

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 407 of 2010

Thursday, this the 28th day of July, 2011

CORAM:

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

G. Venugopal, aged 58 years,
 S/o. (Late) P.S. Gopala Pillai,
 Assistant Audit Officer, Office of the
 Principal Accountant General (Audit) Kerala,
 Trivandrum, Residing at "Aiswarya",
 E-31, Chalakuzhy Road, Pattom Palace P.O.,
 Thiruvananthapuram-695 017.

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 Deputy Comptroller & Auditor General of India,
 Office of the Controller & Auditor General of India,
 Government of India, New Delhi.
3. The Principal Accountant General (Audit) Kerala,
 Thiruvananthapuram.
4. The Deputy Accountant General (Admn),
 Office of the Principal Accountant General (Audit) Kerala,
 Thiruvananthapuram.
5. Shri S. Nagalsamy, Principal Accountant General
 (Audit) Kerala, Thiruvananthapuram.
6. Shri V. Ravindran, Principal Accountant General
 (A&E), Andhra Pradesh, Hyderabad.

Respondents

(By Advocate – Mr. V.V. Asokan)

This application having been heard on 28.7.2011, the Tribunal on the
 same day delivered the following:

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ORDER

By Hon'ble Mr. Justice P.R. Raman, Judicial Member -

The applicant working as Audit Officer under respondents 2 to 4 is aggrieved by the penalty advice Annexure A-1 dated 31.12.2008 issued by the 3rd respondent reverting him from the post of Audit Officer to that of Assistant Audit Officer (Section Officer) in the pay band of Rs. 9300-34800/- with grade pay of Rs. 4800/-. In the appeal filed before the appellate authority the said order of penalty was confirmed as per Annexure A-2. Hence, the applicant impugns Annexure A-2 as well.

2. According to the applicant the 6th respondent has been taking vindictive measures against the employees even against peaceful methods to redress the grievance of the employees in general. That the applicant also participated in certain agitations on different dates and memos were issued to him under dated 16.4.2007 and 18.4.2007 requiring to show cause as to why disciplinary action cannot be taken against him. These memos are produced as Annexures A-3, A-4 and A-5. Annexures A-6, A-7 and A-8 are replies submitted by the applicant. Subsequently, he was issued with a major penalty charge memo Annexure A-9 dated 30.7.2007 to which the applicant submitted Annexure A-10 reply denying the allegations. Inquiry officer was appointed and after conducting the inquiry, inquiry officer submitted his report and finding which is Annexure A-12. The inquiry officer found him guilty in 9 out of the 11 charges. The applicant submitted his objection to the finding of guilt by representation Annexure A-13 and he was also given an opportunity of being heard in the matter and it was



subsequently that a punishment was imposed on him. The appeal presented by him before the appellate authority is produced as Annexure A-15. According to the applicant Annexures A-1 and A-2 are arbitrary and illegal and that there was no evidence on record to substantiate the allegations. That the entire proceedings against the applicant in terms of Annexure A-9 charge are in complete violation of the provisions contained in Rule 14 of the CCS (CCA) Rules, 1965. That there was no misconduct on the part of the applicant and even the very charges levelled against him does not constitute a misconduct and the findings arrived at are on irrelevant considerations. That the penalty imposed is actuated by malafides and accordingly, it is prayed that Annexures A-1 and A-2 be quashed and to give him all consequential benefits as if these orders are not been passed at all.

3. In the reply statements the respondents have denied the allegations. It is contended that a section of employees have carried out a series of illegal agitations within the office premises in duty time which resulted in suspension of one Shri S.V. Santoshkumar, Senior Accountant of the Office of the Accountant General (A&E), Kerala, Trivandrum. The agitators started demonstrations during office hours from 19th December, 2006 onwards. This is in gross indiscipline and insubordination. The applicant while working as Assistant Audit Officer in the office of 3rd respondent whose office is also housed in the same compound in which the office of the Principal Accountant General (C&CA) is located. Both offices have separate service associations in accordance with the Recognition of Service

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Association Rules of 1993. There is no recognized association common to both offices at the field level. Thus the association formed in Audit Office have not right to interfere with the affairs of the A&E office, which is a distinct office for all purpose. The applicant participated in dharna/demonstrations and blockage of passage of the Accountant General (A&E) Kerala on 12th January, 2007. He also participated in a demonstration on 17.4.2007. He has mobilized some staff of the office on 1.6.2007, shouted slogans and demonstrated in front of the office chamber of the Principal Accountant General regarding his promotion as Audit Officer. With reference to the show cause memo asking him to explain as to why disciplinary action shall not be initiated against him, he informed the 4th respondent vide his letter dated 9.5.2007 that being an executive committee member of the association, he was attending to a call issued by the association from 19.12.2006 onwards. But he stated in his letter dated 9.5.2007 that he attended the work in section on 26.12.2006. According to the applicant his attending to the call of the association cannot be viewed as in violation of the rules. To Annexure A-4 memo dated 16.4.2007 the applicant's reply is Annexure A-7 in which he stated that he was expressing concern over the delay in the revocation of the suspension order against Shri S.V. Santhoshkumar under the auspices of the Audit & Accounts Association, which held a peaceful demonstration at the portico after office hours. According to the respondents Annexure R-1(a) is a circular issued by the 3rd respondent on 16.4.2007 advising all the staff to refrain from participating in the Dharna scheduled to be held on 17.4.2007. Despite the same the applicant participated in the Dharna on 19.12.2006 which he

