

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH**

Original Application No. 218 of 2009

Original Application No. 255 of 2009

Original Application No. 369 of 2009

Original Application No. 414 of 2009

Original Application No. 758 of 2009

Original Application No. 21 of 2010

.....*FRIDAY*..... this the*8th*.....day of October, 2010

CORAM:

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

1. Original Application No. 218 of 2009 -

Balachandran N.N., Section Officer (Ad hoc),
Office of the Accountant General (A&E), Kerala,
Thiruvananthapuram.

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Applicant

(By Advocate – Mr. Sudheesh A & Mrs. Bindu C.V.)

V e r s u s

1. Union of India, Represented by its Secretary,
Ministry of Finance, New Delhi.
2. The Accountant General (A&E) Kerala,
Thiruvananthapuram & Disciplinary Authority.
3. Sr. Deputy Accountant General (Admin.),
Office of the Accountant General (A&E) Kerala,
Thiruvananthapuram.
4. The Deputy Comptroller & Auditor General,
(Appellate Authority), Office of the Comptroller and Auditor
General of India, 10 Bahadur Shah Zafar Marg, New Delhi.
5. Sr. Accounts Officer (Admin), Office of the Accountant
General (A&E) Kerala,
Thiruvananthapuram.

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Respondents

**[By Advocate – Mr. Sunil Jacob Jose, SCGSC (R-1) &
Mr. V.V. Asokan, M/s. Iyer & Iyer (R2-5)]**

2. Original Application No. 255 of 2009 -

Madhusoodanan. P., Senior Accountant,
Office of the Accountant General (A&E),
Kerala, Thiruvananthapuram.

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Applicant

(By Advocate – Mr. Sudheesh A & Mrs. Bindu C.V.)

V e r s u s

1. Union of India, Represented by its Secretary,
Ministry of Finance, New Delhi.
2. The Accountant General (A&E) Kerala,
Thiruvananthapuram & Appellate Authority.
3. Sr. Deputy Accountant General (Admin.),
Office of the Accountant General (A&E) Kerala,
Thiruvananthapuram & Disciplinary authority.
4. The Comptroller & Auditor General,
Office of the Comptroller and Auditor General of India,
10 Bahadur Shah Zafar Marg,
New Delhi. 100 002.

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Respondents

**[By Advocate – Mr. A.D. Raveendra Prasad, ACGSC (R-1) &
Mr. V.V. Asokan, M/s. Iyer & Iyer (R2-4)]**

3. Original Application No. 369 of 2009 -

Balachandran K., Accountant, Office of the Accountant
General (A&E), Kerala, Thiruvananthapuram.

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Applicant

(By Advocate – Mr. Sudheesh A & Mrs. Bindu C.V.)

V e r s u s

1. Union of India, Represented by its Secretary,
Ministry of Finance, New Delhi.
2. The Accountant General (A&E) Kerala,
Thiruvananthapuram & Appellate Authority.
3. Sr. Deputy Accountant General (Admin.),
Office of the Accountant General (A&E) Kerala,
Thiruvananthapuram & Disciplinary authority.

4. The Comptroller & Auditor General,
Office of the Comptroller and Auditor General of India,
10 Bahadur Shah Zafar Marg,
New Delhi. 100 002. Respondents

[By Advocate – Mr. V.V. Asokan, M/s. Iyer & Iyer (R2-4)]

4. Original Application No. 414 of 2009 -

Manu V.S., Accountant, Office of the
Accountant General (A&E), Kerala,
Thiruvananthapuram. Applicant

(By Advocate – Mr. Sudheesh A & Mrs. Bindu C.V.)

V e r s u s

1. Union of India, Represented by its Secretary,
Ministry of Finance, New Delhi.
2. The Accountant General (A&E) Kerala,
Thiruvananthapuram & Appellate Authority.
3. Deputy Accountant General (Admin.),
Office of the Accountant General (A&E) Kerala,
Thiruvananthapuram & Disciplinary Authority.
4. The Comptroller & Auditor General,
Office of the Comptroller and Auditor General of India,
10 Bahadur Shah Zafar Marg, New Delhi 100 002.
5. Sr. Accounts Officer (Admin), Office of the Accountant
General (A&E) Kerala,
Thiruvananthapuram. Respondents

[By Advocate – Mr. Sunil Jacob Jose, SCGSC (R-1) &
Mr. V.V. Asokan, M/s. Iyer & Iyer (R2-5)]

5. Original Application No. 758 of 2009 -

Gayathri Nair, Accountant, Office of the Accountant
General (A&E), Kerala, Thiruvananthapuram. Applicant

(By Advocate – Mr. Sudheesh A & Mrs. Bindu C.V.)

