

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA Nos. 272, 289, 250 and 307 of 1998.

Tuesday this the 2nd day of January, 2000.

CORAM

HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR. T.N.T.NAYAR, ADMINISTRATIVE MEMBER

OA No.272/98

S.Mohammed Kannu
Senior Accountant
Office of the Accountant General (A&E)
Kerala, Thiruvananthapuram.

Applicant

By advocate : Mr.M.Rajagopalan

Versus

1. Accountant General (A&E) Kerala
Thiruvananthapuram.
2. Union of India represented by
Secretary, Ministry of
Finance, New Delhi.

Respondents.

By advocate Mr.Govind K.Bharathan, SCGSC

OA No.289/98

E.G.Stephen
Senior Accounts Officer
P.R.Group
Office of the Accountant General (A&E) Kerala
Trivandrum.

Applicant

By advocate Mr.M.Rajagopalan

Versus

1. The Accountant General (A&E)
Kerala, Thiruvananthapuram-39.
2. Union of India represented by
Secretary, Ministry of Finance
New Delhi.

Respondents.

By advocate Mr. Govind K.Bharathan, SCGSC

OA No.250/98

1. A.N.Balan
S/o Late M.Nanoo
Senior Auditor.

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2. Podian Mathew
S/o Mathew
Senior Auditor.
3. D.B.Kurup
S/o Damodarakurup
Senior Auditor.
4. B.Raveendran Kani
S/o P.Bhaskaran Kani
Clerk-Typist.
5. Prem Ranjan
S/o Viswambharan
Clerk Typist.
6. L.S.Sujith Kumar
S/o Lekshmanan P.
Clerk-Typist.
7. S.Ramachandra Babu
S/o Neelaka Pillai
Senior Auditor.
8. Shanavaz Nazir Mohammed
S/o Nazir Mohammed
Auditor.
9. K.G.Sasidharan
S/o Late K.T.Govindan
Senior Auditor.
10. Anistyji Issac
D/o P.C.Issac
Stenographer.
11. C.V.Hema
D/o Late C.N. Vaitheeswaran
Clerk-Typist.
12. V.S.Jayachandran
S/o Velappan Nair
Clerk-Typist.
13. Sundaram
S/o Govindan
Senior Auditor.
14. R.Rajasekharan Nair
S/o Raghavan Nair
Senior Auditor.

Applicants.

(All are employed in Accountant General's Office,
Trivandrum.)

By advocate Mr.M.R. Rajendran Nair

Versus

1. The Accountant General (Audit), Kerala
Thiruvananthapuram.

2. Union of India represented by
Secretary
Ministry of Finance,
New Delhi.

Respondents.

OA No.307/98 (By advocate Mr.Thomas Mathew Nellimoottil)

1. M.C.John
Supervisor
Office of the Accountant General (A&E)
Kerala, Trivandrum.

2. G.Raghavan Nair
Senior Accountant
Office of the Accountant General (A&E)
Kerala, Trivandrum.

Applicants.

By advocate Mr.M.Rajagopalan

Versus

1. Accountant General (A&E) Kerala
Thiruvananthapuram.

2. Union of India represented by
Secretary
Ministry of Finance
New Delhi.

Respondents.

By advocate Mr. Govind K.Bharathan, SCGSC

These applications having been heard together on 2nd January, 2001, the Tribunal on the same day delivered the following common order:

COMMON ORDER

HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN

The facts are similar and the issue involved is identical in these cases. Therefore, these Original Applications are heard jointly and are disposed of by this common order.

2. Applicants in these cases are employees of the office of the Accountant General (A&E), Kerala, Thiruvananthapuram. The Employees' Union called for a strike by a notice dated 12.5.97 and many employees struck work from 6.5.97 to 27.5.97.

On 28.5.97 the strike was called off. Applicants in all these cases claim that they did not participate in the strike, that they attended the office and that they could not perform normal duties on account of the obstructions by the striking employees. After the strike was called off, the applicants were served with identical show **cause** notices (Annexure A-2) dated 12.6.97 as to why proviso to Rule 17 (1) of the Fundamental Rules should not be invoked and the dates of absence should not be treated as 'dies non'. Applicants in individual replies to the show cause notice contended that they never participated in the strike, that they attended the office, that they signed the attendance register, that they performed duties to the extent possible under adverse circumstances on account of the obstructions by the striking staff and that there was absolutely no justification to take any action under the proviso to Rule 17 (1) of the Fundamental Rules. Thereafter without holding any enquiry to ascertain whether the contentions of the applicants were right or wrong, the impugned orders in these cases were issued treating the period from 6.5.97 to 27.5.97 as 'dies non'. Aggrieved by this, the applicants have filed these applications. They have stated that since the non-performance of normal duties being not for reasons attributable to them as they had attended the office and attempted to do the work, the action on the part of the respondents in imposing 'dies non' is wholly unjustified. It has also been contended that while members of the staff who had participated in the strike have been favoured with grant of leave including earned leave, the action on the part of the Administration to punish the applicants who had been loyal to work and against the strike is totally unjustified. With these

allegations, the applicants have filed these applications for setting aside the impugned orders in these cases, declaring that the applicants were present in the office and were on duty and are entitled to receive the pay and allowances during the period.

3. Respondents in the reply statement do not refute the averment that the applicants were present in the office but their stand justifying the impugned order is that the applicant did not perform normal duties.

4. Having heard the learned counsel on either side and having perused the materials placed on record in all these cases, we find no way to sustain the impugned orders in these cases. Against the show cause notice, all the applicants have clearly stated in their explanations that they were present in the office and attempted to do work. That the applicants were present in the office and had signed the attendance registers is not disputed. In the reply statement, it has been stated that the supervisory officer could not oversee whether the applicants had been properly working on account of the closure of the doors by the striking employees. If that be the situation, how could the Administration expect loyal workmen to perform duties under adverse circumstances? The action of the respondents in granting leave to striking workmen while treating the days of illegal strike as dies non in the case of the applicants who had attended the office and attempted to perform duties, according to us, is discriminatory, illegal and wholly unjustified.

5. In the result, all these applications are allowed, the impugned orders are set aside and the respondents are directed to give the applicant the pay and allowances for the period from 6.5.97 to 27.5.97 treating that they were on duty during the period. No order as to costs.

Dated 2nd January, 2001.

Sd/-
(T.N.T.NAYAR)
ADMINISTRATIVE MEMBER

Sd/-
(A.V.HARIDASAN)
VICE CHAIRMAN

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Annexures referred to in this order:

A2: True copy of the memo No.Admn/IV/Misc. dated 12.6.97 issued by the Sr.Accounts Officer under the respondent.