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admitted in Annexure A-6 reply statement. That he submitted his leave application for earned leave for four days from 19.12.2006 to 23.12.2006 for urgent personal affairs and the leave sanctioning authority granted him leave but the applicant came to the office and participated in the demonstration on 19.12.2006 in violation of the provisions contained in the service rules. It is contended that the above action on the part of the applicant amounts to violation of the provisions contained in clause (ii) of Sub Rule (1) of Rule 3 of the CCS (Conduct) Rules, 1964 and by giving false reason for applying for leave he has also violated clause (iii) of Sub Rule 1 of Rule 3 of the Conduct Rules, besides his participation is violative of clause (ii) of Rule 7 of the Conduct Rules. The fact that the applicant was present even beyond 5.30 PM in the office premises on 12.1.2007 shows his intention to participate in the illegal congregation in front of the portico of the main building of the AG (A&E) Kerala. The blockage of passage of AG (A&E) Kerala on 12.1.2007 was part of the activities of the association in connection with the demand for revocation of the suspension of Shri S.V. Santoshkumar. The leave was sanctioned on the ground of private affairs but he had participated in a Dharna/demonstration held on 17.4.2007. This is confirmed by him during the course of inquiry as well. The inquiry officer has conducted the inquiry in strict adherence of the rules in his behalf. A fair opportunity was given to the applicant to defend his case. That the inquiry officer submitted his report holding him guilty of the charges. The disciplinary authority reconsidered the entire materials on record and agreed with the finding and imposed the punishment. The appellate authority also reconsidered the matter but it could not find any reason to disagree with the

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findings of the disciplinary authority. It is submitted that the Annexures A-1 and A-2 are not liable to be set aside in so far as there is no vitiating factors to support the challenge.

4. Placing reliance on the Apex Court decision in Parma Nanda Vs. State of Haryana - 1989 (2) SCC 177, it is contended that when a penalty is lawfully imposed on the proved misconduct there is hardly any reason for the Tribunal to interfere. In State Bank of India Vs. Samarendra Kishore Endow - 1994(2) SCC 537 the Apex Court held that the Courts or Tribunal has no power to substitute its own discretion with that of the authority. Therefore, the decision of the authority and the punishment imposed are not liable to be interfered with. Reliance is also placed on the decision of the Apex Court in Tota Ram Vs. Union of India & Ors. - 2007 (14) SCC 801 wherein it is held that it is not the function of the CAT or High Courts to sit in appeal over the findings recorded in the departmental enquiry and that, as long as there was some evidence which was accepted as bona fide by the disciplinary authority as warranting the charge against the applicant, it was not liable to be interfered within the process of judicial review. Further in the case of Praveen Bhatia Vs. Union of India & Ors. - 2009 (4) SCC 225 it is held that the power of the Court to interfere with quantum of punishment is extremely restricted and only when relevant factors have not been considered, the court can direct reconsideration or in an appropriate case to certain litigation, indicate the punishment to be awarded and that can only be in very rare cases. In the result it is contended that there is no merit in this OA and the same is liable to be dismissed. Annexure A-12 is the copy

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of the inquiry report in which reference is made to the various charges levelled against the applicant.

5. We have heard both sides.

6. The following are the charges levelled against the applicant:-

“ARTICLE – I

That the said Shri.G Venugopal, while functioning as Assistant Audit Officer in the Office of the Principal Accountant General (Audit) Kerala, deserted his duty and participated in the demonstrations on 19th December 2006 and 26th December 2006 held in the office premises in connection with the suspension of Shri. SV Santhosh Kumar, Sr. Accountant of the Office of the Accountant General (A&E) Kerala and shouted slogans against the Accountant General (A&E) Kerala and his administration. By leaving his work place and participating in the demonstrations, the said Shri.G Venugopal, Asst. Audit Officer (now Audit Officer) failed to maintain devotion to duty and thereby violated the provisions contained in Clauses (ii) of Sub Rule 1 of Rule 3 of CCS (Conduct) Rules 1964, which states that every government servant shall at all times maintain devotion to duty.

ARTICLE – II

That on the aforesaid dates and while functioning in the aforesaid office, the said Shri. G Venugopal, Asst. Audit Officer (now Audit Officer) deserted his duty and participated in the demonstrations in connection with the service matter of another employee, which is violative of the provisions contained in clause (ii) of Rule 7 of CCS (Conduct) Rules, 1964 which 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 service of any other Government servant.

