

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 247 of 2010
Original Application No. 266 of 2010
Original Application No. 268 of 2010
Original Application No. 269 of 2010
Original Application No. 634 of 2010
Original Application No. 668 of 2010

Wednesday, this the 22nd day of September, 2010

CORAM:

Hon'ble Mr. Justice K. Thankappan, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

1. Original Application No. 247 of 2010 -

S.V. Santhoshkumar, aged 49 years, S/o. P. Sukumaran,
Accountant, Office of the Accountant General (A&E),
Kerala, Thiruvananthapuram, Residing at: Sangeeth, KGRA
A/68, Kodunganoor P.O., Vattiyerkavu,
Thiruvananthapuram.

..... Applicant

2. Original Application No. 266 of 2010 -

G. Rajesh, aged 43 years, S/o. P.V. Ganesan,
Senior Accountant, Office of the Accountant General (A&E),
Kerala, Thiruvananthapuram, Residing at : SDNC/1, Varsha,
Sreedevi Nagar, Karamana,
Thiruvananthapuram-2.

..... Applicant

3. Original Application No. 268 of 2010 -

G. Mohandas, aged 51 years, S/o. E. Ganesan,
Senior Accountant, Office of the Accountant General (A&E),
Kerala, Thiruvananthapuram, Residing at : TC.24/1605(1),
Meranagar-95, Erakkom Road, Mettukada, Thycaud P.O.,
Thiruvananthapuram-14.

..... Applicant

4. Original Application No. 269 of 2010 -

S. Girija, aged 50 years, D/o. (Late) K. Arjunan, Senior Accountant, Section P11, Office of the Accountant General (A&E), Kerala, Thiruvananthapuram, Residing at : "Avani", KP7/366, Nalumukku, Kairali Nagar, Kudappanakunnu P.O., Thiruvananthapuram-43.

Applicant

5. Original Application No. 634 of 2010 -

Unni P., aged 42 years, S/o. P. Krishnan, Sr. Accountant, Office of the Accountant General (A&E), Kerala, Thiruvananthapuram, Permanent Address: "Souparnika", No. 54/1801, IKS Road, Near Rithika Apartments, East Hill P.O., Kozhikode-5.

Applicant

6. Original Application No. 668 of 2010 -

Mohammed Ashik N.P., aged 43 years, S/o. P.K. Yousef, Assistant Accounts Officer (Ad-hoc), Office of the Accountant General (A&E), Kerala, Thiruvananthapuram, Residing at : Type No. 15, CGO Quarters Complex, Melethumel, Vattiyoor, Trivandrum.

Applicant

(By Advocate – Mr. T.C. Govindaswamy in all the OAs)

V e r s u s

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

2. The 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.

Respondents
in all the OAs

(By Advocate – Mr. V.V. Asokan in all the O.As)

These applications having been heard on 14.9.2010, the Tribunal on 22-09-2010 delivered the following:

O R D E R

By Hon'ble Mr. K. George Joseph, Administrative Member -

Having common facts and issues, the above O.As were heard together and are being disposed of by this common order.

2. The applicants are working in the Trivandrum Office of the Accountant General (A&E), Kerala. They were chargesheeted for participation in an illegal demonstration along with a group of around 40 persons on 30.04.2008, marching through the corridors of the office building of the Principal Accountant General (Audit) and the Accountant General (A&E), shouting slogans, disturbing the peace of the office and preventing free movement of officials and visitors in violation of clause 6(b) of CCS (RSA) Rules, 1993 and Rules 3(1)(iii) & 7 (ii) of CCS (Conduct) Rules, 1964. The Deputy Accountant General (Admn.), Office of the Accountant General (A&E), Kerala, by his orders dated 18.12.2008 in O.A. Nos. 247/10, 266/10, 269/10, 634/10 and dated 28.02.08 in O.A. No. 268/10 and dated 19.12.08 in O.A. No. 668/10 imposed on the applicants the penalty of withholding of all increments for a period of three years without cumulative effect or reduction by a stage in the present pay scale for a period of three years, as the case may be. The Accountant General (A&E), Kerala, the Appellate Authority, confirmed the penalty imposed on the applicants vide his orders dated 13.08.2009 in O.A. Nos. 247/10, 266/10, 269/10, 634/10 and dated 06.10.08 in O.A. No. 268/10 and dated 31.03.09 in O.A. No. 668/10. Aggrieved by the aforesaid orders the

applicants have filed these OAs for the following reliefs :

