


29.01.2009

OA No. 44/2008

Mr. P.V. Calla, Counsel for applicant.
Mr. Y.K. Sharma, Proxy counsel for
Mr. Sanjay Pareek, Counsel for respondents.

This case has been listed before the Deputy Registrar due to non availability of Division Bench. Be listed before the Hon'ble Bench on 02.03.2009.


(Gurmit Singh)
Deputy Registrar

ahq

02.03.2009

OA No. 44/2008

Mr. P.V. Calla, Counsel for applicant.
Mr. Vikas Jain, Proxy counsel for
Mr. Sanjay Pareek, Counsel for respondents.

Let the matter be listed for hearing on 16.04.2009.

This case has been listed before the Deputy Registrar due to non-availability of Division Bench. Be listed before the Hon'ble Bench on

(B.L. KHATRI)
MEMBER (A)

(M.L. CHAUHAN)
MEMBER (J)

AHQ

16/4/09

DEPUTY REGISTRAR

Mr. P.V. Calla, Counsel for applicant.
Mr. M.S. Raghav, proxy counsel for
Mr. Sanjay Pareek, Counsel for respondents.

Heard learned counsel for the parties.
For the reasons dictated separately, the OA
is allowed -

(B.L. KHATRI)

(M.L. CHAUHAN)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 16th day of April, 2009

ORIGINAL APPLICATION No.44/2008

CORAM:

HON'BLE MR. M.L.CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. B.L.KHATRI, ADMINISTRATIVE MEMBER

A.A.Qureshi
s/o late Dr.(Shri) N.A.Qureshi,
Section Officer,
Office of Accountant General (A&E),
Rajasthan, Jaipur,
r/o 42-A-1, Geejgarh Vihar,
Road No.3, Nandpuri Market,
Bais Godown, Jaipur-6

..Applicant

(By Advocate: Mr. P.V.Calla)

Versus

1. The Union of India through
Controller and Auditor General of India,
10, Bahadur Shah Jafar Marg,
New Delhi.
2. The Accountant General (A&E),
A.G.Office,
Bhagwan Das Road,
Rajasthan, Jaipur

.. Respondents

(By Advocate: Mr. M.S.Raghav, proxy counsel for Mr.
Sanajay Pareek)

O R D E R (ORAL)

The applicant has filed this OA thereby praying
for quashing the order dated 25.4.2007 (Ann.A1) passed

by the Disciplinary Authority and the order dated 11.12.2007 (Ann.A2) passed by the Appellate Authority whereby appeal of the applicant was dismissed and minor penalty of withholding of one increment for two years without cumulative effect as imposed by the Disciplinary Authority was upheld.

3. Briefly stated facts, so far relevant for the purpose of disposal of the present OA, are that before issuing the chargesheet dated 15/20 February, 2007 (Ann.A7), the applicant was issued a Memo dated 3.1.2007 (Ann.A5) whereby explanation of the applicant was sought as to why he has sanctioned two days' Casual Leave in favour of Shri Lokesh Kumar Sharma, Senior Accountant, TI Cell from 13.12.2006 to 14.12.2006 contrary to the circular dated 8.12.2006 which stipulated that no leave on 14.12.2006 shall be sanctioned without prior permission of the Group Officer concerned and also that he has changed the dates marked in circular dated 8.12.2006. Since reply to the aforesaid Memo was not found satisfactory by the authority concerned, the applicant was issued a minor penalty chargesheet dated 15/20 February, 2007 (Ann.A7) for the aforesaid allegation. The applicant submitted his reply and after considering reply to the chargesheet, the Disciplinary Authority imposed a penalty of withholding of one increment for two years without cumulative effect under Rule 11(iv) of the

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Central Civil Service (Classification, Control and Appeal) Rules, 1965 [CCS (CCA) Rules, for short] which was also affirmed by the Appellate Authority vide order dated 11.12.2007 as conveyed to the applicant vide order dated 19.12.2007 (Ann:A2). It is on the basis of these facts, the applicant has filed this OA thereby praying for the aforesaid reliefs.

