CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A Nos. 212, 236, 239, 246, 250, 267, 270, 271,

275, 287, 289, 640 and 872 of 2010

Monday, this the 15th day of November, 2010.

CORAM

HON'BLE Ms. K NOORJEHAN, ADMINISTRATIVE MEMBER

HON'BLE DR K.B.SURESH, JUDICIAL MEMBER

O.A.No.212/2010

C.Komalan,
Record Keeper, Welfare Section (A&E),
O/o the Accountant General (A&E),
Thiruvananthapuram. ....Applicant

(By Advocate Mr T.C.Govindaswamy)

v.

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

2. Senior Deputy Accountant General(Admn),
O/o the Accountant General(A&E) Kerala,
Thiruvananthapuram.

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

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

(By Advocate Mr V.V.Asokan)

O.A.No.236/2010

R.S.Suresh,
Assistant Accounts Officer,
O/o the Accountant General (A&E),
Thiruvananthapuram. ....Applicant

(By Advocate Mr T.C.Govindaswamy)

v.

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

2. Senior Deputy Accountant General(Admn),
O/o the Accountant General(A&E) Kerala,
Thiruvananthapuram.

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

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

5. The Deputy Comptroller & Auditor General,
O/o the Comptroller & Auditor General of India,
Government of India, New Delhi.

(By Advocate Mr V.V.Asokan)

O.A.No.239/2010

K.Sudarsanan Nair,
Accountant, Section P 19,
O/o the Accountant General (A&E),
Thiruvananthapuram. ....Applicant

(By Advocate Mr T.C.Govindaswamy)

v.

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

2. Senior Deputy Accountant General(Admn),
O/o the Accountant General(A&E) Kerala,
Thiruvananthapuram.

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

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

(By Advocate Mr V.V.Asokan)

O.A.No.246/2010

Anees K Francis,
Senior Accountant, GE 12,
O/o the Accountant General (A&E),
Thiruvananthapuram. ....Applicant

(By Advocate Mr T.C.Govindaswamy)

v.

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

2. Senior Deputy Accountant General(Admn),
O/o the Accountant General(A&E) Kerala,
Thiruvananthapuram.

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

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

(By Advocate Mr V.V.Asokan)

O.A.No.250/2010

G.Mohandas,
Senior Accountant,
O/o the Accountant General (A&E),
Thiruvananthapuram. ....Applicant

(By Advocate Mr T.C.Govindaswamy)

v.

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

2. Deputy Accountant General(Admn),
O/o the Accountant General(A&E) Kerala,
Thiruvananthapuram.

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

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

(By Advocate Mr V.V.Asokan)

O.A.No.267/2010

A.Mary Beatrice,
Section Officer (Ad-hoc) GE-18,
O/o the Accountant General (A&E),
Thiruvananthapuram. ....Applicant

(By Advocate Mr T.C.Govindaswamy)

v.

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

2. Senior Deputy Accountant General(Admn),
O/o the Accountant General(A&E) Kerala,
Thiruvananthapuram.

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

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

5. The Deputy Comptroller and Auditor General,
O/o the Comptroller & Auditor General of India,
Government. of India, New Delhi. ....Respondents

(By Advocate Mr V.V.Asokan)

O.A.No.270/2010

A.P.Suresh Kumar,
Assistant Accounts Officer,
O/o the Accountant General (A&E),
Thiruvananthapuram. ....Applicant

(By Advocate Mr T.C.Govindaswamy)

v.

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

2. Senior Deputy Accountant General(Admn),
O/o the Accountant General(A&E) Kerala,
Thiruvananthapuram.

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

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

5. The Deputy Comptroller & Auditor General,
O/o the Comptroller & Auditor General of India,
Government of India, New Delhi.

(By Advocate Mr V.V.Asokan)

O.A.No.271/2010

R.Mahesh,
Clerk Typist, PF 38,
O/o the Accountant General (A&E),
Thiruvananthapuram. ....Applicant

(By Advocate Mr T.C.Govindaswamy)

v.

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

2. Senior Deputy Accountant General(Admn),
O/o the Accountant General(A&E) Kerala,
Thiruvananthapuram.

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

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

(By Advocate Mr V.V.Asokan)

O.A.No.275/2010

K.B.Suresh Kumar,
Assistant Accounts Officer (Ad-hoc),
O/o the Accountant General (A&E),
Thiruvananthapuram. ....Applicant

(By Advocate Mr T.C.Govindaswamy)

v.

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

2. Senior Deputy Accountant General(Admn),
O/o the Accountant General(A&E) Kerala,
Thiruvananthapuram.

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

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

5. The Deputy Comptroller & Auditor General,
O/o the Comptroller & Auditor General of India,
Government of India, New Delhi.

