

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

Original Application No. 240 of 2010

Thursday, this the 18<sup>th</sup> day of August, 2011.

**CORAM :**

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

Krishnakumar. R.,  
Clerk/Typist,  
Office of the Accountant General (A&E),  
Kerala, Thiruvananthapuram. .... Applicant

(By Advocate : Mr. M.K. Damodaran, Sr. along with  
Mr. Gilbert George Correya)

**Versus**

1. The Union of India, represented by  
The Secretary to Government,  
Ministry of Finance, New Delhi.
2. The Comptroller & Auditor General of India,  
9, Deen Dayal Upadhyaya Marg,  
New Delhi -110 124.
3. The Deputy Comptroller & Auditor General of India,  
(Appellate Authority) 9, Deen Dayal Upadhyaya Marg,  
New Delhi – 110 124.
4. The Senior Deputy Accountant General (Admn.),  
Office of the Accountant General (A&E),  
Kerala, Thiruvananthapuram. ... Respondents.

(By Advocate Mr. P. Parameswaran Nair for R1 – Not present)  
(By Advocate Mr. V.V. Asokan for R2-4)

The application having been heard on 01.08.2011, the Tribunal on 18/08/2011 delivered the following:

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

The applicant in this O.A challenges Annexure A-9 order dated 29.04.2008 of the 4<sup>th</sup> respondent, the disciplinary authority, imposing on him the penalty of reduction to the lower post of Clerk/Typist on permanent basis and fixing his pay at the minimum of scale of pay of the Clerk/Typist and barring of all increments for a period of 5 years with cumulative effect and Annexure A-12 order dated 02.04.2009 of the 3<sup>rd</sup> respondent, the ad hoc appellate authority, confirming the order of the disciplinary authority.

2. The applicant who was working as Accountant since 02.01.2006 in the Office of the Accountant General (A&E), Kerala, Thiruvananthapuram, was the President of the recognised union of the Accounts Association Category III, He was also an office bearer of the Joint Consultative Machinery, The policy of the Accountant General to outsource the work pertaining to 'One Rank One Pension' scheme was objected to by the service organizations. One employee was suspended in this connection. Protesting the proposal to outsource the work as well as the suspension of the employee, there was dharna during the period 19<sup>th</sup> December to 22<sup>nd</sup> December and on 26<sup>th</sup> December, 2006. The applicant was charged with participation in an illegal dharna in the portico of the main building on 20.11.2006 at 2.20.p.m. and willfully and deliberately blocking the entry of the Accountant General to the office and shouting slogans at him and threatening to prohibit his entry while on duty thereby violating Rule 7(i) and 7 (ii) and Rule 3 (1)(iii) of the CCS (Conduct) Rules, 1964. A detailed enquiry was conducted followed by issuance of Memorandum of charges dated 05.03.2007. The applicant denied



the charges against him. In the enquiry that followed, the charges levelled against the applicant are held as proved. After considering the representation of the applicant against the enquiry report, the 4<sup>th</sup> respondent held the applicant guilty of grave misconduct and issued Annexure A-9 penalty order. The 3<sup>rd</sup> respondent, the appellate authority, rejected the appeal preferred by the applicant and confirmed the penalty vide order Annexure A-12 dated 28.04.2009.

3. The applicant submits that there is no positive evidence to sustain the charges against him. The substance of the charge was that the applicant had physically obstructed the Accountant General. The Accountant General never submitted any report. Annexure A-3 report from the Assistant Care Taker and the evidence of the prosecution witnesses are procured at the instance of the Accountant General (A&E). The failure to examine the person directly affected is fatal to the enquiry. The penalty imposed on the applicant was a penalty not contemplated under any of the clauses enumerated in Rule 11 of the CCS (CCA) Rules. The penalty is illegal and disproportionate to the gravity of charges. The Disciplinary Authority, the Inquiring Authority and the Presenting Officer are the direct subordinates of the Accountant General. The prosecution witnesses were the personal peons of Accountant General. The Accountant General was able to stage manage the entire proceedings causing serious prejudice and injustice to the applicant. The Articles of charges and statement of allegations were deliberately manipulated and fortified and embellished to establish the charges against the applicant. The reasons assigned by the inquiring authority to disbelieve the evidences of the defence are without any logic or reasoning. The representation of the



applicant against the finding of the inquiring authority was never considered by the disciplinary authority. There is no application of mind by the appellate authority on the appeal filed by him. The appellate authority reiterated the observations of the inquiring authority as concurred by the disciplinary authority. The applicant has 16 years of unblemished service till the initiation of proceedings under Annexure A-1 memorandum. The disciplinary authority or the appellate authority has no justification to impose penalty on two counts of reversion to lower time scale and barring of increments for 5 years. The counsel for the applicant cited the judgement of the Apex Court reported in AIR 1962 SC 1166, AIR 1963 SC 812, (1999) 8 SCC 582, (2006) 5 SCC 88 and JT 2009 (2) SC 176 to support his contentions. In the light of the above, the applicant has sought the following reliefs:

- (i) To set aside Annexure A-9 order of the Disciplinary Authority and Annexure A-12 order of the Appellate Authority;
- (ii) To hold that the the Articles of charges against the applicant are not proved;
- (iii) To declare that the penalty imposed is one not provided under Rule 11 of the CCS (CCA) Rules, 1965, and is therefore, illegal;
- (iv) To declare that the penalty imposed is highly disproportionate to the charges alleged;
- (v) To declare that the inquiry held against the applicant was vitiated by bias, dictation and extraneous influence and therefore, the enquiry report bad in law."