V e r s u s

1. Union of India, Represented by its Secretary,
Ministry of Finance, New Delhi.
2. The Accountant General (A&E) Kerala,
Thiruvananthapuram & Appellate Authority.
3. Deputy Accountant General (Admin.),
Office of the Accountant General (A&E) Kerala,
Thiruvananthapuram & Disciplinary Authority.
4. The Comptroller & Auditor General,
Office of the Comptroller and Auditor General of India,
10 Bahadur Shah Zafar Marg, New Delhi 100 002.
5. Sr. Accounts Officer/EDP (PF),
Office of the Accountant General (A&E) Kerala,
Thiruvananthapuram.

Respondents

[By Advocate – Mr. Varghese P. Thomas, ACGSC (R-1) &
Mr. V.V. Asokan (R2-4)]

6. Original Application No. 21 of 2010 -

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

Applicant

(By Advocate – Mr. Sudheesh A & Mrs. Bindu C.V.)

V e r s u s

1. Union of India, Represented by its Secretary,
Ministry of Finance, New Delhi.
2. The Accountant General (A&E) Kerala,
Thiruvananthapuram & Appellate Authority.
3. Deputy Accountant General (Admin.),
Office of the Accountant General (A&E) Kerala,
Thiruvananthapuram & Disciplinary Authority.
4. The Comptroller & Auditor General,
Office of the Comptroller and Auditor General of India,
10 Bahadur Shah Zafar Marg, New Delhi 100 002.

5. Sr. Accounts Officer (Admn), Office of the Accountant General (A&E) Kerala, Thiruvananthapuram.

..... Respondents

[By Advocate – Mr. Varghese P. Thomas, ACGSC (R-1) & Mr. V.V. Asokan, M/s. Iyer & Iyer (R2-5)]

These applications having been heard on 01.10.2010, the Tribunal on 08-10-2010 delivered the following:

ORDER

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

Having the same factual background and common 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 aggrieved by the move of the Accountant General (A&E), Kerala, to outsource the work relating to one rank one pension scheme as it would, they feared, adversely affect their job security. On turning down their request for a formal discussion in the matter, they resorted to protest like dharna and demonstrations. Although the move to outsource the work was withdrawn, disciplinary actions initiated against the agitating employees continued culminating in the imposition of penalties varying from withholding of increment to dismissal from service on 101 employees. The applicants in these O.As participated in agitation with a group of employees in the office premises during the period December, 2006 to March, 2008. Various forms of protest like strike, dharna, agitation, shouting slogans, blocking the portico and passage and obstructing the free movement of the staff and officers

etc. occurred on 19.12.2006 to 22.12.2006, 26.12.2006 12.01.2007, 17.01.2007, 18.01.2007, 17.04.2007, 21.05.2007, 23.08.2007 and 24.03.2008. The applicants in these O.As participated in one form of agitation or the other or any one or more days listed above. They were charge-sheeted for violation of rule 3(1)(iii) and rule 7(i) and 7(ii) of the CCS (Conduct) Rules, 1964, on 5.3.2008, 11.07.2008, 15.07.2008, 16.10.2007 or 15.07.2008, as the case may be, and were imposed with minor penalty of withholding of increments or reduction by one stage in the pay scale. The appellate authority reduced the punishment of withholding of increment for 5 years to 3 years without cumulative effect or confirmed withholding of increment for a period of 3 years without cumulative effect or reduction by one stage for a period of 3 years, as the case may be. The revisional authority rejected the revision petitions in all cases. In O.A. No. 369 of 2009, the order of the revision authority was issued subsequent to filing of the said O.A. The applicants in these O.As seek the relief of quashing the penalty orders, appellate and revisional orders, as the case may be. The applicant in O.A. No. 255/09 sought a direction to the respondents to consider him for promotion to the post of Section Officer (ad hoc) in the office of the Accountant General (A&E), Kerala. He also sought for an interim direction to the respondents to consider his application for deputation/promotion to the post of Section officer in the office of the Principal Accountant General (Audit).

