CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 220 of 2010
w i t h
OA Nos. 228, 237, 238, 245, 249, 272, 273, 296, 595, 671 & 919 of 2010

Wednesday, this the 20th day of July, 2011.

CORAM:

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

1. O.A. No. 220/10

Hari S.S, S/o. Suseelan Nair
Accountant, Office of the Accountant General
(A&E) Kerala, Thiruvananthapuram
Residing at Flat No.117, Sreechitra Nagar
Mettukkada, Thycadu (P.O)
Thiruvananthapuram. ... Applicant

(By Advocate Mr. T.C. Govindaswamy)

Versus

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

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

3 The Accountant General (A&E),
Kerala, Thiruvananthapuram.

4 V. Ravidran
Principal Accountant General (A&E)
Andhra Pradesh, Hyderabad. .... Respondents

(By Advocate Mr. V.V. Asokan)

2. O.A. No. 228/10

P.K. Vimal Kumar
S/o. (late) K.P. Krishnan
Senior Accountant
Office of the Accountant General (A&E)
Kerala, Thiruvananthapuram.
Residing at "Vimala Sadanam"
Arayoor (P.O)
Thiruvananthapuram – 69 122. ... Applicant

(By Advocate Mr. T.C. Govindaswamy)

Versus

1 The Comptroller & Auditor General of India
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2 The Senior Deputy Accountant General (Admn)
Office of the Accountant General (A&E)
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3 The Accountant General (A&E),
Kerala, Thiruvananthapuram.

4 V. Ravidran
Principal Accountant General (A&E)
Andhra Pradesh, Hyderabad. .... Respondents

(By Advocate Mr. V.V. Asokan)

3. O.A. No. 237/10

Elsamma, D/o. O.M. Joseph
Accountant, PF-5 Section
Office of the Accountant General (A&E)
Kerala, Thiruvananthapuram
Residing at CRRA-16, TC-27/2049
Chirakulam Road, Statue
Thiruvananthapuram. ... Applicant

(By Advocate Mr. T.C. Govindaswamy)

Versus

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

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

3 The Accountant General (A&E),
Kerala, Thiruvananthapuram.

4 V. Ravidran
Principal Accountant General (A&E)
Andhra Pradesh, Hyderabad. ..... Respondents

(By Advocate Mr. V.V. Asokan)

4. O.A. No. 238/10

V. Suseelan, S/o. C. Vasudevan
Senior Accountant
Office of the Accountant General (A&E)
Kerala, Thiruvananthapuram
Residing at "Sruthy", T.C. No.7/1833
Sreechitra Nagar, House No. C-38
Pangode, Thirumala (P.O)
Thiruvananthapuram – 695 006 ... Applicant

(By Advocate Mr. T.C. Govindaswamy)

Versus

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

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

3 The Accountant General (A&E),
Kerala, Thiruvananthapuram.

4 V. Ravidran
Principal Accountant General (A&E)
Andhra Pradesh, Hyderabad. .... Respondents

(By Advocate Mr. V.V. Asokan)

5. O.A. No. 245/10

G. Sujatha, D/o. A. Bhaskaran
Senior Accountant
Office of the Accountant General (A&E)
Kerala, Thiruvananthapuram
Residing at Kunnumpurath Veedu
Kuttichalkonam, Kudappanakunnu (P.O)
Thiruvananthapuram. ... Applicant

(By Advocate Mr. T.C. Govindaswamy)

Versus

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

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

3 The Accountant General (A&E),
Kerala, Thiruvananthapuram.

4 V. Ravidran
Principal Accountant General (A&E)
Andhra Pradesh, Hyderabad. .... Respondents

(By Advocate Mr. V.V. Asokan)

6. O.A.No. 249/10

P.K. Nalinamma, D/o. Kesavan
Senior Accountant, GE 29
Office of the Accountant General (A&E)
Kerala, Thiruvanathapuram
Residing at Chennanad Home
CGRA-21 (City Gardens)
Kizhakkathil Junction, Anayara (P.O)
Thiruvananthapuram. ... Applicant

(By Advocate Mr. T.C. Govindaswamy)

Versus

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

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

3 The Accountant General (A&E),
Kerala, Thiruvananthapuram.

4 V. Ravidran
Principal Accountant General (A&E)
Andhra Pradesh, Hyderabad. .... Respondents

(By Advocate Mr. V.V. Asokan)