ARTICLE – III

That the said Shri. Venugopal, while functioning in the aforesaid office and in the aforesaid capacity, on the aforesaid dates and time, participated in the demonstrations in connection with the service matter of another employee. By deserting the work place and participating in demonstrations, the said Shri.G Venugopal, Asst. Audit Officer (now Audit Officer) acted in a manner unbecoming of a Government servant violating clause (iii) of Sub Rule 1 of Rule 3 of CCS (Conduct) Rules, 1964, which states that every Government servant shall at all times do nothing which is unbecoming of a Government servant.

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ARTICLE – IV

That the said Shri.G Venugopal, Asst. Audit Officer (now Audit Officer) while functioning in the aforesaid office, deserted his duty and participated in the demonstration/agitation held on 12.1.2007 at 4.40 PM in the premises of the Office of the Accountant General (A&E) Kerala and blocked the passage of the Accountant General (A&E) Kerala, at 5.30 PM on the said date and also shouted slogans against the Accountant General (A&E) and his administration. By deserting his work place and participating in the activities as aforesaid, the said Shri.G Venugopal, Asst. Audit Officer (now Audit Officer), showed lack of devotion of duty and violated clause (ii) of Sub Rule 1 of Rule 3 of CCS (Conduct) Rules, 1964 which states that every government servant shall at all times maintain devotion to duty.

ARTICLE V

That the said Shri.G Venugopal, while functioning in the aforesaid office and in the aforesaid capacity deserted his duty and participated in the aforesaid activities in connection with the service matter of another employee, which is violative of the provisions contained in clause (ii) of Rule 7 of CCS (Conduct) Rules, 1964 which 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 service of any other Government servant.

ARTICLE VI

That the said Shri.G Venugopal, while functioning in the aforesaid office on the aforesaid date and time, blocked the passage of the Accountant General (A&E) Kerala, which resulted in his removal by the Police from the office premises. By deserting the work place and participating in the aforesaid activity, the said Shri.G Venugopal, Asst. Audit Officer (now Audit Officer) acted in a manner unbecoming of a Government servant violating clause (iii) of Sub Rule 1 of Rule 3 of CCS (Conduct) Rules, 1964, which states that every Government servant shall at all times do nothing which is unbecoming of a Government servant.

ARTICLE VII

That the said Shri.G Venugopal, while functioning in the aforesaid office and in the aforesaid capacity participated in the demonstration/dharna held on 17.4.2007 at 10.40 AM in the office premises in connection with 'One Rank One Pension' issue. By deserting the duty and participating in the demonstration held in the office premises on the aforesaid date and time, Shri.G Venugopal, Asst. Audit Officer (now Audit Officer), failed to maintain devotion to duty and violated the provisions contained in Clauses (ii) of Sub Rule 1 of Rule 3 of CCS (Conduct) Rules, 1964 which states that every government servant shall at all times maintain devotion to duty.

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ARTICLE VIII

That the said Shri.G Venugopal while functioning in the aforesaid office and in the aforesaid capacity deserted the work place and participated in the demonstration/dharna held on 17.4.2007 in connection with the service matter of another employee. Thus he violated the provisions contained in clause (ii) of Rule 7 of CCS (Conduct) Rules, 1964 which 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 service of any other Government servant.

ARTICLE IX

That the said Shri.G Venugopal which functioning in the aforesaid office and in the aforesaid capacity, deserted his duty and participated in the demonstration/dharna held on 17.4.2007 disobeying the instructions of the Administration thereby acting in a manner unbecoming of a Government servant violating clause (iii) of Sub Rule 1 of Rule 3 of CCS (Conduct) Rules, 1964 which states that every Government servant shall at all times do nothing which is unbecoming of a Government servant.

ARTICLE X

That the said Shri.G Venugopal while functioning in the aforesaid office and in the aforesaid capacity mobilized some staff of the office on 1.6.2007 who shouted slogans and demonstrated in front of the office chamber of the Principal Accountant General regarding his promotion as Audit Officer. By mobilizing and inciting members of staff against the Principal Accountant General regarding his service matter, the said Shri.G Venugopal, Asst. Audit Officer (now Audit Officer) violated the provisions contained in Rule 7 (ii) of CCS (Conduct) Rules, 1964 which 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 service of any other Government servant.

ARTICLE XI

That the said Shri.G Venugopal which functioning in the aforesaid office and in the aforesaid capacity mobilized some staff of the office on 1.6.2007 who shouted slogans and demonstrated in front of the office chamber of the Principal Accountant General regarding his promotion as Audit Officer. By mobilizing and inciting the staff against the Principal Accountant General, the said Shri.G Venugopal, Asst. Audit Officer (now Audit Officer) violated the provisions contained in Rule 3 (1) (iii) of CCS (Conduct) Rules, 1964 which states that every Government servant shall at all times do nothing which is unbecoming of a Government servant.”