4. In the reply statement filed on behalf of the respondents, it is submitted that this O.A is not maintainable both in law and facts. Both the disciplinary authority and the appellate authority have considered the contentions of the applicant properly and legally. The contention of the applicant that the penalty

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imposed is unique, unparalleled and a combination of various penalties from clause 2(ii) and (vi) of Rule 11 of the Rules is totally baseless as there are no such clauses under Rule 11 of the CCS (CCA) Rules, 1965. The applicant has no case of non-compliance of procedural formalities in the enquiry. The applicant himself has conceded that he did indeed, participate in the agitations despite specific orders issued by the competent authority to desist from participating in the agitations. The illegal dharna in which the applicant participated within the office premises during duty hours disrupted the office work, blocked the passages to the office. The agitators shouted defamatory slogans against the Accountant General and the Administration and deliberately obstructed the free movement of the Accountant General while he was entering the office. No Government servant has a right to disrupt the functioning of the office. In the light of the above, the applicant is not entitled to any of the reliefs prayed for in the O.A.

5. We have heard Mr. M.K. Damodaran (Senior) with Mr. Gilbert George Correya, learned counsel for the applicant and Mr. V.V. Asokan, learned counsel for the respondents 2 to 4 and perused the records.

6. For consideration of this O.A, the Articles of charges against the applicant are extracted as under :

**"ARTICLE - I**

That said Shri R. Krishna Kumar, while functioning as Accountant in the Office of the Accountant General (A&E), Main Office, Thiruvananthapuram, actively participated in an agitation programme held by a group of employees on 20.12.2006 in the lobby and portico/porch of the Main building of the Office of the Accountant General (A&E), Kerala, Thiruvananthapuram, during

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office hours without approval of the competent authority for such congregation and shouted slogans against the Accountant General and his administration that were derogatory, defamatory, demeaning, offensive, insolent, and insubordinate in nature, tone and content. In the process of holding such agitation programme, Shri R. Krishna Kumar hindered the passage of the public and staff, restricted freedom of movement and disrupted office functioning. By his active participation in the agitation programme as aforesaid, Shri R. Krishna Kumar violated Rule 7 (i) of the CCS (Conduct) Rules, 1964.

### **ARTICLE - II**

That said Shri R. Krishna Kumar, while functioning as Accountant in the Office of the Accountant General (A&E), Main Office, Thiruvananthapuram, and while actively participating in an agitation programme as aforesaid, at about 2.20 PM on 20.12.2006, wilfully and deliberately blocked the Accountant General (A&E) and obstructed his free movement into the office. When the Accountant General tried to enter his office, the said Shri R. Krishna Kumar jumped at the Accountant General with upraised fist, shouted at the Accountant General and repeatedly and deliberately, physically obstructed the further movement of the Accountant General, forcing the Accountant General to follow a different route escorted by the Group D Peons attached to his Secretariat and the Caretaker. Thus, Shri R. Krishna Kumar, Accountant violated Rule 7(ii) of the CCS (Conduct) Rules, 1964.

### **ARTICLE - III**

By his aforesaid acts elaborated on in Articles I and II above, Shri R. Krishna Kumar has indulged in wilful misconduct prejudicial to the interests and reputation of his employer, conducted himself in a manner inconsistent with due and faithful discharge of duty in service, indulged in improper and unlawful behaviour, transgressed established and definite code of conduct, encouraged similar indisciplined behaviour in his colleagues, and thus has displayed behaviour that is inconsistent and in compatible with due and peaceful discharge of his duty to his employer. Shri R. Krishna Kumar has been abrasive and had disturbed the peace at the place of employment. He has been insulting and insubordinate to such a degree as to be incompatible with the relationship of master and servant. Shri R. Krishna Kumar has indulged in conduct unbecoming of a Government servant and thereby violated Rule 3(1)(iii) of the CCS (Conduct) Rules, 1964."

The applicant is charged with violation of Rule 7(i), 7(ii) and Rule 3(1)(iii) of



the CCS (Conduct) Rules, 1964, for his active participation in an agitation programme in the lobby and portico of the Main building of the Office of the Accountant General (A&E), Kerala, Thiruvananthapuram, during office hours on 20.12.2006 and shouting slogans and blocking the entry of the Accountant General to his office.

