

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH

Jaipur, this the 18<sup>th</sup> day of October, 2010

**ORIGINAL APPLICATION NO. 303/2010**

**With**

**MISC. APPLICATION NO. 252/2010**

**CORAM**

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Bharat Lal Yadav son of Late Shri Gopal Lal, aged about 58 years,  
Senior Auditor, O/o Principal Accountant General (Civil Audit),  
Rajasthan, Jaipur.

.....Applicant

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

VERSUS

1. Union of India through the Comptroller and Auditor General of India, 10 Bahadurshah Jaffar Marg, New Delhi.
2. The Principal Accountant General (Civil Audit), Rajasthan, Jaipur.
3. The Senior Deputy Accountant General (Civil Admn. Audit), Rajasthan, Jaipur.

.....Respondents

(By Advocate: Mr. Mukesh Agarwal)

**ORDER (ORAL)**

The applicant has filed this OA thereby praying for the following reliefs:-

"The Hon'ble Tribunal may kindly call for the entire record of the case and examine the same and by an appropriate order or directions the impugned memorandum dated 31.5.2010 (Annexure A/1) may kindly be quashed and set aside.

Further by an appropriate order, the OM No. 25/23/66 Ets. (A) dated 9<sup>th</sup> December, 1966 as reproduced in sub Para No. 11 of Para (IV) of this OA may kindly be declared unconstitutional being violative of fundamental rights of the employees. The respondents may be restrained to treat the contents of OM dated 9<sup>th</sup> December, 1966 as statutory Rules.

Any other appropriate order or a direction which is deemed just and proper by this Hon'ble Tribunal may also be passed in favour of the applicant.

The Original Application may kindly be allowed through out with costs."

2. When the matter was listed before the Vacation Bench, the Vacation Bench passed the stay order thereby restraining the respondents to proceed with all the inquiries and consequential action was ordered to be kept in abeyance even in respect of the persons who have not filed this OA, which stay order was continued from time to time.

3. The respondents have filed their reply and simultaneously have also moved an MA No. 252/2010 for vacation of the stay order.

4. Briefly stated, facts of the case are that the applicant along with other persons were issued Memorandum under Rule 14 of the CCS (CCA) Rules, 1965. thereby enclosing a charge sheet whereby allegation against the applicant was that he participated in the programme of 'Mass Casual Leave' on 08.04.2010 and absented himself from his place of posting on the said date on account of call of All India Audit & Accounts Association. Thus according to the respondents, the applicant has violated the Rule 7(ii) of the CCS (Conduct) Rules, 1964. The applicant has challenged the said action of the respondents on various grounds, which need not be adverted<sup>to</sup> at this stage in view of the stand taken by the respondents in their reply as well as contention raised by the applicant.

*[Handwritten signature]*

5. From the stand taken by the respondents in the reply, it is evident that pursuant to the call of All India Audit & Accounts Association, local Association decided to remain on Mass Casual Leave on 08.04.2010, therefore, a Circular dated 01.04.2010 was issued by the office of respondent no. 2, informing all staff members that taking part in such type of activities is a violation of Rule 7(ii) of CCS (Conduct) Rules, 1964 and for this, action under CCS (CCA) Rules, 1965 and FR 17 (1) and 17(A) can be taken against them. It is further stated that all staff members were also advised not to take part in such type of activities. It is further stated that in continuation of circular dated 01.04.2010, a Circular dated 07.04.2010 was also issued and all staff members were advised to keep in view the implication of any action to be taken under FR 17 and FR 17(A). It is further stated that applicant, who is senior Auditor, had submitted his Casual Leave for 08.04.2010 through Association. After receiving such an application from Association, the respondents issued a letter dated 07.04.2010 to General Secretary of Association and it was conveyed that casual leave applications of staff members for 08.04.2010, submitted by Associations, are not sanctioned and staff members are not permitted to take leave on 08.04.2010. It was also conveyed that the staff members who will be absent from duty on 08.04.2010, an action under FR 17 and FR 17 (A) would be initiated against them. It is further stated that the applicant despite the clear instructions remained absent from duty on 08.04.2010, therefore a show cause notice dated 15.04.2010 was issued to him. It is further stated that the applicant vide letter dated 16.04.2010 accepted that he was on Mass Casual Leave on 08.04.2010 in support of call of Association. Thus according to the respondents, since the applicant was

unauthorizedly absent from duty and did not followed the instructions and thus had violated CCS (Conduct) Rules, 1964. Therefore, a charge sheet memorandum dated 31.05.2010 under CCS (Conduct) Rules, 1965, was issued to him.