7. The above charges were supported by the statement of imputations

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which are reiterated as under:-

“ARTICLE – I

It was reported by the Office of the Accountant General (A&E) Kerala that Shri.G Venugopal, Assistant Audit Officer (now Audit Officer) of the Office of the Principal Accountant General (Audit) Kerala, participated in the demonstrations on 19th December 2006 and 26th December 2006 held in the office premises in connection with the suspension of Shri.S.V.Santhosh Kumar, Sr. Accountant of the Office of the Accountant General (A&E) Kerala. It was further reported that Shri.G Venugopal participated in the day long dharna and other activities in connection with the same issue. Rule 3 (1) (ii) of CCS (Conduct) Rules states that every Government servant shall at all times maintain absolute devotion to duty. By deserting his work place and participating in the demonstrations/dharna in the office premises, the said Shri.G Venugopal, Asst. Audit Officer (now Audit Officer) failed to maintain devotion to duty and thereby violated the provisions contained in Clauses (ii) of Sub Rule 1 of Rule 3 of CCS (Conduct) Rules 1964.

ARTICLE – II

That the said G.Venugopal while functioning in the aforesaid office and in the aforesaid capacity deserted his work place on the aforesaid dates and participated in the demonstrations/dharna. Rule 7 (ii) of CCS (Conduct) Rules 1964 stipulates 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 service of any other Government servant. His participation in the dharna/demonstration as aforesaid was therefore violative of the provisions contained in clause (ii) of Rule 7 of CCS (Conduct) Rules, 1964.

ARTICLE – III

That the said Shri.Venugopal, while functioning in the aforesaid office and in the aforesaid capacity, on the aforesaid dates and time, participated in the demonstrations in connection with the service matter of another employee as stated in the aforesaid Article I. By deserting the work place and participating in demonstrations, the said Shri.G Venugopal, Asst. Audit Officer (now Audit Officer) acted in a manner unbecoming of a Government servant violating clause (iii) of Sub Rule 1 of Rule 3 of CCS (Conduct) Rules, 1964 which states that every Government servant shall at all times do nothing which is unbecoming of a Government servant.

ARTICLE – IV

As per the report of the Sub Inspector of Police, Cantonment Police Station, Thiruvananthapuram, Shri.G Venugopal, Assistant Audit Officer (now Audit Officer) was removed from the office premises of the Accountants General's office on 12.1.2007. Shri.G Venugopal



had deserted his duty and participated in the demonstration/agitation held on 12.1.2007 at 4.40 PM in the premises of the office of the Accountant General (A&E) Kerala. He blocked the passage of the Accountant General (A&E) Kerala at 5.30 PM on the said date and he shouted slogans against the Accountant General (A&E) and his administration. By 6.15 PM, the Police came and removed Shri.G Venugopal, who engaged in blocking the passage of the Accountant General (A&E) Kerala. By deserting his duty and participating in the activities as aforesaid, the said Shri.G Venugopal, Asst. Audit Officer, (now Audit Officer) showed lack of devotion to duty and violated clause (ii) of Sub Rule 1 of Rule 3 of CCS (CCA) Rules, 1964 which states that every Government servant shall at all time maintain devotion to duty.

ARTICLE V

That the said Shri.G Venugopal, while functioning in the aforesaid office and in the aforesaid capacity deserted his duty and participated in the activities stated in the aforesaid article IV in connection with the service matter of another employee and thereby violated the provisions contained in clause (ii) of Rule 7 of CCS (Conduct) Rules, 1964 which 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 service of any other Government servant.

ARTICLE VI

As detailed in Article IV, the said Shri.Venugopal, while functioning in the aforesaid capacity and on the aforesaid date and time, blocked the passage of the Accountant General (A&E) Kerala, which resulted in his removal by the Police from the office premises. By deserting his duty place and participating in the activities as aforesaid, the said Shri.G Venugopal, Asst. Audit Officer (now Audit Officer) acted in a manner unbecoming of a Government servant violating clause (iii) of Sub Rule 1 of Rule 3 of CCS (Conduct) Rules, 1964.

ARTICLE VII

As per the report received, the said Shri.G Venugopal, had participated in the demonstration/dharna held in the office premises of both the Offices of the Accountant General (A&E) Kerala and the Principal Accountant General (Audit) Kerala on 17.4.2007 at 10.40 AM in connection with 'One Rank One Pension' issue. It was further reported that Shri.G Venugopal reached the Chamber of the Accountant General (A&E) Kerala and shouted slogans against the Accountant General (A&E) Kerala and his administration. By deserting his work place and participating in the demonstration/dharna in the office premises on the aforesaid date and time, the said Shri.G Venugopal, Asst. Audit Officer (now Audit Officer), failed to maintain devotion to duty and violated the provisions contained in Clauses (ii) of Sub Rule 1 of Rule 3 of CCS



(Conduct) Rules, 1964.