7. The enquiry officer in his report dated 08.01.2008 held that all the 3 charges against the applicant have been proved. The disciplinary authority having found no reason to disagree with the finding of the enquiry officer that the charges levelled against the applicant have been proved, imposed the impugned penalty on him. The appellate authority also found no merit in his appeal and rejected the same confirming the penalty imposed on the applicant.

8. In his submission against the enquiry report the applicant has stated that there was no demonstration attracting the provision 7(i) and strike in 7(ii) of the CCS (Conduct) Rules, 1964. "Raising of slogan, demonstration and dharna were held to highlight a burning issue of outsourcing a portion of normal pension calculation work by the Head of Department". "There is no difficulty in seeing that the slogan raising, demonstration and dharna were organised by the Government of India recognised Association as part of collective bargaining". "I had not committed any misconduct unbecoming of a Government servant as the organisational programmes are approved one, both by the Executive Committee and by the Rules of Recognition." The stand of the applicant exemplified by such statements is tantamount to admission of his participation in the agitation on 20.12.2006. In the light of



admission, we do not find it necessary to go into the contentions of the applicant, like lack of positive evidence, embellishment of charges etc. Instead, we proceed to examine whether the applicant has violated Rule 7(i) and 7(ii) and Rule 3(1)(ii) of the CCS (Conduct) Rules, 1964. The Rule 7(1) (i) and (ii) are reproduced as under :

**"7. Demonstration ad Strikes:**

No Government servant shall -

- (i) engage himself or participate in any demonstration which is prejudicial to the interest 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, or
- (ii) 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 of any other Government servant".

9. The agitation/demonstration under consideration here has relevance only to 'public order' in 7(i) of the CCS (Conduct) Rules. In **Superintendent Central Prison, Fatehgarh vs. Dr. Ram Manohar Lohia**, AIR 1960 SC 633, the Hon'ble Supreme Court held "Public order (Art. 14 (2) and (3)) is synonymous with public peace, safety and tranquility. It is the absence of disorder among breaches of local significance in contradistinction to national upheavals such as revolution, civil strife, war affecting the security of the State". Gathering in front of the Office of the Accountant General, blocking his entry and shouting of slogans during office hours is not the normal work of the applicant and his co-agitators. When employees leave their seat of work, assemble in a crowd, block entry and shout slogans, the tranquility of the office is broken. There is disorder. Even if the commutation and disorder are not



prolonged, public order is disturbed. Therefore, we hold that the participation of the applicant during office hours in the agitation under scrutiny here is violative of 7(i) of the CCS (Conduct) Rules.

10. The agitation on 20.12.2006 in which the applicant had participated, was a demonstration against certain policy of the department. The employees have the freedom of speech to express their stand or feelings about a particular act of the Head of Department. The Apex Court held in AIR 1962 SC 1166, **Rameshwar Prasad and Others vs. State of Bihar and Another**, that a peaceful and orderly demonstration would fall within the freedom of speech. But that right needs to be exercised in an appropriate manner. To demonstrate during office hours when they are expected to discharge their duties is to desert duty and get paid for it from the public exchequer. After doing the day's work, if the employee demonstrate after office hours, in a peaceful manner, it may not be seen as violative of 7(ii) of CCS (Conduct) Rules. In the instant case, the applicant demonstrated instead of working during office hours and forced the Accountant General to take a particular door to enter his office after blocking his normal entry door. In doing so, he clearly violated 7(ii) of CCS (Conduct) Rules.

11. Rule 3(1)(iii) reads as follows:

**"3. General-**

(1) Every Government servant at all times-

(i) xxxxxxxx (ii) xxxxxxxx

(iii) do nothing which is unbecoming of a Government servant."



12. The applicant being a Government employee is at all time expected to do nothing which is unbecoming of a Government servant. Indulging in acts like crowding the office of the Accountant General, raising slogans at the highest pitch or less, blocking the way at a time when he should be performing his assigned duties at his seat of work can hardly be described as becoming of a Government servant. At the time of agitation during office hours, he was not in the section doing his work but was leading the agitation as the President of the recognised Union. Hooliganism in the office during office hours is to be doubly condemned. Unions should seek more dignified and acceptable methods of collective bargaining. The conduct of the applicant on 20.12.2006 during office hours was quite unbecoming of a Government servant. The stand of the applicant in respect of the happening on 20.12.2006 is contrary to law and propriety. We do not find in the order of the disciplinary authority dated 29.04.2008 and the order of the appellate authority dated 02.04.2009 any infirmity which calls for interference by this Tribunal.

13. The O.A is dismissed with no order as to costs.

(Dated, the 18<sup>th</sup> August, 2011)



**(K. GEORGE JOSEPH)**  
**ADMINISTRATIVE MEMBER**



**(JUSTICE P.R. RAMAN)**  
**JUDICIAL MEMBER**