

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 274 of 2010

Thursday, this the 25th day of August, 2011

CORAM:

Hon'ble Mr. Justice P.R. Raman, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

V.B. Aruna, aged 55 years, D/o. V.K. Balan,
 Assistant Accounts Officer (Ad-hoc), Office of the
 Accountant General (A&E), Kerala,
 Thiruvananthapuram, Residing at : TC 6/254(4),
 Netaji Road, Vattiyoorkavu,
 Thiruvananthapuram.

.....

Applicant

(By Advocate – Mr. T.C. Govindaswamy)

V e r s u s

1. The Comptroller & Auditor General of India,
Government of India, New Delhi.
2. The Senior Deputy Accountant General (Admn),
Office of the Principal 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.
5. The Deputy Comptroller and Auditor General,
Office of the Comptroller & Auditor General of India,
Government of India, new Delhi.

.....

Respondents

(By Advocate – Mr. V.V. Asokan)

This application having been heard on 05.08.2011, the Tribunal on

25/08/2011 delivered the following:

L

ORDER

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

The applicant in this OA is presently working as Assistant Accounts Officer (Adhoc) in the Trivandrum office of the 3rd respondent. She is aggrieved by the order of imposition of order dated 11.10.2007 of the disciplinary authority imposing on her the minor penalty of reduction to a lower stage in the time scale of Rs. 6500-10500/- by one stage for three years without cumulative effect with effect from 1.11.2007 and also by the appellate order dated 7.1.2009 modifying the order of the disciplinary authority to the extent of withholding of one increment for two years without cumulative effect. The applicant prays for quashing the impugned orders and to direct the respondents to grant her all the consequential benefits including arrears of pay and allowances as if the impugned orders at Annexures A-1 and A-2 had not been issued at all.

2. A charge memo dated 24.8.2007 was served on the applicant for her participation in the demonstration held on 21.5.2007 and 23.8.2007, marching towards the chamber of AG (A&E) and shouting slogans which were insubordinate in nature, tone and content while on duty and thus violated the provisions of Rule 7(i) and 3(1)(iii) of CCS (Conduct) Rules, 1964. The applicant in reply submitted that her participation in the demonstrations was a part of organizational action and that she had not marched towards the chamber of the Accountant General and Deputy Accountant General and blocked the passage of officials and visitors and that she did not shout any slogans which were insubordinate in nature, tone

L

and content and requested dropping of the proceedings initiated against her. The disciplinary authority finding her guilty of violation of Rules 3(1)(iii) and 7(i) of CCS (Conduct) Rules, 1964 imposed the penalty of reduction to a lower stage in the time scale of Rs. 6500-10500/- by one stage for three years without cumulative effect with effect from 1.11.2007 under Rule 16 of the CCS (CCA) Rules, 1965. The order of penalty was modified on appeal to the extent of withholding one increment for two years without cumulative effect.

3. The applicant submitted that as the factual aspects of the charges against her were disputed the disciplinary authority ought to have conducted an inquiry duly giving her an opportunity to defend her case before arriving at a finding of guilt against her. She has referred to the decision of the Hon'ble Supreme Court in O.K. Bhardwaj Vs. Union of India – 2001 (9) SCC 180 wherein the Hon'ble Apex Court has held that where there is a dispute on facts an inquiry must be conducted even for an imposition of the minor penalty. The appellate order also is without application of mind, contrary to the statutory rules and hence illegal. The appellate authority ought to have considered the fact that the penalty imposed in Annexure A-1 order would become inoperative on account of the new pay scale which came into effect from 1.1.2006. The applicant further submitted that the penalty imposed is highly disproportionate, shocking to the conscience of a man of ordinary prudence and is therefore, liable to be interfered with by this Tribunal. The impugned orders are based on evidence collected behind the applicant and based on alleged video clippings not proved in an inquiry.



The entire proceedings are opposed to the basic principles of natural justice, arbitrary and discriminatory.

4. Per contra, the respondents submitted in the reply statement that disciplinary proceedings under Rule 16 of CCS (CCA) Rules, 1965 was initiated against the applicant based on clinching evidence substantiating her participation in the illegal agitations on the dates mentioned in the charge sheet. Vacating once place of duty to join an illegal demonstration and thereby stopping normal functioning of the office was prejudicial to public order. No government servant has a right to disrupt the functioning of the order. The full fledged inquiry is not contemplated in Rule 16 of the CCS (CCA) Rules. The applicant was given an effective opportunity of being heard. The applicant herself had admitted that she did indeed participate in the agitational activities. In her reply she only tried to justify her action as legal. Rule 16 provides wide discretionary powers to the competent authority. The inquiry is required only if the disciplinary authority is of the opinion that such an inquiry is required.

5. We have heard the learned counsel for the applicant and the learned counsel for the respondents and perused the records.

6. One of the ground urged by the applicant is that in the facts and circumstances of this OA inquiry should have been held by the disciplinary authority. The Disciplinary authority has submitted that it has got wide discretionary powers under Rule 16 of CCS (CCA) Rules that an inquiry is



required only if the disciplinary authority is of the opinion that such an inquiry is required. As per Rule 16 of the CCS (CCA) Rules, 1965 a government servant against whom 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 inquiry in the manner laid down in sub rules (3) to (23) of Rule 14 is required to be held only in cases in which disciplinary authority is of the opinion that such inquiry is necessary. The disciplinary authority has ample discretion to hold or not to hold an inquiry when a minor penalty is proposed to imposed. Mere demand for an inquiry by itself does not compel the disciplinary authority to hold an inquiry. But the discretion rested with the disciplinary authority statutorily should be exercised in a reasonable manner and not capriciously or arbitrarily. In the order dated 23.6.2011 in OA No. 211 of 2010 this Tribunal held as under:-

"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. We find that the instant OA is identical to the aforecited OA. In the facts and circumstances of the instant OA we hold that the disciplinary authority should have exercised his discretion to hold or not to hold an inquiry and communicate the same to the applicant. The decision of the disciplinary authority not to hold an inquiry in the instant case is capricious and arbitrary. Therefore, following the decision of this Tribunal in the aforecited OA, in our considered view, the decision taken by the disciplinary authority not to hold an inquiry is liable to be set aside leaving other points raised in the OA open. Accordingly, it is ordered as under:-


Annexure A-1 order dated 11.10.2007 imposing the punishment on the applicant and order of the appellate authority dated 7.1.2009 at Annexure A-2 are hereby set aside. The right of the respondents to proceed with the inquiry from the stage of holding an inquiry and to take a decision in accordance with law is left open. 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.



8. OA is allowed to the extent as indicated above. No order as to costs.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

“SA”