ARTICLE VIII

As stated in Article VII, that the said Shri.G Venugopal, deserted his duty and participated in the demonstration/dharna held on 17.4.2007 in connection with the service matters of employees. Thus the said Shri.G Venugopal violated the provisions contained in clause (ii) of Rule 7 of CCS (Conduct) Rules, 1964 which 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 service of any other Government servant.

ARTICLE IX

The Administration Section issued circular a dated 16.4.2007 bringing to the notice of all Audit staff that participating in Dharna would be against the Central Civil Services (Conduct) Rules 1964 and absence from work for participating in such dharnas is liable to be dealt with under the provisions of FR 17 (I) and FR 17 (A). All audit staff were advised to refrain from participating in the above said dharna on 17.4.2007 through the said circular. As stated in Article VII above, that the said Shri.G Venugopal deserted his work place and participated in the demonstration/dharna held on 17.4.2007 disobeying the instruction of the Administration issued in Circular dated 16.4.2007 and thereby acted in a manner unbecoming of a Government servant violating clause (iii) of sub rule 1 of Rule 3 of CCS (Conduct) Rules, 1964.

ARTICLE X

That the said Shri.G Venugopal while functioning as Assistant Audit Officer, mobilized some staff on 1.6.2007 at 12.45 PM who shouted slogans and demonstrated in front of the office chamber of the Principal Accountant General regarding his promotion as Audit Officer. The staff who staged demonstration on the aforesaid date and time in front of the Chamber of the Principal Accountant General shouted slogans against the Principal Accountant General and his administration that were derogatory, baseless and inciting in nature. As per Rule 7 (ii) of CCS (Conduct) Rules, 1964, 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 service of any other Government servant. By mobilizing some staff of the office on 1.6.2007 and inciting members of staff against the Principal Accountant General, the said Shri.G Venugopal, Asst. Audit Officer (now Audit Officer) violated the provisions contained in Rule 7 (ii) of CCS (Conduct) Rules, 1964.

ARTICLE XI

As aforesaid in Article X, the said Shri.G Venugopal mobilized some staff on 1.6.2007 who shouted slogans and demonstrated in front of

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the office chamber of the Principal Accountant General regarding his promotion as Audit Officer. By mobilizing and inciting the staff against the Principal Accountant General, the said Shri.G Venugopal, Asst. Audit Officer (now Audit Officer) violated the provisions contained in Rule 3 (I) (iii) of CCS (Conduct) Rules, 1964 which states that every Government servant shall at all times do nothing which is unbecoming of a Government servant.

8. The inquiry officer directed the applicant to appear before him for the preliminary hearing on 7.11.2010 which was adjourned to 18.1.2008 as the applicant was on leave on medical grounds. Thereafter the charges were admitted for hearing. The inspection of original listed documents was taken up on 22nd January, 2008 and the applicant was allowed to be represented through a defence assistant. The documents produced by the presenting officer in support of the charges are listed in Annexure II to the inquiry report. They were marked as P1 to P9, P10(a) and P10(b). The names of the prosecution witnesses deposed in the inquiry who was subjected to cross-examination and re-examination is listed in Annexure III. The verbatim form of the recorded version of the witnesses is contained in Annexure III (a) to the report. No documents as such were produced on defence side but a list of six witnesses were given. They were examined and cross-examined. Annexure IV of the report contains the list including the self examination of the applicant. The deposition of the defence witnesses is contained in Annexure IV(a) to the report. The applicant was also given chance to submit written statement of defence. The inquiry officer framed four issues for determination which is as under:-

“(1) Whether Shri G. Venugopal, Audit Officer participated in demonstrations/dharnas held in the office premises between 19 and 22 December and on 26 December, 2006, and if so, did this result in violation of Rules 3(1)(ii), 7(ii) and 3(1)(iii) of the Central Civil



Services (Conduct) Rules, 1964;

(2) Whether Shri G. Venugopal, participated in demonstrations/agitations held on 12 January 2007 at 4.40 pm in the premises of the Accountant General (A and E), Kerala, blocking the passage of the Accountant General (A and E), shouting slogans against the Accountant General and his administration and if so, by acting thus, was there a violation of the Rules 3(1)(ii), 7(ii) and 3(1)(iii) of the Central Civil Services (Conduct) Rules, 1964;

(3) Whether Shri G. Venugopal, participated in the demonstration/agitation held on 17 April 2007 at 10.40 am in the office premises of the Principal Accountant General (Audit) and the Accountant General (A and E) after getting half-a-day's casual leave sanctioned for the purpose of attending to some personal matters and by doing so, did he violate Rules 3(1)(ii), 7(ii) and 3(1)(iii) of the Central Civil Services (Conduct) Rules, 1964;

(4) Whether Shri G. Venugopal, participated in the demonstration/agitation held on 1 June 2007 at 12.45 pm in front of the office chamber of the Principal Accountant General (Audit), Kerala, and shouted slogans against the Principal Accountant General and his administration that were derogatory, demeaning, offensive, insolent and subordinate in nature and if so, by so doing did he violate 3(1)(ii), 7(ii) and 3(1)(iii) of the Central Civil Services (Conduct) Rules, 1964."

