

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH**

Original Application No.180/00907/2014

Thursday, this the 4th day of October, 2018

C O R A M :

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER**

S.V.Santhoshkumar,
S/o.P.Sukumaran,
Assistant Audit Officer (on deputation),
Office of the Accountant General (E&RSA),
Thiruvananthapuram – 695 001.
Residing at Sangeeth, KGRA-A/68,
Kodunganoor P.O., Vattiyoorkavu,
Thiruvananthapuram – 695 013. ...Applicant

(By Advocate – Mr.T.C.Govindaswamy)

v e r s u s

1. The Comptroller & Auditor General of India,
No.9, Deendayal Upadhyaya Marg,
New Delhi – 110 124.
2. The Principal Accountant General (A&E), Kerala,
Thiruvananthapuram – 695 001.
3. The Sr. Deputy Accountant General,
Office of the Accountant General (A&E), Kerala,
Thiruvananthapuram – 695 001. ...Respondents

(By Advocates – Mr.K.I.Mayankutty Mather)

This application having been heard on 25th September 2018, the Tribunal on 4th October 2018 delivered the following :

O R D E R

Per : Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

O.A.No.180/907/2014 is filed by Shri.S.V.Santhoshkumar, presently working as Assistant Audit Officer on deputation, office of the Accountant General (E&RSA), Thiruvananthapuram – Group B Gazetted – aggrieved

by the alleged inaction on the part of the respondents in the matter of restoration of the post of Senior Accountant to him on completion of the penalty of reduction to the lower post of Accountant. The prayers sought for in the O.A are as follows :

1. Call for records leading to the issue of Annexure A-4 and quash the same to the extent it imposes upon the applicant the penalty of reduction to the lower post of Accountant for an unlimited period of time and also to the extent it has the effect of postponement of future increments and loss of seniority on restoration as Senior Accountant.
2. Direct the respondents to restore the applicant to the post of Senior Accountant with effect from 19.3.2010 with all consequential benefits including arrears of pay and allowances arising therefrom.
3. Direct the respondents not to postpone the applicant's future increments of pay on restoration as Senior Accountant with effect from 19.3.2010 and direct further to release all the increments and other allowances due as a result thereof.
4. Direct the respondents to restore the applicant's original seniority and to grant all the consequential benefits arising therefrom.
5. Award costs of and incidental to this application.
6. Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case.

2. The applicant had been initially appointed as a Clerk/Typist on 13.2.1985 under the respondents and was promoted as a Senior Accountant in the year 1991. In 2008 he was proceeded against for violation of Rule 3 of the Central Civil Services (Conduct) Rules, 1965. He was punished with a penalty of "reduction to the lower post of Accountant in the pay scale of Rs.4500-125-7000 until he is found fit, after a period of three years from the date of this order to be restored to the higher post of Senior Accountant". Thus his pay was ordered to be reduced from the existing scale of Senior Accountant of Rs.5500-9000 and accommodated as an Accountant with a direction that he will draw a pay of Rs.7000 and that he could not earn increments of pay during the period of reduction. It was also decreed that

the period of reduction would have the effect of postponing his future increments of pay on restoration to the higher post and that on re-promotion after having found fit, he would not regain his original seniority in the higher post which has been assigned to him prior to the imposition of penalty.

3. The applicant challenged the punishment before this Tribunal by filing O.A.No.872/2009 which was allowed, setting aside the penalty on the ground of dis-proportionality with a further liberty to impose a lesser penalty. The said order of this Tribunal was challenged unsuccessfully before the Hon'ble High Court of Kerala in O.P.(CAT) No.1820/2011 and Hon'ble Supreme Court of India in S.L.P (C) – CC No.1432/2012. (Copies of both the judgments are at Annexure A-1 and Annexure A-2).

4. In the meanwhile, the applicant was imposed with another penalty by order bearing No.Sr.DAG/Admn/C.Cell/DA/SVSK/2008/Tr.1553 dated 18.12.2008 (Annexure A-3). As per this punishment order a minor penalty of withholding of all increments for three years without cumulative effect was ordered and the same would be operative from the date of expiry of the penalty of reduction in rank earlier mentioned. The said penalty was also challenged by the applicant through O.A.No.247/2010 and this Tribunal allowed his plea. However, challenge before the Hon'ble High Court of Kerala by the respondents is still pending.