3. The applicants submit that they have participated in peaceful organizational activities only. The Senior Dy. Accountant General (Admn.) initiated disciplinary proceedings against the applicants with bias and malafide. Even though it was alleged that the applicants shouted slogans

which were derogatory, defamatory and offensive, the specific words used by them are not shown anywhere in the disciplinary proceedings. The applicants submitted that they have not disturbed the office work or administration or blocked the passage of the office or obstructed free movement of officers and visitors. The agitation in a peaceful manner would not constitute any violation of CCS (CCA) Rules. The Disciplinary Authority introduced new evidences which were not mentioned in the statement of charges or in the imputation. They have denied the participation in an agitation which was not peaceful. The video recordings are susceptible of editing. The request of the applicants wherever made for an enquiry was denied which amounted to taking out the right of the applicants for being heard and defend themselves. The Appellate Authority erred in dismissing the appeals filed by the applicants as it failed to consider the contentions raised by them. Therefore, the O.As should be allowed.

4. The respondents contested the O.A. In their reply statements, they submitted that since the charges levelled against the applicants have been proved beyond doubt by their acceptance that they had participated in the strike, dharna and shouting slogans within the office premises and on the basis of the reports of the incidents and video recordings, they were imposed with the penalty of withholding of future increments or reduction by one stage, for a period of 3 years without cumulative effect. The penalty imposed on the applicants by the Disciplinary Authority after satisfying himself that the incidents mentioned in the charge sheets did indeed take place as they were clearly seen in the video as having participated in the unruly and unauthorised demonstrations. A formal enquiry in the case of

minor penalty proceedings is warranted only in the event the Disciplinary Authority is of the opinion that such enquiry is necessary if the penalties proposed to be imposed are such as to attract provisions of Rule 16(1-A). The evidence was irrefutable, complete and categorically established the misconduct of the applicants. They were afforded all opportunities of natural justice. The Appellate Authority considered all the records including the charge-sheet, replies of the charged official and statement of witnesses. On finding that evidences on record fully supported the finding of the Disciplinary Authority, the Appellate Authority confirmed the finding of the Disciplinary Authority. The misconduct perpetrated by the applicant warranted deterrent punishment in the interest of maintaining discipline in the office. The Disciplinary Authority did not introduce new evidences in the orders of penalty which were not mentioned either in the statement of charges or in the imputations. The penalties imposed on the applicants are commensurate with the misconduct perpetrated by them. Despite specific instructions from the Deputy Accountant General (Admn.) directing employees to desist from illegal activities in the office premises, the applicants had actively participating in the illegal activities in the office premises during office hours. The respondents relied on the decisions of the Hon'ble Supreme Court in **Railway Board vs. Niranjan Singh**, AIR 1969 SC 966, **O.K. Ghose vs. E.X. Joseph**, (1963) Supp. 1 SCR 789, **T.K. Rangarajan vs. Government of Tamil Nadu**, 2003 AIR SCW 3807 and **O.K. Bhadwaj vs. Union of India**, 2001 (9) SCC 180, to buttress their arguments.

5. Arguments were heard and documents perused.

6. In O.A. No. 369/09, the learned counsel for the respondents raised the point of maintainability of the O.A. In this O.A., the order of Revision Authority is not challenged by the applicant. As the orders of Disciplinary Authority and the Appellate Authority merge with the order of the Revision Authority, it is to be challenged in the O.A. In the absence of such a challenge, this O.A. is not maintainable. Learned counsel for the applicant argued that the order of the Revision Authority was issued after filing this O.A. As per Section 19(4) of the Administrative Tribunals Act, 1985, where an application has been admitted by a Tribunal, every proceeding under the relevant service rules as to the redressal of the grievances in relation to the subject matter of such application pending immediately before such admission shall abate and, therefore, it is not necessary to challenge the order of the Revision Authority. In our considered view, the O.A. No. 369/09 is maintainable under Section 19(4) of the Administrative Tribunals Act, 1985, because when this Tribunal admitted the O.A., the order of the Revision Authority is abated.

7. The applicants were proceeded against under Rule 16 of CCS (CCA) Rules, 1965, for their participation in certain forms of protest in violation of rules prohibiting dharna, demonstrations etc. in the office premises during office hours, for inflicting a minor penalty which does not require full fledged enquiry. All the applicants have denied the charges levelled against them. The undisputed fact is that there was some sort of protest on certain days during the period between December, 2006 to August, 2008 and that the applicants have participated in them. The disputed fact is that whether the protests were peaceful or whether they were illegal,