9. Out of 11 charges the inquiry officer himself has found only 9 of them having been proved. The charges 10 & 11 pertains to mobilising some staff on 1.6.2007 and for shouting slogans and conducting demonstrations in the front of the office of the Principal Accountant General, were found not proved.

10. For the purpose of convenience we may at first refer to charges 7, 8 & 9. The charges are already extracted above. The finding on charge No. 7 that the delinquent participated in the demonstration on 17.4.2007 at 10.40 AM in the office premises in connection with one rank one pension issue and by so doing failed to maintain devotion to duty and thus violated clause

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(ii) of Sub Rule (1) of Rule 3 of the CCS (Conduct) Rules, 1964, is proved. Charge No. 8 the finding that he participated in the demonstration/dharna held on 17.4.2007 in connection with the service matter of another employee and thus violated the provisions contained in clause (ii) of Rule 7 of CCS (Conduct) Rules is also proved. As regards charge No. 9 the finding that the delinquent acted in a manner subversive of discipline and indicating insubordination to authority by participating in an unauthorized dharna or demonstration conducted in the premises on 17th April, 2007 attracting clause (iii) of Sub Rule 1 of Rule 3 of CCS (Conduct) Rules, 1964 is proved.

11. In substance all the above charges relating to the same incident alleged to have happened on 17.4.2007 and sum and substance of the allegations is that he participated in the demonstration/dharna at 10.40 AM in the office premises by deserting his duty which amounts to violation of clause (iii) of Sub Rule 1 of Rule 3 of CCS (Conduct) Rules, 1964. As the incident happened as part of an agitation generally by the employees attached to the AG's office in connection with the some common issue several employees were charge sheeted making more or less similar allegations. One such case wherein similar charges were framed against the employee the challenge made thereto in OA No. 895 of 2009 came up for consideration before us and by judgement dated 5th July, 2011, we disposed of the matter partly allowing the OA but remanded the case with certain directions. The charges 7, 8 & 9 in the present case were also charges levelled against the delinquent in OA 895 of 2009 as charges Nos. 4, 5 & 6.

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With reference to the aforesaid charges we held as follows:-

“12. The Enquiry Officer held that the charges as per Articles IV, V and VI of the Articles of charge as per Annexure-I of the charge sheet have been conclusively proved. The charges framed against the applicant as per Articles IV, V & VI are that (i) the charged official participated in the demonstration/dharna held on 17.04.2007 at 10.40 a.m. in the office premises in connection with 'One Rank One Pension' issue; (ii) the charged official deserted his work place, gave false reason for availing half day's casual leave on the forenoon of 17.04.2007 and participated in the demonstration/dharna held on 17.04.2007 disobeying the instructions of the Administration issued in circular dated 16.04.2007; Article IV pertains to violation of clause (ii) of Sub Rule (1) of Rule 3 of CCS (Conduct) Rules, 1964 which reads as under:

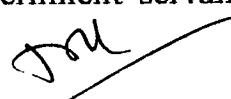
“3. General :

- (1) Every Government servant shall at all times -
- (i)
- (ii) maintain devotion to duty “

The applicant had while on sanctioned leave, participated in the demonstration held on 17.09.2007 at 10.40 a.m. Participation in a demonstration in a service related matter while on sanctioned leave does not involve non-performance of duty or desertion of duty or obstruction to performance of duty by others. Therefore, the Enquiry Officer, the Disciplinary Authority and the Appellate Authority erred in not holding that the charge of not maintaining devotion to duty at all times does not stick to the applicant.

13. Article V of the Article of charges pertains to the alleged violation of clause (ii) of Rule 7 of CCS (Conduct) Rules, 1964, which 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 service of any other Government servant. Clause (ii) of Rule 7 of the CCS (Conduct) Rules, 1964, does not mention demonstration/dharna. It prohibits strike. As per New Oxford Advanced Learner's Dictionary, 'Demonstration' means a public meeting or march at which people show that they are protesting against or supporting somebody or something whereas 'Strike' means to refuse to work as a protest. Strike is cessation of work. What is prohibited in clause (ii) of Rule 7 of CCS (Conduct) Rules, 1964 is cessation of work, not demonstration. What constitutes a 'strike' under Conduct Rules is explained in Government of India, MHA O.M. No. 25/23/66-Ests.(A) dated 09.12.1966 as under :

“(2) Interpretation of what constitutes a “strike” under the Conduct Rules – Rule 7 (ii) of the Central Civil Services (Conduct) Rules, 1964, provides that no Government servant



shall resort to or in any way abet any form of strike in connection with any matter pertaining to his service or the service of any other Government servant. Instances have come to the notice of Government where employees resort to various methods of protests for redress of grievances, some of which are tantamount to strike. References have been received seeking clarification whether certain acts are covered under the definition of 'strike' and if so, whether action can be taken against such employees for violation of the Conduct Rules.