(By Advocate Mr V.V.Asokan)

O.A.No.287/2010

T.N.Manoharan,
Senior Accountant,
O/o the Accountant General(A&E) Kerala,
Kalcor, Manappattiparambu,
Kochi-17. - Applicant

(Advocate Mr TC Govindaswamy)

v.

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

2. Senior Deputy Accountant General(Admn),
O/o the Accountant General(A&E) Kerala,
Thiruvananthapuram.

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

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

(By Advocate Mr V.V.Asokan)

O.A.No.289/2010

V.B.Aruna,
Assistant Accounts Officer (Ad-hoc),
O/o the Accountant General (A&E),
Thiruvananthapuram. ....Applicant

(By Advocate Mr T.C.Govindaswamy)

v.

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

2. Senior Deputy Accountant General(Admn),
O/o the Accountant General(A&E) Kerala,
Thiruvananthapuram.

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

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

5. The Deputy Comptroller & Auditor General,
O/o the Comptroller & Auditor General of India,
Government of India, New Delhi.

(By Advocate Mr V.V.Asokan)

O.A.No.640/2010

Unni.P.,
Sr. Accountant,
O/o the Accountant General (A&E),
Thiruvananthapuram. ....Applicant

(By Advocate Mr T.C.Govindaswamy)

v.

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

2. Senior Deputy Accountant General(Admn),
O/o the Accountant General(A&E) Kerala,
Thiruvananthapuram.

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

4. Shri V Ravindran,

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

(By Advocate Mr V.V.Asokan)

O.A.No.872/2010

Joy Kurien,
Sr. Accountant,
O/o the Accountant General (A&E),
Thiruvananthapuram. ....Applicant

(By Advocate Mr T.C.Govindaswamy)

v.

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

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

3. Senior Deputy Accountant General(Admn),
O/o 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 applications having been finally heard on 26.11.2010, the Tribunal on 15.11.2010 delivered the following:

ORDER

HON'BLE DR K.B.SURESH, JUDICIAL MEMBER

The applicant in O.A.246/2010 and several others have approached this Tribunal to be free from the penalties that the respondents have imposed on them. Since all these cases even though had a genesis in different orders, germinated from the same incident or incidents and are of the same nature and therefore, we

have decided to hear the matter together and so O.A.246/2010 was suggested to be considered as the leading case by both sides and acceded to by us.

2. To begin with, the simple legal complex question; what is justice? What is to be the degree of justice to be found on the side of the applicant, what is to be the degree of justice to be found on the side of the respondents? How to harmonise both within the available parameters so that public interest which is the corner stone of the administration itself will survive and exult.

3. Therefore, what is justice? When Jesus of Christ was brought before Pontius Pilate and admitted that he was a King he said "It was for this that I was born, and for this I came to the world to give testimony for truth". Pilate asked what is truth? The Roman never expected and Jesus did not give any answer to this question. For the testimony for truth was the essence of his calling as messianic King. He was born to give testimony for justice; the justice to be realised in the Kingdom of god and for this justice he dies on the cross Thus behind the question of what is truth? Arises, another still more important question, what is justice?

4. No other question had been discussed so passionately, no other question had caused so much of blood to flow and bitter tears to be shed, no question has been the object of so much intensive thinking by the most illustrious from Plato to Kant and yet this question is today as answered. It seems it is one of those question to which the raising wisdom applies butt might not find a definite answer but only be able to improve the question.

5. Thus spoke, Han kelson at the University of California on May 27th of 1952. In his talk "The sentencing of Jesus Christ and the law behind it".

6. The constitution inscribes justice as one among the first premise of the republic which means that state power will execute the pledge of justice in favour of the millions of our public. Thus, justice without power is inefficient, power without justice is tyranny. **Justice and power must therefore be brought together, so whatever may be powerful is just and whatever may be just is powerful.**

7. In short, we to determine as to how and why an incident of violence which took place in the premises of the respondents in which the applicants were allegedly participants and to what extent can blame be attached to each other so that the promises of the preamble of the Constitution can be made effectively applicable to the countless millions.

8. Therefore what is promise of the preamble of the Constitution?

9. In **Golak Nath and others v. State of Punjab and other** [AIR 1967 SC 1643], Justice K Subba Rao, C.J. states that the preamble contains in a nutshell its ideals and aspirations. It set up the ideals of governance for the welfare of the people and the duty of court should be while interpreting constitutional provisions concerned to be; liberty and freedom of the people and economic justice and always to remember that their constitution and ordinary statute are different in extent. In fact the spirit of the constitution imputed in its preamble must be maintained by the court in the interpretation of the provisions of the constitution. Thus it goes without saying than that when statutory provisions are to be

interpreted in a situation of liberty and freedom and economic justice, the preamble must form part of the interpretable rule.