5. Meanwhile as per original punishment order the penalty of reduction in rank was completed on 19.3.2011 and the applicant ought to have been

restored in the original post of Senior Accountant with effect from that date. In the event of being allowed to continue in the higher post from 19.3.2011 the penalty of withholding of increments, as the next increment was due on first of July, ought to have been given effect to only from 1.7.2011. The applicant's representation on the subject remained unanswered. In the meanwhile, as per Annexure A-4 dated 6.6.2012 the original punishment imposed on the applicant was reduced to two years instead of three years from 19.3.2008. This essentially meant that he was eligible to be restored to the post of Senior Accountant with effect from 19.3.2010. A copy of the representation made by the applicant on 25.6.2012 in this regard addressed to the 3rd respondent is at Annexure A-5.

6. Disregarding his representation the applicant was restored to the post of Senior Accountant with effect from 19.3.2013 only, being given the benefit of MACP with effect from that date and the benefit of the appointment as Assistant Audit Officer post with effect from 14.8.2013 whereas the claim of the applicant is for restoration as Senior Accountant with effect from 19.3.2010.

7. The applicant has produced copies of the amendment to CCS (CCA) Rules, 1965 at Annexure A-7 which reads :

“2. In the Central Civil Services (Classification, Control and Appeal) Rules, 1965, in Rule 11, for Clause (vi) the following clause shall be substituted, namely :-

(vi). reduction to lower time scale of pay, grade, post or service ***for a period to be specified in the order of penalty***, which shall be a bar to the promotion of the Government servant during such specified period to the time scale of pay, grade, post or service from which he was reduced, with direction as to whether or not, on promotion on the expiry of the said specified period -

(a) the period of reduction to time scale of pay, grade, post or service shall operate to postpone future increments of his pay, and if so, to what extent; and

(b) the Government servant shall regain his original seniority in the higher time scale of pay, grade, post or service.”

(emphasis supplied)

8. The applicant contends that a reading of penalty at Annexure A-4 reveals that it is for an unlimited period of time imposed after Annexure A-7 amendment to the CCS (CCA) Rules, 1965. As per Annexure A-7 amendment the punishment is over on 19.3.2010. The applicant would remain free from penalty for the period from 19.3.2010 to 1.7.2010 and hence with effect from 19.3.2010 he was deemed to have obtained his third financial upgradation under MACP in PB-2 + GP Rs.4600/-.

9. As grounds the applicant submits the same set of facts as above. He had been ordered to undergo a reduction in rank for two years with effect from 19.3.2008 and in effect suffered the same till 19.3.2013 which is *ultra-vires*. Rule 11 (vi) is amended in terms of Annexure A-7 by notification dated 2.2.2010, by which Annexure A-4 is liable to be struck down as the penalty in reduction in rank has been extended beyond the period indicated/ordered.

10. The applicant has filed M.A.No.180/1125/2014 seeking a condonation of delay of 504 days in filing the O.A. The reasons indicated are that he had been on deputation away from the department and as an Assistant Audit Officer had been on tour to various places in India and had not been aware of the amendment effected through Annexure A-7 and Annexure A-8 orders. The condonation of delay application was strongly

objected to by the learned counsel for the respondents Shri.Vineeth Komalachandran who submitted that no valid reason had been put forward in the application. However, we conclude that the reasons brought out to explain the delay are valid and hence the condonation application is allowed and the delay is condoned.

11. A reply statement has been filed on behalf of the Respondent Nos.1-3. The statement goes into the details about the misconduct that led to the imposition of punishment. It is submitted that the currency of the first penalty of reversion to lower cadre expired on 18.3.2010 and the second penalty commenced on 19.3.2010 and expired on 18.3.2013. As the second punishment were ordered to follow the first he could be restored to his original post only on the expiry of his second punishment.

12. Referring to some internal correspondence with the office of the Comptroller & Auditor General of India the respondents sought for clarification and vide Annexure R-2 (a) the CAG ordered that "*the official cannot be promoted after the expiry of the first penalty on 18.3.2011 and also during the currency of second minor penalty commencing immediately thereafter ie. with effect from 19.3.2011 because O.M.No.22034/5-2004-Estt.(C) dated 15.12.2004 issued by the Department of Personnel and Training (DoPT) enjoins that a Government servant, on whom a minor penalty of withholding of increments etc. has been imposed, should be considered for promotion by the Departmental Promotion Committee (DPC) which meets after the imposition of the said penalty. After due consideration of full facts leading to imposition of the penalty, if he is still*

considered fit for promotion, the promotion may be given effect after the expiry of the currency of the said penalty.”

13. The same issue was the reason why a further communication was addressed, a copy of which is available at Annexure R-2(c) but the result was the same with reply being received as Annexure R-2(d).