It is, therefore, clarified that 'strike' means refusal to work or stoppage or slowing down of work by a group of employees acting in combination and includes -

- (i) mass abstention from work without permission (which is wrongly described as "mass casual leave;
- (ii) refusal to work overtime where such overtime work is necessary in the public interest;
- (iii) resort to practices or conduct which is likely to result in or results in the cessation or substantial retardation of work in any organization. Such practices would include, what are called, 'go-slow', 'sit-down', 'pen-down', 'stay-in', 'token', 'sympathetic' or any other similar strike; as also absence from work for participation in a Bandh or any similar movements.

Government servants who resort to action of the above kind violate Rule 7 (ii) of the Central Civil Services (Conduct) Rules, 1964, and disciplinary action can be taken against them. It may be noted that the list of activities which are covered under the definition of strike as enumerated above is only illustrative and not exhaustive. It only clarifies the position in respect of practices which are often resorted to at present."

As the applicant has not refused to work and as he was on sanctioned leave, the Enquiry Officer, the Disciplinary Authority and the Appellate Authority are clearly wrong in holding that the applicant has violated Rule 7(ii) of the CCS (Conduct) Rules. Participation in a demonstration is not a misconduct in terms of the provisions of Rule 7(ii). Instances of coercion or physical duress are not specifically stated in the charge sheet.

14. As regards the Charge VI, the applicant has admitted that by taking eligible leave, he had participated in the dharna held on 1.04.2007. He had given false reason for availing casual leave on the forenoon of 17.04.2007 to participate in the dharna. Therefore, the conclusion of the Enquiry Officer, Disciplinary Authority and



Appellate Authority that the applicant had acted in a manner unbecoming of a Government servant violating clause (iii) of Sub Rule (1) of Rule 3 of CCS (Conduct) Rules, 1964 which states that every Government servant shall at all times do nothing which is unbecoming of a Government servant, is in order."

12. In the light of the aforesaid finding when we examine the finding of the inquiry officer herein, to which we have already referred to above, we do not find any substantial difference either in the nature of the evidence, the charges or in the finding rendered thereto. In such circumstances following our decision we hold that finding on the above charges cannot be sustained as allegations cannot be attributed as a misconduct in its entirety.

13. As regards the charges Nos. 1 to 3 they relate to the incident alleged to have happened on 19th December and 20th December, 2006 alleging participation in the demonstration on both these dates and shouting slogans against the Accountant General and also that such demonstration was held in connection with the service matter of another employee thereby attracting clauses 3(1)(ii)(iii) and 7(ii) of the Conduct Rules. The inquiry officer finds that by leaving his work place and participating in the demonstration the applicant failed to maintain devotion of duty and thereby violated the provisions contained in 3(1)(ii) of the Conduct Rules. It is based on the analysis of the evidence that the applicant had admitted that though there were directions from the administration in the form of a circular for not participating in the dharna on 19th & 26th December, 2006, he had participated in the same. Further for participating in the demonstration as per his own admission he has given a leave application citing false reasons.

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As per the analysis of the evidence there was a Dharna held on 19th and 26th December, 2006 in the office premises. The defence witnesses examined in the cases deposed that the programme called by the audit and accounts association was on issues such as the demand raised in connection with one rank pension issue and the demand for revoking the suspension of one Shri S.V. Santhosh Kumar, Senior Accountant. That the applicant had admitted in his deposition of having participated in the organizational programme on 19th December, 2006 as he was implementing the collective decision of the association. There was also a discussion regarding the leave sanctioned for the reason other than participating in the demonstration or Dharna and then participating in the Dharna which is a conduct, subversive of discipline and not maintaining devotion to duty as expected of a government servant under Rule 3(1)(ii) of the Conduct Rules. Likewise, while discussing the evidence while considering charge No. 2 the inquiry officer found that in fact the period of participation in the Dharna has been one of unauthorized absence from official duty even though there is no evidence to show that there is a call for strike by any of the association. That the dharna held between 19th to 22nd tentamounts to striking work by participation of the employees in large number and abstaining from work. Thus by misusing the leave he participated in the Dharna, which attracted Rule 7(ii) of the Conduct Rules. While discussing the evidence with reference to the article of charge No. 3 he finds that in view of his finding with respect to charges Nos. 1 & 2 the charge having participated in the demonstration, he acted in a manner unbecoming of a government servant attracting Rule 3(1)(ii) of the Conduct rules.



