

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 411 of 2011

FRIDAY, this the 21st day of June, 2013.

CORAM:

Hon'ble Dr. K.B.S. Rajan, Judicial Member

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

K. Kamalasan, aged 54 years,
 S/o. P.K. Kesavan, Senior Auditor,
 Office of the Accountant General (Audit),
 Kerala, Thiruvananthapuram,
 Residing at : Aavani,
 No. KP-7/366, Nalumukku,
 Kairali Nagar, Kudappanakunnu (PO),
 Thiruvananthapuram – 695 043.

..... **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 – 1.

2. The Principal Accountant General (Audit),
 Kerala, Thiruvananthapuram-5.

3. The Deputy Accountant General (Admn.),
 Office of the Principal Accountant General (Audit), Kerala,
 Thiruvananthapuram – 5. **Respondents**

(By Advocate – Mr. V.V. Asokan)

This application having been heard on 14.06.2013, the Tribunal on

21-06-2013 delivered the following:

O R D E R

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

The applicant, a Senior Auditor in the office of the Accountant General (Audit) Kerala, Trivandrum, is aggrieved by Annexure A1 order

dated 7.7.2010 imposing on him the penalty of reducing his pay by two stages from Rs. 18,270/- to Rs. 16,930/- in Pay Band-2 with Grade Pay of Rs. 4800/- for a period of two years with recurring effect and vide Annexure A2 order of the appellate authority dated 20.1.2011 confirming the above penalty. The applicant has sought the following reliefs:-

- “(i) Call for the records leading to the issue of Annexure A1 and A2 and quash the same;
- (ii) Direct the respondents to grant the applicant all the consequential benefits including arrears of pay and allowances, as if A1 and A2 had not been issued at all;
- (iii) Award costs of and incidental to this application;
- (iv) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case.”

2. The applicant submitted that out of 14 documents listed along with the charge memo, 10 were marked as Exhibits P-1 to P-10, despite the absence of the author of these documents and even custodian of the same. Even these documents were not produced before the inquiry in any manner known to law. These documents cannot be treated as valid evidence and in any case the applicant was also denied an opportunity of cross-examining the witnesses to disprove the contents of these documents. There was absolutely no valid evidence on record. The findings of the inquiry officer, disciplinary authority and the appellate authority even on articles 1, 3, 7 and 9 which only were held as proved were perverse based on purely surmises. Once it is found by the inquiring authority that there is no evidence in support of charge No. 2 as well as charge No. 8, as a natural corollary it should not have been found that there is any evidence in support of charges 1 & 3 as well as charges 7 & 9. The entire proceedings were out of



vengeance and out of ill will intended only to suppress the lawful service association activities of the majority union representing the audit and accounts organization. The penalty imposed in terms of Annexures A1 and A2 are highly disproportionate and shocking to the conscience of a man of ordinary prudence.

3. Respondents in their reply statement submitted that the applicant had participated in the dharna/demonstration held in office premises from 19.12.2006 to 22.12.2006 and on 12.1.2007, 17.4.2007 and 1.6.2007. As explanations submitted by the applicant were not satisfactory a charge memo vide Annexure A3 dated 20.8.2007 was issued to him. Out of 13 charges levelled against the applicant, four charges namely charges Nos. 1, 3, 7 & 9 were found proved. The disciplinary authority imposed the penalty as per Annexure A1 order which was confirmed by the appellate authority as per Annexure A2 order after following the procedure prescribed in the CCS (CCA) Rules, 1965. The applicant has stated in his letter dated 4.7.2007 that he participated in the agitation programme after availing earned leave for four days for urgent domestic affairs (Annexures R2 & R4). The leave was sanctioned by the competent authority taking into consideration the ground on which the applicant sought the leave. The applicant had admitted his participation in the dharna/demonstration during inquiry as well. The applicant belongs to the office of the 2nd respondent and he had no business with the affairs of another office. The imposition of penalty on the applicant was made taking into account the seriousness of the misconduct of participating in unauthorized demonstration/dharna within

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the office premises and shouting slogans. The penalty imposed on the applicant is not at all disproportionate to the gravity of the misconduct committed by him. All reasonable opportunity contemplated in Article 311(2) of the Constitution of India has been given to the applicant in accordance with the principles of natural justice. By participating in dharna/demonstrations the applicant violated the conduct rules. In spite of specific warning issued by competent authority to desist from participating in agitations, the applicant deliberately participated in a series of illegal agitational activities blatantly violating the provisions of CCS (Conduct) Rules, 1964. No Government servant has a right to disrupt the functioning of the office. Respondents relied on the judgments of the Hon'ble Supreme Court in Parma Nanda Vs. State of Haryana – 1989 (2) SCC 177, State Bank of India Vs. Samarendra Kishore Endow – 1994 (2) SCC 537, Tota Ram Vs. Union of India & Ors. - 2007 (14) SCC 801 and Praveen Bhatia Vs. Union of India & Ors. - 2009 (4) SCC 255 to emphasize the limitations of this Tribunal in interfering with departmental inquiries.

