

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 326 OF 2008

MONDAY....., this the 3RD day of AUGUST , 2009.

CORAM:

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

Shri. G Saharajan Nair,
Assistant Audit Officer, Office of the
Principal Accountant General (Audit),
Kerala, Branch Thrissur, residing at
Sreerudram, Chackola's County,
Viyur, Thrissur – 680010.

... **Applicant**

(By Advocate Mr. R Sreeraj)

versus

1. Union of India represented by its
Secretary to Government of India,
Ministry of Finance, Indian Audit and
Accounts Department, New Delhi.
2. The Principal Accountant General (Audit),
Kerala, Thiruvananthapuram-695 039.
3. The Deputy Comptroller & Auditor General
of India, Office of the Comptroller and
Auditor General of India, No.10, Bahadur
Shah Zafar Marg, New Delhi-110 124.
4. The Comptroller and Auditor General
of India, No.10, Bahadur Shah Zafar
Marg, New Delhi-110 124. ... **Respondents**

(By Advocate Mr. P Nandakumar)

The application having been heard on 29.07.2009, the Tribunal
on delivered the following:

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

The applicant, functioning as Assistant Audit Officer in the Office of

the Principal Accountant General (Audit), Kerala, Branch Thrissur is an active worker of Audit Association, Category II which is said to be affiliated to the All India Audit Association. When the Accountant General (A&E), Kerala visited the Thrissur Branch Office on 30.04.2007, representatives of some associations met him in the chamber of Deputy Accountant General(A&E) in connection with some general problems affecting the Branch Office and also to hand over a memorandum in that regard. According to the applicant, the Accountant General (A&E) threw out the memorandum and shouted at the representatives to get out of the room. All had thereafter left the room without uttering any word and the applicant was one among such representatives who met the Accountant General (A&E), Kerala.

2. The applicant was issued with a memorandum (Annexure A3) containing the following charges :-

"It has been brought to notice that Shri G. Saharajan Nair, Assistant Audit Officer unauthorizedly forced entry into the chamber of the Deputy Accountant General (A&E) at Branch Office, Thrissur around 3 PM on 30.04.2007 when the Accountant General (A&E) Kerala was sitting in the said chamber. He along with a group of staff of office of the Accountant General (A&E) Kerala and this Office, forcefully tried to hand over a petition to the Accountant General (A&E). Despite the direction of the Accountant General (A&E) to leave the room, Shri Saharajan Nair and others refused to do so and they tried to hand over the petition to the Accountant General (A&E). When he along with others was leaving the Chamber, shouted slogans against the Accountant General (A&E) which were derogatory, defamatory, demeaning, offensive, insolent and insubordinate in nature.

His attention is invited to the provisions contained in Rule 3(1)(ii) & (iii) of

the CCS (Conduct) Rules 1964, which state that every government servant shall at all times maintain absolute devotion to duty and do nothing which is unbecoming of a Government Servant. Further Rule 7 of the Rule ibid states that no government servant shall 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 or the services of another Government Servant.

By participating in the unlawful act, Shri. Saharajan Nair, AAO has violated the provisions contained in Rule 3(1)(ii) &(iii) and Rule 7 of the CCS (Conduct) Rules 1964."

3. The applicant given his explanation admitting a delegation of about 50 members of the Audit and Accounts Association having reached the chamber of DAG(A&E) and placing the memorandum. However, the allegation of slogans being shouted in the chamber was denied. That the applicant was a member of the delegation has been admitted. The applicant requested that no disciplinary action be taken against him as he has not violated any of the provisions of the Conduct Rules. Not being satisfied with the above explanation, the respondents had issued Rule 16 Memorandum to the applicant vide Annexure A5 and the applicant had furnished his reply vide Annexure A6. The reply contains inter alia the following statements :-

"I am a member of Audit Association, Category II, which is a legally constituted and recognized organization. The Association, knowing that the AG (A&E) was visiting the Branch Office, Thrissur, sought for permission sufficiently in advance to discuss some general problems concerning the Branch Office. Neither the AG(A&E) nor DAG (A&E) or any responsible Officer of the Branch Office informed the Association that permission was refused for the discussion. In the absence of such a communication, it was inferred that AG would not have any



reluctance or hesitation to meet the representatives of the Association. In view of this, I along with some other persons including the office bearers entered the room of the DAG(A&E) where the AG(A&E), was sitting and tried to hand over a memorandum detailing the general problems."

4. The charge of having violated Rules 7(ii) of CCS (Conduct) Rules has been stoutly denied by the applicant. The Disciplinary Authority after considering the explanation, passed Annexure A1 order dated 19.12.2007 whereby the applicant was held guilty of misconduct and misbehaviour for his actions on 30.04.2007 which were violative of Rules 3(1)(i), 3(1)(ii) and 7(i) of the CCS (Conduct) Rules, 1964 and imposed the penalty of reduction to a lower stage by one stage in the time scale of Rs.7450-225-11500 for 2 years without cumulative effect, with effect from 01.01.2008.
5. The applicant by Annexure A7 filed his appeal contending that the Disciplinary Authority had not gone through the nature of charges or the reply of applicant thereto while arriving at the conclusion. According to the applicant, the Disciplinary Authority erred in its conclusion. The Appellate Authority by Annexure A9 order dated 24.12.2008 after taking into account the contentions of the appeal upheld the decisions by the Disciplinary Authority as to the misconduct of the applicant but modified the penalty to withholding of one increment for a period of 1 year from 01.07.2008 without cumulative effect.
6. When the applicant's disciplinary proceedings were pending, respondents had issued Promotion Order of some Assistant Audit Officers to the cadre of Audit Officers vide Annexure A2. The name of the applicant was

not included in the Promotion Order.