10. In **D.S.Nakara and others v. Union of India** [AIR 1983 SC 1300] the Hon'ble Apex Court held that the principal aim of a socialistic state is to eliminate inequality in the income and status and standards of life. The basic frame work was that socialism is to provide decent standard of life to the working people. This amongst others on the economic side envisage economic equality and suitable distribution of income. This is a blend of Marxism and Gandhian socialism. It is such socialistic state with a blend of Marxism and Gandhian socialism which attracts the constitutional premises of Legislative executive and judiciary powers to strive to set up, form a welfare society.

11. Viewed in this conspectus, what is the relevance of trade union Act of 1926 and its imminent source so far as it relates to the constitution of India. In view of the directive principles of state policy and particularly Article 38, the Government of India had drawn up a scheme of one rank one pension which would have eliminated heart burn among many of pensioner who had served the country with distinction and at the fag end of his career found himself if not destitute at least unequally treated. Therefore, the Government in their wisdom had drawn up a scheme but which require a greater level of participatory efforts in its employees for its implementation. The forum for the implementation was the office of the Accountant General and the employees there had a crucial and splendid role to think into themselves the new transformation of society into a little more better place to live for thousands and thousands. It was felt in administrative hierarchy that based on studies, the level and degree of transformation was agonising slow and the reason was the employees of Accountant General resented this additional

work on their shoulders. In order to tide over their difficulty of any being unable to implement the programme even after years have passed them by the respondents seems to have decided to formulate a plan for outsourcing at least a part of this work. They would say that for reasons of probity, they decided that it is better if at least a portion of work can be done by outside agencies even though it had to cost more so that beneficiaries can hope to get the benefit within a shorter span of time. It seems that there were meetings with employees representatives but which may not have yielded much fruit. Thus, the respondents would say that they had decided to go for outsourcing but then the employees, at least at that juncture, realised that if work starts to get outsourced a point may come when outsourcing might become the usual act and employment only an alternative. It may also mean lessening of promotional avenue as also redundancy in the sense that if the work can be more efficiently farmed out to also outside agencies who may not be bound by rule regulated policies available to Government, could have offered better operational efficiency. It is seen at that point wisdom dawned on the employees and they may have expressed their readiness which were apparently not accepted by the respondents. This lead to an agitation and unfortunately went on towards confrontation.

12. For reasons of security the respondents seems to have installed closed circuit television cameras at several crucial points and on the this particular day it was operational. The respondents have produced a compact disc of the entire events so that in order to satisfy judicial conscience that what we do today is justified and protected by ends of justice. The applicant objects to the said production of compact CD on the ground that while at the inquiry even though they have seen the video clippings. The videographer who had taken CD was not produced by them at the time for cross examining them as to the veracity and

genuineness of the clippings. We have considered this matter and after going through the judicial views on the matter and technical knowledge available, we are of the view that editing out of events might be possible in video clipping. But editing in; particularly in view of the volatile movement of imagery at that particular time is going to be extremely difficult if not impossible. Therefore, we decided that truth is the most important point and technical appliance of rules will only come later. Therefore, we have seen the compact disc played on a computer along with both counsel and departmental representatives and who pointed out each person in motion at the particular time. We do not want to go deep into each persons level on participation but it is crystal clear that there was an agitation which had turn d violent but each person had different levels of participation and the first applicant herein does not seem to have had any overt degree of participation other than that of an interested spectator. We have found that different people have performed differently but the impugned orders are all of similar nature.

13. Apparently, the process of criminal law which imposeson each member of a conspiracy to be equally liable in case of an offence seems to have been juxtaposed in this as well. But then, we have to consider that the theories of initial evidentiary absolutism is not available in service jurisprudence. It is more like civil probity and therefore bringing in elements of criminal law in the service jurisprudence will diminish the element of justice into the process and procedures. Therefore, we have to hold that in fact each person has to be judged on its own merit going by the level of participation of each in the incident.

14. The learned counsel for the applicants point out that in a similar matter, a co-ordinate Bench of this Tribunal held that following the Apex Court judgment in O.K.Bharadwaj vs Union of India and others [(2001) 9 SCC 180] that opportunity

of being heard is essential in case of even minor penalties. The learned counsel for respondents would rely on yet another judgment of the Hon'ble Apex Court in **Food Corporation of India, Hyderabad and others v. And Prahalada Rao and another** [(2000) 1 SCC 165]. It postulated a situation that holding a regular departmental inquiry is discretionary. But it cannot be exercised arbitrarily or misused. Therefore, what emerges as a dominant proposition is that natural justice must be followed and if further opportunities of being heard form part of that requirement of natural justice then it must be allowed. The learned counsel for applicants urges to follow the co-ordinate Bench's decision.