unauthorised and disturbing the peace violating the provisions of Conduct Rules, 1965, attracting penal action. All the applicants have stated that their protests did not disturb the peace of office nor prevent free movement. They clearly stated that they did not participate in any unlawful activities disturbing the peaceful working of the office nor violated any rule. The protests were peaceful. They did not use any derogatory or defamatory language. The video recording is susceptible of suitable editing. Under Rule 16 of the CCS (CCA) Rules, 1965, the competent authority has discretionary power to conduct an enquiry if such an enquiry is required in his opinion when a minor penalty is to be imposed. In the instant cases, the charge against the applicants is that they participated in an unauthorized and illegal protests disrupting the peaceful working of the office. The applicants have denied the charge stating that the demonstration they participated was not illegal as it was part of collective bargain, which was peaceful. When the charge is factual and when it is denied by the charged employees, even in a case of minor penalty, the respondents ought to have conducted an enquiry in accordance with the principles of natural justice as per the law laid down by the **Apex Court in O.K.Bhardwaj vs. Union of India** (supra), which reads as follows:

"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."

An enquiry was called for in the instant cases as minimum requirement of natural justice, because the alleged employees have denied the charges against them.

8. Besides denying the charges the applicants in O.A. No. 414/09 and 369/09 specifically requested for an enquiry under rule 16 (1A) of CCS (CCA) Rules, 1965, to prove their innocence and the applicants in O.A. Nos. 218/09, 758/09 and 255/07 stated that only an enquiry can afford an opportunity to set out evidence to prove that the charges against them are unsustainable in law and fact. On the one hand the Disciplinary Authority has irrefutable and complete evidence to establish categorically the charge against the applicants. On the other hand the applicants have enough evidence to prove their innocence. The right course of action in such a situation is to conduct a full fledged enquiry giving opportunity to the parties concerned to prove their point. The view taken by the Disciplinary Authority and confirmed by higher authorities, that a formal enquiry will not

in any manner further the cause of justice is not in the interest of justice. The respondents have not dealt with any difficulty that may arise or any damage that may be caused, if a formal enquiry is held. Therefore, it is to be assumed that a formal enquiry would not have caused any difficulty or damage to anyone. Holding an enquiry is not a desirable but essential requirement of justice in the facts and circumstances of these disciplinary proceedings. In our considered view, the respondents should have held an enquiry in accordance with the principles of natural justice by giving an opportunity to the applicants to question the evidence against them and to lead evidence to prove their innocence.

9. The disciplinary proceedings against the applicants are vitiated by the infirmity of not following the principles of natural justice. In the conspectus of the facts and circumstances of these cases, to have adequate compliance of principles of natural justice, it is absolutely necessary to conduct a formal enquiry even though the respondents have imposed a minor penalty on the applicants. The discretion of the Disciplinary Authority to decide whether an enquiry should be held or not, should have been used to hold an enquiry in the circumstances of the instant cases so that justice is not only be done but it is seen to be done also. As per the decision of the Apex Court in **O.K.Bhardwaj vs. Union of India** (supra), in order to ensure the minimum requirement of the principles of natural justice, it is indispensable that an enquiry should be held when the charged employees denied the charges, which are factual. On the ground of failure to adhere to the principles of natural justice alone, the impugned orders in these O.As are liable to be set aside.

10. What triggered off the agitation by the employees, it appears, was the refusal of the concerned respondent authority to hold discussion with them to allay their apprehension over job security in the event of outsourcing certain work in the interest of government employees at large. Had the employees been taken into confidence, perhaps, the present situation would not have arisen. At present the move to outsource is dropped but the dissatisfaction which emanated from the attempt to introduce outsourcing of work continues. At the same time, the respondent authorities have to maintain discipline in the office and ensure that the employees conduct themselves according to rules; they also have to ensure peace and harmony in the working place for better performance from the employees. The disciplinary proceedings should have been conducted with utmost regard to the rules and principles of natural justice. Therefore, in our considered opinion these cases should be remitted back to the disciplinary authority leaving all issues other than adherence to principles of natural justice, open. In the formal enquiry issues that are left open are to be dealt with. It is not in the interest of the litigants that the disciplinary proceedings should drag on. They should be concluded as early as possible for which the charged employees should co-operate and when punishment, if any, is to be inflicted, it should be just, fair and minimal, leaving scope for improvement on the part of charged employees.

11. In the light of the above, the orders of the Disciplinary Authority, Appellate Authority and the Revision Authority, as the case may be, inflicting a minor penalty on the applicants in the respective O.As are quashed and set aside and the matter is remitted back to the respondents

to hold an enquiry from the stage of reply to the charge sheet, in accordance with the principles of natural justice within a period of six months from the date of receipt of a copy of this order.

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

(Dated, the 8th October, 2010.)

(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER

(JUSTICE K. THANKAPPAN)
JUDICIAL MEMBER

CVT.