7. Challenging the order of the Disciplinary Authority and the Appellate Authority the applicant has filed this O.A. He has also challenged Annexure A2 Promotion Order.

8. Respondents have contested the O.A. According to them, the applicant is a member of the Audit Association, Category II which is not a recognized association and there was absolutely no need or possible reason for the Audit association or its members to meet the Head of the Department of another office. It is also been contented that conflicting versions as to denial of permission by Accountant General (A&E) have been made in the representations given by the applicant. That the applicant forcefully barged into the chamber of the Deputy Accountant General (A&E) Kerala, Branch Office Thrissur and tried to hand over a representation and when the same was refused to be entertained, the applicant alongwith others shouted slogans against the Accountant General (A&E) Kerala has all been held to be proved and thus the applicant is guilty of violating Rules 3(1)(i), 3(1)(ii) and 7(i) of the CCS (Conduct) Rules, 1964 . The presence of the applicant in the office of Deputy Accountant General proved the fact that the applicant has deserted his office work whereas he not expected to. As regards non-conduct of enquiry, the respondents have contented in the counter that the same was at the discretion of the Disciplinary Authority.

9. The applicant has filed his rejoinder reiterating his stand as given in the O.A. and also added Annexure A10 relating to activities requiring permission/sanction, Annexure A11 relating to conduct and commissions

which amount to misconduct and Annexure A12 relating to depositions of certain prosecution witnesses in connection with some other Rule 14 enquiry wherein reference to the alleged episode of 30.04.2007 had been referred to. This deposition is in respect of 5 out of 7 individuals, in respect of the self same incident against whom major penalty proceedings were initiated. The applicant contented in the rejoinder that all the depositions will go to show that no slogans were shouted in the chamber and again nobody could concretely say as to who had shouted the slogans. Respondents have filed Annexure R1(a) which is nothing but the order of the Appellate Authority. In addition, an additional reply statement was also filed wherein the respondents referred to order dated 14.09.1992 of the DoPT which states that if any penalty is imposed on the Government Servants as a result of disciplinary proceedings the findings of the sealed cover shall not be acted upon and the promotion of such individuals would be considered only in the subsequent DPC's in the normal course and as such the applicant is not entitled to claim any promotion alongwith those promoted vide Annexure A2.

10. Counsel for the applicant submitted the following:-

(a) The disciplinary authority failed to invoke the

provisions of Rule 16(1)(b) of the CCS(CC&A)

Rules 1965.

(b) The disciplinary authority ought to have

conducted the enquiry when the facts were

disputed.

(c) The depositions made by various witnesses

in other cases would go to show that the applicant had not tendered the memorandum.

Similarly, no slogans were raised inside the chamber of the Accountant General.

(d) The appellate authority also has not considered the matter as warranted under the rules.

(e) The promotion granted vide Annexure A-2 should be quashed and the applicant ought to have been considered.

11. Counsel for the respondents submitted that Rule 16(1)(b) gives full discretion to the disciplinary authority to hold or not to hold the inquiry. The applicant had not asked for such enquiry, in which event, the authority could have ordered for inquiry and if not, reasons for not holding the inquiry would have been spelt out. The authority had passed the penalty order after fully going through the charge memo and the reply therefor. In fact, the extent of misconduct had been rightly weighed by the disciplinary authority, as five others out of seven were proceeded with under major penalty proceedings and for the applicant, he had ordered only minor penalty proceedings. The appellate authority considered the appeal and taking sympathy over the applicant, did reduce the quantum of penalty. The promotion vide Annexure A-2 having been made in respect of others during the currency of penalty suffered by the applicant, there is no question of the applicant being considered for such promotion. Penalty is commensurate with the extent of misconduct. A number of decisions of the Apex Court would go to show that

judicial review of disciplinary proceedings is limited and the instant case does not qualify for the same. Hence, he has prayed for dismissal of the O.A. The counsel relied upon the following decisions:

- (a) 1991(3) SCC 239
- (b) 1992 SCC (L & S) 995
- (c) 2006 (13) SCC 1

12. Arguments were heard and documents perused. As to the discretion vested with the disciplinary authority in holding or not holding the inquiry in minor penalty proceedings, it is fully upto the authority. As rightly pointed out by the counsel for the respondents, the applicant had not asked for the same. As regards to the very misconduct, it is admitted fact that the applicant who belonged to audit wing had entered into the chamber of AG (A&E) with whom the applicant cannot have any official link and he was one among 50 members. It is trite that even joint representations are not allowed under the rules and as such, without prior permission, his entry itself is construed as misconduct. The applicant had himself in his appeal admitted the fact that he had tendered the memorandum to the AG. As regards raising slogans, it is not the case of the applicant that there had been no raising of the slogans at all. All that the applicant tried to prove through the depositions of witnesses in other cases is that there was no shouting of slogans inside the room. The charge is that the applicant, when along with others was leaving the chambers, shouted slogans.

13. The Apex Court has on various occasions held that indiscipline cannot be tolerated in any institution.



14. In view of the above, we are not convinced that the applicant has made out a case to have the impugned orders of penalty and promotion order at Annexure A-2 quashed and set aside. Hence, the OA is dismissed. Under the circumstances, there shall be no orders as to cost.

Dated, the 3RD AUGUST, 2009.


K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER


Dr.K.B.S.RAJAN
JUDICIAL MEMBER

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