4. Notice of this application was given to the respondents. The respondents have filed reply. In the reply, it has been stated that circular dated 8.12.2006 was issued in compliance of the headquarter office letter No. 303/NGE (JCM) 19-2006 dated 1.12.2006 in which it was stated that one day's strike of 14.12.2006 would be observed by the 'All India Accounts and Audit Association (Category-I) and All India Audit and Accounts Association (Category II and III). It is further stated that appropriate authority was directed to ensure normal functioning of the office and accordingly, a circular dated 8.12.2006 was issued amongst all the officers of the office directing them not to sanction any kind of leave to their subordinates on 14.12.2006 without approval of the Group Officer concerned. It is further stated that the applicant has also noted this circular. Despite the instructions contained in the above circular, the applicant sanctioned two days Casual Leave to Shri Lokesh Sharma, Senior Accountant for 13.12.2006 and

14.12.2006 without informing the Branch Officer and the Group Officer concerned. It is further averred that the said leave was sanctioned on 11.12.2006 i.e. after noting the instructions of the circular. Thus, according to the respondents the applicant was aware about the contents of the circular dated 8.12.2006 and it was not permissible for him to sanction two days' Casual Leave on account of marriage in the family of Shri Lokesh Sharma. As such, according to the respondents, the charges against the applicant stood fully proved. It is further stated that the reasoning given by the applicant for change of date in the circular dated 8.12.2006 can also be not accepted, as such, the minor penalty as mentioned above was rightly imposed by the Disciplinary Authority. It is also stated that since there was no merit in the appeal, the Appellate Authority has rightly affirmed the penalty as imposed by the Disciplinary Authority.

5. The applicant has filed rejoinder. Alongwith rejoinder, the applicant has placed on record copies of letter dated 1.12.2006 (Ann.A12), dated 26.12.2006 (Ann.A13) and marriage invitation card (Ann.A14) whereby invitation has been extended in favour of Shri Lokesh Sharma in whose case leave was sanctioned by the applicant, in order to show that no employee participated in the agitation on 14.12.2006 on the call of Federation/Association and in fact no

demonstration or agitation was held in the office of the Accountant General (A&E), Rajasthan, Jaipur and that the office functioned normally on that date.

6. We have heard the learned counsel for the parties and gone through the material placed on record.

7. The question which requires our consideration is whether the circular dated 8.12.2006 which has been admittedly issued pursuant to the headquarter office letter dated 1.12.2006 (Ann.A12) could have formed basis in order to initiate disciplinary action against the applicant? It is admitted case between the parties that the circular dated 8.12.2006 (Ann.A11) was issued by the office of the Accountant General (A&E) Rajasthan, Jaipur pursuant to headquarter letter dated 1.12.2006 (Ann.A12) by which direction was issued to all the Heads of Offices in the IA & AD to ensure that normal function of the office is not disturbed on account of the notice dated 29.11.2006 given by the All India Accounts and Audit Officers Association (Category-I) and All India Audit and Accounts Association (Category II and III whereby the association has decided to go on strike on 14.12.2006 and to take strict action against the staff disrupting the office decorum and disciplinary action should be taken in terms of proviso to FR 17(1) and FR 17-A. The authorities were also directed to report on the action

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taken in the matter in the prescribed proforma. Thus, having regard to the instructions issued by the headquarter office vide Ann.A12, the respondents have also issued similar instructions vide circular dated 8.12.2006 (Ann.A11) with additional condition that Branch Officer to ensure normal functioning of the office and in case of adverse situation, the matter be reported to the undersigned i.e. Deputy Accountant General (Admn.) who has signed the letter. If the matter is viewed in the light of these two letters Ann.A11 and A12, the only conclusion which can be drawn is that the order dated December 1, 2006 was issued for a limited purpose to ensure that normal functioning of the office is not disturbed on account of proposed notice given by the Association whereby they have decided to go on one day strike on 14.12.2006 and in case any of the employee participate in the strike or hold demonstration/agitation on the aforesaid date, they should be dealt with under FR 17 (1) and 17-A. These two circulars do not apply in normal situation, where the applicant being Section Incharge is authorize to sanction leave in favour of the applicant. Thus, as already noticed above, the circular dated 8.12.2006 (Ann.A11) which has been issued pursuant to direction given by the headquarter office vide letter dated 1.12.2006 (Ann.A12) could not have formed basis for the purpose of issuing chargesheet against the applicant and to impose the

aforesaid penalty on the applicant. According to us, the matter has not been examined by the respondents in right perspective. Admittedly, it is not a case of such nature where the employees of the office of Accountant General (A&E) Rajasthan, Jaipur resorted to demonstration/agitation on 14.12.2006 at the call/notice given by the Federation/Association in IA & AD. In fact, from the material placed on record, it is evident that no such demonstration/agitation of any type was held in the office of the respondents at Jaipur on 14.12.2006. From the material placed on record, it is also evident that the office functioned normally on the aforesaid date. At this stage, it will be useful to quote letter dated December 26, 2006 written by the Deputy Accountant General (Admn) to the headquarter office pursuant to direction issued vide letter dated December 1, 2006, which thus reads:-

"....."