- (i) Call for the records leading to the issue of Annexure A1 and A2 and quash the same ;
- (ii) Direct the respondents to grant the applicant all the consequential benefits including arrears of pay and allowances, as if A1 and A2 had not been issued at all;
- (iii) Award costs of incidental to this application;
- (iv) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

3. The applicants submit that the factual aspects of the allegations in the charge memorandum were disputed by them and that they had requested for an enquiry, which was rejected. The Disciplinary Authority must decide whether an enquiry is necessary or not at all by a positive exercise of his discretion and arrive at a conclusion in that regard in terms of Rule 16(1)(b) of the CCS (CCA) Rules. The decision of Hon'ble Supreme Court in *O.K. Bhardwaj vs. Union of India*, 2001 (9) SCC 180, was cited to show that an enquiry must be conducted even for imposition of minor penalty when facts of the charges are disputed. An enquiry should have been ordered duly giving the applicants an opportunity to defend their case. The Appellate Authority ought to have considered the fact that the penalty imposed on the applicants would become inoperative and that if implemented, it would result in imposition of a penalty much more than what was contemplated by the Disciplinary Authority, in the revised pay scale that came into force with effect from 01.01.2006. The Principal Accountant General, who is the 4th respondent herein, was biased and prejudiced and the entire exercise of power right from the time of issue of memos to the appellate orders were at his command and at his

discretion. Therefore, the whole proceedings are biased and prejudiced and opposed to the the principles of natural justice. He should not have considered the appeal in his capacity as Accountant General (A&E) and should have referred the same to an higher authority or different from him, instead of being a Prosecutor and Judge himself. The applicants further submitted that the penalty imposed on them is highly disproportionate shocking to the conscience of any man of ordinary prudence. The orders of the Disciplinary Authority and the Appellate Authority are based on evidence collected behind the applicants and on the basis of video clippings not proved in an enquiry. The entire proceeding is opposed to the basic principles of natural justice, arbitrary and discriminatory. Therefore, the O.As should be allowed.

4. The respondents opposed the O.As. They contended that since the explanation furnished by the applicants to the statement of imputations of misconduct was not tenable, the Disciplinary Authority vide a speaking order dated 18.12.2008 imposed minor penalty on them, which is permissible under Rule 16 of the CCS (Control and Appeal) Rules. The Disciplinary Authority had clearly and unambiguously recorded the reasons for finding the applicants guilty of misconduct. The illegal demonstration held on 30.04.2008 by a group of employees was recorded in the surveillance camera and the same has confirmed the fact that the applicants really participated in the demonstration. The applicants marched through the office corridors during office hours disturbing the peace of the office, disrupting the office functioning and preventing free movement of officials and public. They also shouted defamatory slogans

against the Accountant General and the administration. No Government servant has a right to disrupt the functioning of office. The Office of the Accountant General deals with the entitlement of thousands of State Government employees, whose interests are harmed by the applicants by gross indiscipline and blatant violation of CCS (Conduct) Rules, 1964. The Apex Court has observed that the jurisdiction of the Tribunal to interfere with the disciplinary matters cannot be equated with appellate jurisdiction. The Tribunal has no power to substitute its own discretion for that of the authority. The counsel for the respondents cited decisions in the following cases in support of his arguments:

- (i) Parma Nanda vs. State of Haryana, 1989 (2) SCC 177.
- (ii) State Bank of India vs. Samearendra Kishore Endow, 1994(2) SCC 537
- (iii) Tota Ram vs. Union of India & Others, 2007 (14) SCC 801
- (iv) Praveen Bhatia vs. Union of India and Others, 2009 (4) SCC 225
- (v) Mithilesh Singh vs. Union of India and Others, 2003 (3) SCC 309
- (vi) Chairman & Managing Director, V.S.P. And Others vs. Goparaju Sri Prabhakara Hari Babu, 2008 (5) SCC 569
- (vii) O.K. Ghosh and another vs. E.X. Joseph, AIR 1963 SC 812
- (viii) T.K. Rangarajan vs. Govt. of Tamil Nadu and Ors., AIR 2003 SC 3032
- (ix) M.H. Devendrappa vs. Karnataka State Small Industries Development Corporation, (1998) 3 SCC 732.

It was further submitted that rule 16 of the CCS (CCA) Rules, 1965, provides wide discretionary powers to the competent authority. Enquiry is conducted only if the disciplinary authority is of the opinion that such an enquiry is required, as the penalty imposed on the applicants is only a minor penalty. It is the duty of every citizen to strive towards excellence in all spheres of individual and collective activity so that the nation can constantly rise to higher levels of endeavour and achievement. This cannot be achieved unless the employees maintain absolute discipline and utmost devotion to duty. In order to achieve this motto, the disciplinary

proceedings were initiated against the applicants and minor penalties were imposed on them. Hence, the above O.As should be dismissed.

5. We heard the learned counsel for the parties and perused the records.

6. The main contention of the applicants is that the evidence against them is collected behind their back and that the video clippings not supported by other evidence cannot be considered as clinching. When the facts of the case are disputed, even in a case of minor penalty, the respondents ought to have conducted an enquiry in accordance with the principle natural justice. The judgement of the Apex Court in **O.K. Bhardwaj vs. Union of India**, 2001 (9) SCC 180, is reproduced as under:

1. Leave granted.

2. The High Court has recorded its opinion on two questions : (i) that the punishment imposing stoppage of three increments with cumulative effect is not a major penalty but a minor penalty; (ii) in the case of minor penalties, "it is not necessary to give opportunity to the employee to give explanation and it is also not necessary to hear him before awarding the penalty"; a detailed departmental enquiry is also not contemplating in a case in which minor penalty is to be awarded.

3. While we agree with the first proposition of the High Court having regard to the rule position which expressly says that "withholding increments of pay with or without cumulative effect" is a minor penalty, we find it not possible to agree with the second proposition. Even in the case of a minor penalty an opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect to the charges against him. Moreover, if the charges are factual and if they are denied by the delinquent employee, an enquiry should also be called for. This is the minimum requirement of the principle of natural justice and the said requirement cannot be dispensed with.

4. Learned counsel for the respondent, however, says that though the second proposition of the High Court may not be correct, yet so far as this case is concerned it does not make any difference for the reason that in this case, as a fact an opportunity

was given to the appellant and that there has been adequate compliance with the principles of natural justice. But since the High Court has not considered the matter from the above angle that is on merits the proper course in our opinion is to remit the matter to the High Court to consider whether in the light of the facts and circumstances of the case, an enquiry was called for and if called for, was it held according to law and the principles of natural justice, and to dispose of the matter according to law. The appeal is allowed with the above directions. No costs."