15. It is true that the Trade Union act of 1926 provides a methodology of collective bargaining for the employees. It must be borne in mind at this juncture the Trade Union Act of 1926 had its genesis in the extreme cases of Chicago and its reverberations in the world around. But what is collective bargaining? What can be the degree of bargaining involved in the collectivity? In that process, collective bargaining normally values decency and respect for each other person and dignity of all is the significant opportunity. When a collectivity designs that it has to be beyond the restraints of these parameters, which are the requirements of a reasonable civil society, then coercion and compulsion enters into the system of collective bargaining. If we examine the genesis of the trade union movement and its continuance throughout, whenever compulsion and coercion the degree of compulsion escalates the bargaining have become coercion fully and that is not the mandate of the trade union act. Therefore, looking at the rationale logically it must be understood and it is admitted that there is at variance situation within the premises of the respondents. The applicants would claim that the anti labour policies and the behaviour pattern of one single individual or group of senior officers had lead to that issues. Even if it is to be assumed for argument sake, it

cannot be used to condone the degree of incidence that have taken place. In other words, we are inclined to rely on the genuineness and reliance of the recorded clippings. It is argued that it being a mechanical re-production has to be viewed as a secondary evidence. The preliminary evidence being in the creator, but it is also said that these cameras are fixed as a regular security operation and regularly monitored even without human intervention. But otherwise also the theories of preliminary evidence and secondary evidence may not have much reliance in view of the scientific advances we are able to access to at this age. As we have already held, edging out might be possible but bringing in and that too in harmony with other imagery available is extremely difficult and the counsel for the applicant was most gracious in not disputing his clients image found in the recording.

16. So where does justice lie? Whether on the side of the respondents who had taken administrative decisions or against which the agitating employees rendering their heart out and in the moment of frenzy had assaulted him?.

17. But we feel that the preliminary role must be given not to the employees and the employer but to the general public and the beneficiaries of hat administrative set up, for whom that office exist. It is settled that deficiencies of the office whether it be through the employees or mismanagement of the employer is yet to be seen. But public suffer. Even in service jurisprudence the interpretation of events and statutory formation must view in the background of the general public who are affected by the happenings or non-happenings in that particular station. Taken in that sense, it is the duty of the employer to maintain discipline and decorum in the office. In fact it is one of his preliminary responsibility. The other being maintenance of efficiency. Therefore, the decision to outsource the

work cannot be faulted on that ground. Pleadings are insufficient to offer that any other view which we could have taken. To continue maintenance of decorum and discipline in the office is also a prime requisite. Otherwise, that particular administrative set up will lose its social relevance. Even while interpreting a legal issue, courts on record have to take this aspect of the issue into thought process while adjudicating. Therefore, the following points outline and reiterate the deficiency or apparent deficiency of the employees and it may have led to a situation which they waited to counter with explosive response but we recognise that human frailties may some times lead to explosive situation as well. Much water have flown under the bridge after the event. Now we are advised that 90% of the additional work is already finished.

18. But what is to be the methodology to be followed. Having seen the compact disc, we are unable to fully agree within the findings, of the coordinate Bench which had not an opportunity of seeing it themselves what had happened in that office at that particular moment. Therefore, how to construe the discretion of the employer to decide in a scenario of minor punishment to be inflicted and whether to hold a regular inquiry or not is the question. Much will depend on his satisfaction that the theories of natural justice are fully met, in that truth do not become a victim and then in that conspectus what is the adequate opportunity to be granted before any one is punished? We have carefully gone through the statement of the applicants. Any normal person, who can harmonise the defence statement with that of video clippings would have held that collectively the employees are liable for punishment. But to what degree is the only question.

19. But as we have said earlier, we have analysed that the wrong yardstick is used by the respondents in equating the employees together. We have already

said that the theories of criminal law are not available in service jurisprudence. We note that the 1st applicant Smt Ann was only a spectator. Her presence at the event may not be sufficient enough to inflict a punishment on her. The respondents will have the opportunity therefore to determine once again as to what is the actually and active role of each of the applicants. The applicants are to be given an opportunity of seeing that video clippings once again. They must be allowed an opportunity of filing a statement explaining their conduct of the day. Since only a minor punishment is to inflicted on such statement, the disciplinary authority can impose punishment on them if they deserve it in accordance with law without waiting for a regular inquiry into the matter. This shall be done within 3 months next on receiving a copy of this order. The impugned orders in all the cases are hereby quashed, disciplinary authorities are directed to start from the point of deciding the quantum of punishment on the employees and allow them an opportunity as aforesaid.

20. Original Applications are disposed of as above. There shall be no order as to costs.

DR K.B.SURESH
JUDICIAL MEMBER

K NOORJEHAN
ADMINISTRATIVE MEMBER

trs