14. Heard Shri.T.C.Govindaswamy, learned counsel for the applicant and Shri.Vineeth Komalachandran representing Shri.K.I.Mayankutty Mather, learned counsel for the respondents. The applicant had faced two sets of punishments. First included reduction in rank commencing from 19.3.2008 to 18.3.2010 and the second from 19.3.2010 to 18.3.2013 which was by way of denial of increments.

15. The crux of the issue is how far the respondents are correct in delaying the restoration to his original post for five years on the plea that he was under the currency of punishment when the reduction of rank was ordered only for two years. The amendment to CCS (CCA) Rules, 1965 as at Annexure A-7 is clear and categoric that punishment of reduction has to be restricted to the period specified in the order and cannot be for an indefinite period. This cardinal rule appears to have been violated in this case. As pleaded by the applicant he was eligible for being restored to his original post of Assistant Audit Officer on 19.3.2010. It appears that he was denied the same on the ground that the second penalty had started and he could not be considered for “promotion” once he was under the shadow of the second punishment. Learned counsel for the respondents submitted that

the DPC had to meet for considering his promotion in order to ascertain his fitness (reduction of his punishment from three to two came later). His case for being restored to the post on 19.3.2011 could be considered only by the DPC which met on 28.12.2012 and at that point he was declared unfit on account of the currency of second punishment.

16. We have no hesitation in adjudging that the respondents were wrong in considering this as a case of promotion when the order was specifically to restore him to the original post subject to fitness. In view of the clear provisions in the amended CCS (CCA) Rules, 1965 that a punishment in rank can only for a definite period specified in the order of penalty and not for an indefinite period, his fitness had to be assessed on the date the first punishment expired which was on 18.3.2011 (18.3.2010 when we consider the reduction in period of punishment). It was not proper on the part of the respondents to have postponed the consideration of the case for a DPC which met several months afterwards.

17. For the reasons stated above, we conclude that the O.A has merit on its side and consequently we order that the prayers sought for are to be granted in full. The O.A stands disposed of accordingly. Orders in this regard are to be issued by Respondent Nos.2-3 within 15 days of receipt of this order. No costs.

(Dated this the 4th day of October 2018)

ASHISH KALIA
JUDICIAL MEMBER
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E.K.BHARAT BHUSHAN
ADMINISTRATIVE MEMBER

List of Annexures in O.A.No.180/00907/2014

1. **Annexure A1** – True copy of the judgment dated 26th July 2011 in OP(CAT) No.1820/2011 (Z) rendered by the Hon'ble High Court of Kerala.
2. **Annexure A2** – True copy of the judgment dated 21.2.2012 in SLP(C) – CC No.1432/2012 dated 21.2.2012, as downloaded from the website of the Hon'ble Supreme Court of India.
3. **Annexure A3** – True copy of the order bearing No.Sr.DAG/Admn/C.Cell/DA/SVSK/2008/Tr.1553 dated 18.12.2008, issued by the 3rd respondent.
4. **Annexure A4** – True copy of the Order bearing No.DAG(A)/C.Cell/SKSV/DA/2012/Tr.No.242 dated 6th June 2012, issued by the 3rd respondent.
5. **Annexure A5** – True copy of the representation dated 25.6.2012 addressed to the 3rd respondent.
6. **Annexure A6** – True copy of the representation dated 23.12.2013, addressed to the 2nd respondent.
7. **Annexure A7** – True copy of the amendment to CCS (CCA) Rules, 1965 as notified by the Government of India, Department of Personnel & Training under Notification bearing F.No.11012/2/2005-Estt.(A) dated 2.2.2010.
8. **Annexure A8** – True copy of the amendment to Rule 29 of the Fundamental Rules under Notification bearing F.No.6/2/2013-Estt. (Pay-I) dated 10.12.2013, issued by the Department of Personnel & Training.
9. **Annexure R2(a)** - True copy of the letter issued by the office of the C&AG.
10. **Annexure R2(b)** - True copy of the O.M.No.22034/5-2004-Estt.(D) issued by DoPT.
11. **Annexure R2(c)** - True copy of the letter issued by the office of the Principal Accountant General (A&E).
12. **Annexure R2(d)** - True copy of the letter issued by the office of the C&AG.
13. **Annexure R2(e)** - True copy of the letter issued by the office of the C&AG.
14. **Annexure R2(f) series** - True copies of the O.M.No.9/13/62 – Estt. (D) and O.M.No.9/30/63 – Estt.(D) issued by Ministry of Home Affairs.