7. The Apex Court has laid down the law that the minimum indispensable requirement of the principles of natural justice is that if the facts of the charge are denied by the charged employees, an inquiry should be conducted even in the case of a minor penalty. The discretion of the disciplinary authority to conduct or not to conduct an enquiry in departmental proceedings for minor penalties should be exercised with adequate compliance with the principles of natural justice. The applicants have denied the charges raised against them. Therefore, the burden of proving the charges rests on the respondents. Even in a case where rules do not make provisions for enquiry, compliance of the principles of natural justice is required. In the instant case, non-compliance of the principles of natural justice vitiates the order of disciplinary authority. In this regard, a clarification issued by the Government of India, Department of Personnel & Training vide O.M. No. 11012/18/85-Estt(A) dated 28.10.1985 is reproduced hereunder:

"Rule 16(1-A) of the CCS (CCA) Rules, 1965, provides for the holding of an inquiry even when a minor penalty is to be imposed in the circumstances indicated therein. In other cases, where a minor penalty is to be imposed, Rule 16(1) ibid leaves it to the discretion of Disciplinary Authority to decide whether an inquiry should be held or not. The implication of this rule is that, on receipt of the representation of the Government servant concerned on the imputations of misconduct or misbehaviour communicated to him, the Disciplinary Authority should apply its mind to all facts and circumstances and the reasons urged in the

representation for holding a detailed inquiry and form an opinion whether an inquiry is necessary or not. In a case where a delinquent Government servant has asked for inspection of certain documents and cross-examination of the prosecution witnesses, the Disciplinary Authority should naturally apply its mind more closely to the request and should not reject the request solely on the ground that an inquiry is not mandatory. If the records, indicate that, notwithstanding the points urged by the Government servant, the Disciplinary Authority could, after due consideration, come to the conclusion that an inquiry is not necessary, it should say so in writing indicating its reasons, instead of rejecting the request for holding inquiry summarily without any indication that it has applied its mind to the request, as such an action could be construed as denial of natural justice."

8. Even where a minor penalty is imposed, the disciplinary authority has to indicate the reasons in writing as to why the inquiry is dispensed with. The disciplinary authority in the instant case, is of the opinion that an inquiry as requested by the delinquent employees will not in any manner further the cause of justice because the irrefutable evidence of video recordings of 30.04.2008 categorically establishes their misconduct. Even in the face of the irrefutable evidence, the applicants requested for an inquiry as provided under Rule 16(1)(b) of CCS (CCA) Rules, on the imputations, so that they could prove their innocence, because in their view the veracity of the video recordings and statements mentioned in the punishment order could not be verified with confronting evidence in the absence of a formal inquiry. In our considered view, the respondents should have proved the charges levelled against the applicants by conducting an inquiry in accordance with principles of natural justice by allowing the applicants to question the evidence against them.

9. The applicant in O.A. No. 668/10 did not avail of the opportunity granted to him to peruse the records including the video recording of

30.04.2008. This aspect distinguishes this O.A. from the rest. But his non-availment of the opportunity offered to him to inspect the records, in no way justifies the denial of a formal inquiry sought by the applicants. The denial of an inquiry sought by the applicants is against the minimum requirement of principles of natural justice as held by the Apex Court in **O.K. Bhardwaj vs. Union of India**, 2001 (9) SCC 180 (*ibid*). It may be possible that the applicants may not avail of the opportunity in the inquiry to prove their innocence. That possibility by itself is not a justification enough to dispense with the minimum requirement of the principles of natural justice. The respondents could have granted the request for a formal inquiry and let the applicants face it, without in any way, countenancing indiscipline disruption of work in office. In fact it is their bounden duty to tackle indiscipline with a firm hand. They erred, when they put stress on their discretion not to conduct an inquiry in a case of minor penalty at the cost of principles of natural justice. This infirmity in the departmental proceedings needs to be rectified. Therefore, in our considered view, keeping other issues in these O.As open, the matter should be remanded.

10. In view of the above, the impugned orders of the disciplinary authority and the orders of the appellate authority in the respective O.As are quashed and set aside and the matter is remitted back to the respondents to hold an enquiry proceeding from the stage of reply to the charge sheet in accordance with the principles of natural justice.

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

(Dated, the 22nd September, 2010.)

(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER

(JUSTICE K. THANKAPPAN)
JUDICIAL MEMBER

CVR.