I am directed to refer Headquarters Office Letter No.303-NGE (JCM)/19-2006 dated December 1, 2006 on the above mentioned subject. Requisite information desired therein is as under:-

Name of Office	No.of employees who participated in the Agitational Programmes on 14.12.2006 at the call/notice given by the Federations /Associations in IA&AD	Whether the office functioned normally	Details of action taken in the matter to deal with the situation
1	2	3	4
Office of the Accountant General (A&E) Rajasthan, Jaipur	No demonstration or agitation of any type was held in this office (on 14.12.06)	Yes	No action was necessary/required

This bears the approval of Accountant General (A&E).

Yours faithfully,

Sd/-

Dy. Accountant General (ADMN.)"

Thus, from the portion as quoted above, it is evident that on 14.12.2006 office of the Accountant General functioned normally and there was no demonstration or agitation of any kind on that date.

8. Under these circumstances, we are of the firm view that the respondents have wrongly proceeded to issue chargesheet to the applicant on the basis of the circular dated 8.12.2006 based on the Headquarters letter dated December 1, 2006 which circular could have been made basis only if there was an agitation on 14.12.2006 and employee had participated in the demonstration/agitation. Thus, according to us, the applicant has made out a case of malice in law and it was not proper for the respondents to initiate action of minor penalty proceedings on the basis of these circulars.

9. The matter can also be looked into from another angle. As can be seen from the order dated 8.12.2006 (Ann.A11), this order was noted by the officials on 8.12.2006 and 11.12.2006. The applicant has noted this

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circular on 11.12.2006. One of the charges against the applicant is that initially he has put ^{date} ~~10.12.2006~~ as 10.12.2006 and the same has been changed to 11.12.2006. The applicant has given explanation that on 10.12.2006 it was Sunday and this being the mistake, it was accordingly corrected to 11.12.2006. We fail to understand how this explanation of the applicant is not acceptable ? Further, whether the applicant has indicated ^{date as} 10.12.2006 or 11.12.2006 is of no consequence, inasmuch as, it is not a case of the applicant that he was not aware about the circular dated 8.12.2006 and leave application dated 11.12.2006 (Ann.A10) was sanctioned by him in the absence of knowledge of the circular dated 8.12.2006. Further, from the material placed on record, it is evident that one Shri Lokesh Sharma has applied for two days' Casual Leave vide his application dated 11.12.2006 (Ann.A10) on the ground that there is a marriage of his sister's son on 13.12.2006, as such, two days Casual Leave for 13.12.2006 and 14.12.2006 be granted in his favour. It is not the case of the respondents that even in normal situation, the applicant was not authorized to sanction two days Casual Leave. The fact remains that the applicant being a Branch Incharge was competent to sanction two days Casual Leave in favour of all the subordinate employees in normal situation. The applicant has also placed on record invitation card of marriage of one Shri Vimal to be held on 13th

December, 2006 addressed in favour of one Shri Lokesh Sharma on record which fact proves that Shri Lokesh Sharma has applied for two days Casual Leave on genuine grounds and on account of marriage in his close relation. Thus, it cannot be said that the leave application of Shri Lokesh Sharma which was sanctioned by the applicant was an after-thought in order to avoid possible action on account of strike to be held on 14.12.2006.

9. It may also be relevant to mention here that in fact no such notice for strike was given by the employees working in the office of Accountant General (A&E) Rajasthan, Jaipur, as according to the applicant, there was no strike in the Jaipur Office and the recognized union has not given any notice for strike and to that effect no demonstration was held by the union.


10. In view of what has been stated above, we are of the view that the applicant has made out a case for grant of relief. Accordingly, the action taken by the respondents pursuant to the chargesheet dated February 15/20, 2007 (Ann.A7), which has culminated into passing of the impugned order dated April 25, 2007 (Ann.A1) as affirmed by the Appellate Authority vide order dated 11 December, 2007 (Ann.A2) is without any basis and was not warranted in the facts and

circumstances of this case. As such, the impugned orders Ann.A1 and A2 are quashed and set-aside.

11. The OA is allowed in the aforesaid terms with no order as to costs.


(B.L. KHATRI)

Admv. Member


(M.L. CHAUHAN)

Judl. Member

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