.GEORGE JOSEPH
ADMINISTRATIVE MEMBER

JUSTICE P.R.RAMAN
JUDICIAL MEMBER

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