7. O.A. No. 272/10

R. Babu, S/o. (late) N. Raghavan
Senior Accountant, LA Cell A/CS
Office of the Accountant General (A&E)
Thiruvananthapuram
Residing at "Kartha"
Thalikuzhy (P.O), Pulimath (Via)
Thiruvananthapuram – 12 ... Applicant

(By Advocate Mr. T.C. Govindaswamy)

Versus

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

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

3 The Accountant General (A&E),
Kerala, Thiruvananthapuram.

4 V. Ravidran
Principal Accountant General (A&E)
Andhra Pradesh, Hyderabad. .... Respondents

(By Advocate Mr. V.V. Asokan)

8. O.A. No. 273/10

R. Rajesh, S/o. K.P. Raghavan Nair
Accountant/EDP (PF)
Office of the Accountant General (A&E)
Kerala, Thiruvananthapuram
Residing at TC 17/1312(11)
"Aravindam", Chadiyara
Poojappura, Thiruvananthapuram – 12. ... Applicant

(By Advocate Mr. T.C. Govindaswamy)

Versus

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

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

3 The Accountant General (A&E),
Kerala, Thiruvananthapuram.

4 V. Ravidran
Principal Accountant General (A&E)
Andhra Pradesh, Hyderabad. .... Respondents

(By Advocate Mr. V.V. Asokan)

9. O.A. No. 296/10

K.S. Gopan, S/o. P.K. Somanathan Nair
Accountant, Office of the Accountant General (A&E)
Thiruvanathapuram
Residing at "Ambady", Vetturoad
Kariyapuram (P.O), Thiruvananthapuram. ... Applicant

(By Advocate Mr. T.C. Govindaswamy)

Versus

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

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

3 The Accountant General (A&E),
Kerala, Thiruvananthapuram.

4 V. Ravidran
Principal Accountant General (A&E)
Andhra Pradesh, Hyderabad. .... Respondents

(By Advocate Mr. V.V. Asokan)

10. O.A. No. 595/10

C.A Majeed, S/o. C.A Abdul Khader
Senior Accountant,
Office of the Accountant General (A&E)
Kerala, Thrissur Branch
Residing at : No. E1-AG's
Office Staff Quarters
Pullazhi (P.O), Thrissur – 680 012 ... Applicant

(By Advocate Mr. T.C. Govindaswamy)

Versus

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

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

3 The Accountant General (A&E),
Kerala, Thiruvananthapuram.

4 V. Ravidran
Principal Accountant General (A&E)
Andhra Pradesh, Hyderabad. .... Respondents

(By Advocate Mr. V.V. Asokan)

11. O.A No. 671/10

Deyanandan N, D/. (late) K. Neelakandan
Senior Accountant, GE 18
Office of the Accountant General (A&E)
Kerala, Thiruvananthapuram
Residing at "Dyuthi", Maruthoor
Vattappara (P.O),
Thiruvananthapuram. ... Applicant

(By Advocate Mr. T.C. Govindaswamy)

Versus

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

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

3 The Accountant General (A&E),
Kerala, Thiruvananthapuram.

4 V. Ravidran
Principal Accountant General (A&E)
Andhra Pradesh, Hyderabad. .... Respondents

(By Advocate Mr. V.V. Asokan)

12. O.A No. 919/10

Joy Kurien, S/o. (late) E. Kurien
Senior Accountant
Office of the Accountant General (A&E)
Kerala, Thiruvananthapuram
Residing at "Baby Mandiram"
TC. 12/1104, Law College Junction
Vanchiyoor (P.O), Thiruvnanthapuram. ... Applicant

(By Advocate Mr. T.C. Govindaswamy)

Versus

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

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

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

4 V. Ravidran
Principal Accountant General (A&E)
Andhra Pradesh, Hyderabad.

5 K. Vijayakumaran
Senior Deputy Accountant General (Admn)
Office of the Accountant General (A&E)
Kerala, Thiruvananthapuram. .... Respondents

(By Advocate Mr. V.V. Asokan)

These applications having been heard on 23.06.11, the Tribunal on 20-07-11... delivered the following:

ORDER

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

The above O.As are identical. They were heard together and are disposed of by this common order.