6. We have heard the learned counsel for the parties and have gone through the material placed on record. It has been brought to our notice that all the employees who were similarly situated to that of the applicant have not been proceeded by issuing a major charge sheet under Rule 14 of the CCS (CCA) Rules, 1965 and in their cases, the period of absence of one day has been treated as 'Dies-Non' whereas the applicant has been proceeded under Rule 14 of the CCS (CCA) Rules, 1965 for major penalty.

7. The question which requires our consideration is whether the action of the respondents can be upheld in view of the mandate as contained under Articles 14 of the Constitution of India? In other words, whether the action of the Disciplinary Authority in issuing a major charge sheet to the applicant, whereas certain other employees have been dealt with leniently for the same misconduct and their absence for one day has been treated as 'Dies Non', was warranted in the facts & circumstances of this case and whether the applicant has been treated fairly and such an action of the disciplinary Authority cannot be said to be arbitrary as well as discriminatory.

8. From the facts, as stated above, it is evident that employees of the Association remained on Mass Casual Leave on 08.04.2010, thus remained absent from duty and submitted casual leave despite the

fact that Associations were apprised by the office of respondent no. 2 that involving in such activities attracts the provisions of Rule 7(ii) of CCS (Conduct) Rules, 1964 and for this, action under CCS (CCA) Rules, 1965 and FR 17(1) and FR 17 (A) can be taken against such employees. The respondents have resorted to invoke Rule 17 and 17(A) in the case of most of the employees thereby treating the said period of absence of one day as 'Dies Non' whereas in the case of the applicant on similar facts, major charge sheet has been issued. According to us, such an action on the part of the disciplinary authority in the similar facts & circumstances of the case is arbitrary and violative of provisions of Article 14 of the Constitution of India and amounts to abuse of discretionary power vested with the Disciplinary Authority. The Apex Court in the case of **Coimbatore District Central Coop. Bank vs. Employees Association** [2007(4) SCC 669] had observed that with the rapid growth of the administrative law and the need to control possible abuse of discretionary powers by various administrative authorities, certain principles have been evolved by reference to which the action of such authorities can be judged. If any action is taken by an authority is contrary to law, improper, irrational or otherwise unreasonable, a Court competent to do so can interfere with the same while exercising its power of judicial review.

9. Further the Apex Court in the case of **M.P. Gangadharan & Another vs. State of Kerala & Others** [2006(6) SCC 162] has held that the question of reasonableness and fairness on the part of the statutory authority shall have to be considered in the context of the factual matrix obtaining in each case. It was further held that before

an action is struck down, the court must be satisfied that a case has been made out for exercise of power of judicial review.

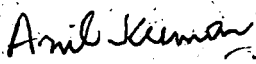
10. Further the Apex Court in the case of **Hind Construction & Engineering Compnay Ltd. vs. Workmen** [AIR 1965 SC 917] while dealing with the situation where some workers had remained absent from duty treating a particular day as a holiday were dealt with the misconduct and dismissed from service held that absence of workmen could have been treated as 'Leave without pay' and they could also be warned and not fined. Reversing the order of punishment, the Apex court further observed that it is impossible to think that any other reasonable employer would have imposed the extreme punishment of dismissal on its entire permanent staff in this manner.

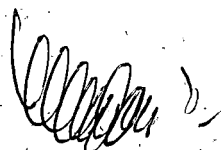
11. If the matter is viewed on the basis of the law laid down by the Apex Court, we are of the view that it is a case where the action of the respondents in issuing major penalty charge sheet to the applicant is improper, irrational and was not warranted in the facts & circumstances of the case, more particularly, when under similar set of facts, the respondents have treated the absence of one day as 'Dies-Non' in respect of several employees for the same misconduct. Thus the action of the disciplinary Authority in issuing major charge sheet is not only arbitrary but his action is also discriminatory. Accordingly, the impugned charge sheet dated 31.05.2010 (Annexure A/1) so far as it relates to the applicant is quashed and set aside. It will be permissible for the respondents to deal the case of the applicant in the same manner as has been done in other cases especially when the respondents in the reply have not shown peculiar facts &

circumstances, which distinguishes the case of the applicant to that of those employees in whose case, the period of absence has been treated as 'Dies Non.' The stay granted by this Tribunal on 25.06.2010 and as continued from time to time shall stand vacated.

12. With these observations, the OA is disposed of with no order as to costs.

13. Since the stay order granted by this Tribunal is vacated, no order is required to be passed in MA No. 252/2010 moved by the respondents for vacation of stay order, which shall stand disposed of accordingly.

  
(ANIL KUMAR)  
MEMBER (A)

  
(M.L. CHAUHAN)  
MEMBER (J)

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