4. We have heard the learned counsel for the parties and perused the records. For the sake of convenience the articles of charges Nos. 1, 3, 7 & 9 held to have been proved by the inquiry officer are reproduced as under:-

"Article-1

That the said Shri K. Kamalasan, while functioning as Senior Auditor in the office of the Principal Accountant General (Audit) Kerala, participated in the demonstrations/dharna on 19th December, 2006 to 22nd December, 2006 and on 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 and shouted slogans against the Accountant General (A&E) Kerala and his administration. That the said Shri K.



Kamalasanan participated in the day long dharna in connection with the same issue. By participating in the demonstrations/dharna, the said Shri K. Kamalasanan, Senior Auditor failed to maintain devotion to duty and thereby violated the provisions contained in 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-III

That the said Shri K. Kamalasanan, while functioning in the aforesaid office and in the aforesaid capacity and on the aforesaid dates, participated in the demonstrations/dharna in connection with the service matter of another employee. By participating in the demonstrations/dharna and giving false reasons for availing earned leave, the said Shri K. Kamalasanan, Senior Auditor 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 K. Kamalasanan, while functioning in the aforesaid office and in the aforesaid capacity participated in the demonstrations/dharna held on 17.4.2007 at 10.40 AM in the office premises in connection with 'One Rank One Pension' issue. By participating in the demonstration held in the office premises on the aforesaid date and time, Shri K Kamalasanan Senior Auditor 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.

Article-IX

That the said Shri K. Kamalasanan, while functioning in the aforesaid office and in the aforesaid capacity, participated in the demonstrations/dharna held on 17.4.2007 disobeying the instructions of the Administration and giving false ground for availing leave, 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."

5. The above charges are held proved by the inquiry officer on the basis of the admission of the applicant that he had participated in the agitations



and dharnas after availing leave on domestic affairs. In doing so the applicant did not comply with the direction of the administration in the circular dated 16.4.2007 to refrain from dharna on 17.4.2007 in the office premises. Clause (ii) of Sub Rule 3 of CCS (CCA) Rules, 1965 reads as under:-

“3. General :

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

Participation in demonstration/dharna in a service related matter while on sanctioned leave, does not involve non-performance of duty or desertion of duty or obstruction of performance of duty by others. Therefore, the finding of the inquiry officer and the stand of the disciplinary authority and the appellate authority that the charge of not maintaining devotion to duty at all times as proved is erroneous.

5. The applicant has admitted that during leave sanctioned for urgent domestic affairs as stated by him, he has participated in dharnas/demonstration. Evidently, the applicant gave false reason for availing leave. Hence, the conclusion of the inquiry officer, disciplinary authority and appellate authority that the applicant acted in a manner unbecoming a Government servant violating clause (iii) of Rule 3 of CCS (CCA) Rules, 1964 which states that every Government servant shall at all times do nothing which is unbecoming of a Government servant is, correctly arrived at. In the light of the submission of the applicant that he participated with demonstrations while on leave, it is not necessary to rely on the



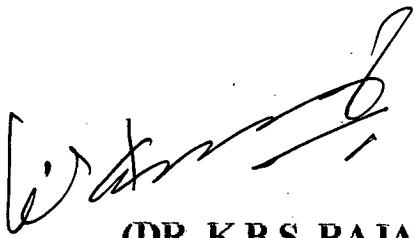
exhibits which are stated to be not legal evidence to prove the charge above.

6. Thus out of the 13 charges, four charges are proved, to the extent of availing of leave by the applicant by giving false reason, beyond doubt. The imposition of penalty of reduction in pay by two stages from Rs. 18,270/- to Rs. 16,930/- for a period of two years with recurring effect in our considered opinion is highly disproportionate to the gravity of the misconduct on the part of the applicant.

7. In the result, we hereby quash Annexures A1 and A2 orders and remit the case to the appellate authority, the 2nd respondent, for reconsideration of the penalty imposed on the applicant within a period of three months from the date of receipt of a copy of this order.

8. Original Application stands disposed of as above. No order as to costs.


(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER


(DR. K.B.S. RAJAN)
JUDICIAL MEMBER

“SA”