2. The applicants are employees in the office of the Accountant General (A&E), Thiruvananthapuram. They were imposed with a minor punishment under Rule 16 of the CCS (CCA) Rules, 1965, by order dated 30.09.2008, which was confirmed by the Appellate Authority's order dated 24.12.2008 and on 02.01.2009, as the case may be. It is prayed that the above orders be quashed and direct the respondents to grant them all consequential benefits including arrears of pay and allowances as if the impugned orders have not been issued.

3. Disciplinary action was initiated against the applicants under Rules 16 of the CCS (CCA) Rules, 1965 for their alleged participation in a demonstration held on 24.03.2008 at around 12.30 p.m and shouting of slogans against the 4th and 5th respondents who were respectively the Appellate Authority and the Disciplinary Authority of the applicants. The applicants claimed that they never participated in the alleged demonstration on 24.03.08. But the Disciplinary Authority imposed on them the penalty of withholding of all increments of pay for a period of three years with further direction that they will not earn any increments during the

currency of the penalties. The applicants submitted that the impugned orders are in gross violation of both the principles of natural justice that no one shall be a judge in his cause and no one shall be condemned unheard. Unless and until the video clippings on which the disciplinary action is based are produced in a regularly constituted departmental enquiry and proved in accordance with law, they have no validity in the eyes of law. They had specifically requested the Disciplinary Authority that in case he wants to proceed further in the matter, a regular departmental enquiry as provided under the CCS (CCA) Rules may be conducted so as to enable them to prove their innocence. The disciplinary action taken against the applicants carries no legally acceptable evidence. As the entire proceedings against the applicants are ultra vires the Rule 12 of the CCS (CCA) Rules,1965 and the instructions of the Government of India issued thereunder, they are liable to be set aside.

4. The respondents submitted that since the explanations submitted by the applicants were found untenable, the Disciplinary Authority by a speaking order dated 30.09.2008 imposed a minor penalty clearly recording the reasons of finding the applicants guilty of the misconduct alleged against them. This order has been confirmed by the Appellate Authority. The disciplinary proceedings were initiated against the applicants for participating in an illegal demonstration held on 24.03.08 within the office premises during duty time despite specific instruction issued by the competent authority to desist from participating in the demonstration. A full fledged trial and enquiry is not contemplated in Rule 16 of the CCS (CCA) Rules, 1965. The applicants were given effective opportunities for being

heard by issuing memorandum of charges and calling for their explanations which alone is the legal requirement under Rule 16 of CCS (CCA) Rules. Therefore, the applicants are not entitled to any relief as prayed for in these O.As.

5. We have heard both the sides and perused the materials on record.

6. One of the grounds urged by the applicants is that the factual situation demanded that an enquiry is required to be held and, therefore, the imposition of penalty without holding an enquiry is bad in law. As per Rule 16 of the CCS (CCA) Rules, 1965, a Government servant against whom the penalties specified in clause (i) to (iv) of the Rule 11 is made, is to be informed in writing about the action proposed to be taken against him and of the imputations of misconduct on which it is proposed to be taken and giving him reasonable opportunity to defend himself. But an enquiry in the manner laid down in sub-rules (3) to (23) of Rule 14 is required to hold only in cases in which the Disciplinary is of the opinion that such enquiry is necessary. The Disciplinary Authority is vested with a discretion to hold or not to hold an enquiry when a minor penalty is proposed to be imposed. Mere asking for an enquiry by itself does not compel the Disciplinary Authority to hold an enquiry. But the discretion vested with the authority statutorily should be exercised in a reasonable manner and not capriciously or arbitrarily. In the order dated 23.06.2011 in O.A. No. 211/2010, this Tribunal held as under:

"7. ..... 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 15.11.2010 - Krishnadas A.K & others Vs. The Comptroller and Auditor General of India & others** and **O.A.872/09 dated 15.3.2011 - 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."

7. The order of this Tribunal in the aforesaid O.A squarely covers the O.As under consideration here. Following the decision of this Tribunal in the above O.A, we hold that based on the facts of the cases under consideration, the decision taken by the Disciplinary Authority not to hold an enquiry is arbitrary and therefore, liable to be set aside leaving other points raised in these OAs open. Accordingly, it is ordered as under.

8. The orders imposing the punishment on the applicants are hereby quashed and set aside. The right of the respondents to proceed to hold an enquiry from the stage of holding an inquiry and to take a decision in accordance with the law is left open. The applicants 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.

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

(Dated, the 20th July, 2011)

(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER

(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

cvr.