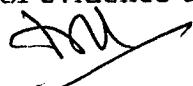
14. While discussing the evidence with regard to charge No. 1 the inquiry officer refers to the dharna held on 19th - 22nd December, 2006 and also on 26th December, 2006 in the office premises. Referring to the admission made by the applicant, it is observed that he admitted of having participated in the organizational programme only on 19th December, 2006. If the conclusions are to be based on the admission alone then the finding could have been confined to the participation of the applicant in the demonstration held on 19th December, 2006, unless there is any other evidence. To prove that he participated in the demonstration or dharna on the remaining days there is no material available on record to which any reference is made to find that the applicant had participated in the demonstration on the remaining days. The inquiry officer jumps into the conclusion by recording the finding that the applicant has deserted his duty and participated in the demonstration on 19/22nd December, 2006. Therefore, there is no finding that he participated in the dharna on 26th December, 2006. As regards the date 22nd December, 2006 there is no supporting evidence to which any reference is made in the report. Further there is no charge that he participated in the demonstration on 22nd December, 2006. Hence, the finding that he participated in the demonstration on 22nd December, 2006 is set aside as it is based on no evidence and it is without even an allegation raised in this regard. The fact that he participated in the demonstration on 19th December, 2006 is admitted by the applicant but he had been on leave on the said date. We however find that the inquiry officer while answering issue No. 3 held that availing leave in one pretext and participating in the demonstration is proved. There is no reason to interfere with the said



finding. But the further finding that he deserted his work and participated in the dharna cannot be supported. In this connection we had in OA No. 895 of 2009 held that mere participation in the demonstration by itself may not amount to misconduct in the light of the decision of the Apex Court in AIR 1962 SC 1166 – Rameshwar Prasad & Ors. Vs. State of Bihar & Anr. as it is against amount to freedom of speech guaranteed under Constitution. We have also held that in identical situation there is no scope for application of Rule 7(ii) of the Conduct Rules. We have already discussed at length the relevant provision and the circumstances under which the said provision will have application. For parity of reasons we hold that the charge that the applicant is guilty of misconduct under Rule 7(ii) is not sustainable. Thus the above discussion reached us to conclude that the applicant had availed leave giving one reason but at the same time participated in the demonstration as found by the inquiry officer is not liable to be interfered with. But the remaining charges under Articles 1 to 3 are not proved.

15. Going to charges Nos. 4, 5 & 6 they relate to the incident happened on 12.1.2007. Even though it was alleged that the applicant has participated in the demonstration held on 12.1.2007 at 4.40 PM and blocked the passage of the Accountant General at 5.30 PM after deserting work place and participating in the activities aforesaid he showed lack of devotion to duty and violated the relevant provisions in the conduct rules more particularly Rule 3(1)(ii), 3(1)(iii) & 7(iii). After discussion and analysing the evidence the conclusion reached by the inquiry officer is as follows:-

“The conclusion that can be drawn on the basis of evidence on record



is that there was a demonstration on 12 January 2007 and that Shri G Venugopal participated in the same following which the police removed the participants including Shri Venogopal from the premises. No proof has been furnished to indicate that the demonstration was carried out with the permission of the authorities.leaves no room for doubt that the demonstration was unauthorised/illegally conducted".

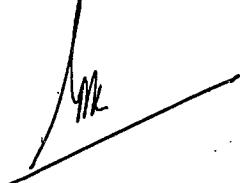
The finding is that he participated in the demonstration held on 12.1.2007 and thus showed lack of devotion to duty. In other words there is no finding as such that he blocked the passage of the Accountant General nor there is any finding that his participation in the demonstration was at any time during the working hours. Even though it is subsequently alleged in the charge that he participated in the demonstration at 4.40 PM there is absolutely no discussion about it. For that matter there was not even an evidence worth to be recorded regarding the time at which he participated in the demonstration. All that was concluded is that he participated in the demonstration on that date. Based on the limited finding that he participated in the demonstration without a finding that it is during office hours that such participation took place there cannot be a finding of desertion of work. As we have already held that it is mere participating that to beyond the office hours it cannot be characterised as misconduct attracting either 3(1)(ii), 3 (1)(iii) or 7(iii) of the Conduct Rules as the case may be. Thus the finding that he is held guilty of the misconduct on the aforesaid charges are therefore not sustainable in the eye of law.

16. It is based on the several charges said to have been proved in the inquiry that punishment was inflicted on the applicant and confirmed by the

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appellate authority. In view of our finding that the various charges as found by inquiry officer cannot be sustained in the eye of law and for the limited charges proved namely that he availed leave giving false reason, what is the appropriate punishment, if any to be inflicted is a matter at the first instance to be considered by the appropriate authority i.e. the appellate authority.

17. Following the same lines of action as held in OA No. 895 of 2009 dated 5th July, 2011, we remit this case back to the the appellate authority for consideration. Original Application is allowed as above. The order of the disciplinary authority as well as the appellate authority to the limited extent as above stand quashed. No order as to costs.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

“SA”