

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.736 of 2013

Reserved: 12.09.2018

Order pronounced: 17.09.2018

Between:

D. Eswara Rao, S/o. Veera Swamy,
Aged about 52 years, Occ: Senior Accountant,
O/o. Principal Accountant General (A&E),
Andhra Pradesh, Hyderabad.

... Applicant

And

1. Union of India, represented by the
Comptroller and Auditor General of India,
9, Deendayal Upadhyay Marg, New Delhi – 110124.
2. The Principal Accountant General (A&E),
Saifabad, Hyderabad – 500463.
3. The Deputy Accountant General (Admn),
O/o. The Principal Accountant General (A&E),
Andhra Pradesh, Hyderabad – 500463.

... Respondents

Counsel for the Applicant	...	Dr. A. Raghu Kumar
Counsel for the Respondents	...	Mr. V. Vinod Kumar, Sr. CGSC

CORAM:

<i>Hon'ble Mr. B.V. Sudhakar</i>	...	<i>Member (Admn.)</i>
<i>Hon'ble Mr. Swarup Kumar Mishra</i>	...	<i>Member (Judl.)</i>

ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.)}

The OA is filed against the order of the 3rd respondent in imposing penalty of reduction in pay of the applicant and confirmed by 2nd and 1st respondents on approaching them by an appeal and a petition respectively.

2. Brief facts of the case is that the applicant is working as senior accountant in the respondents organisation and is also the treasurer of the Accounts Category –III Association, office of the Principal Accountant General (A&E)

which is recognised under RSA Rules (1993) in 2001. The association is meant for safeguarding and promote interests of category III employees and improve organisational efficiency by enhancing employee productivity. In pursuance of this policy the association sought permission on different occasions to conduct general body meeting of the associations. Initially the respondents did grant permission but with the proviso that they should not use mikes and the meeting to be in an open space during lunch hour. However, despite being given such permission the applicant's association was not adhering to the conditions stipulated by the respondents to which the respondents strict objection. As this went on the showdown occurred when the applicant association asked for permission to hold the annual general body meeting on 29.6.2010 the respondents refused but the applicant association went ahead resulting in the applicant being charge sheeted under rule 16 of CCS (Conduct) Rules 1964 by invoking rule 7 (1) of the CCS (Conduct) Rules,1964 and imposed the punishment of reduction of pay for three years with no increments being earned during the punishment period. The reduction will not have any effect of postponement of future increments of pay. Aggrieved by this punishment the O.A has been filed.

3. The applicant contends that the association being recognised it should not be prevented to discharge the constitutional requirement under CCS Rules to conduct the annual general meeting. Using of mike is necessary to make the proceedings audible to all. The space available in the association room is not sufficient to conduct an annual general body meeting. Rule 7(1) of CCS (Conduct) Rules, 1964 prohibits only such demonstrations and strikes and relying on instruction on Ministry of W&H.A.V. No.366 dt 10.6.1969 which is not the nodal Ministry is misplaced. Despite asking for inquiry to defend

himself against the charges framed, it was refused. In the past many such meetings were held without any issue during lunch hour using mikes. Besides the applicants also pointed out that other associations were granted permission but they were discriminated. Imposing of punishment for having discharged his responsibility as office bearer of the association by the disciplinary authority and being confirmed by the appellate authority and the petitioning authority in a routine manner is unfair.

4. Respondents contend that the applicant being a Govt. Servant and he has to abide by the disciplinary rules. Repeatedly flaunting the orders of the administration by the applicant as General Secretary of the association breeds indiscipline and hence had to resort to disciplinary action. The disciplinary authority using his discretion has not permitted the inquiry by the applicant as the facts of the case do not warrant an inquiry. The appellate authority and the petitioning authority after due application of mind have confirmed the penalty by giving a reasoned and speaking order.

5. Heard the learned counsel on either side. Learned counsel for the applicant stated that invoking Rule 7(1) of CCS (Conduct) Rules in the charge sheet is incorrect and that a major penalty cannot be imposed by a Rule 16 charge sheet without ordering for inquiry. In the past there was no problem for conducting the meetings and now too there is no issue but only during the period of a particular officer the issue has cropped up. Inquiry asked for has been denied. The respondent counsel contended that the punishment imposed is only a minor punishment and it is up to the disciplinary authority to order an inquiry. The respondents counsel stand is vindicated by rules in regard to penalty imposed.

6. The applicant has been discharging his responsibility as an office bearer of the association referred to. The respondents were trying to usher in discipline. Both apparently appear to be correct. However, a point by point analysis will be helpful to decide the issue. The association has been conducting the meeting for years with mikes during lunch hour at the canteen. Generally lunch hour is the time which is not strictly devoted for office work. Hence the question of disturbing others usually does not arise. Govt itself recognising the association would mean it is permitted to discharge its legitimate functions. When other office associations in the same compound could conduct, denying the same to the applicant association is discriminatory. Depending on the order issued by a Ministry which is not the nodal Ministry to rein in the rights of the association is ill conceived. General, it is the nodal Ministry Instructions which are to be followed. Rule 7(1) of CCS (Conduct) Rules has been invoked in the charge sheet which reads as under:

DEMONSTRATION AND STRIKES:

No Government servant shall -

(i) engage himself or participate in any demonstration which is prejudicial to the interests of the sovereignty and integrity of India, the security of the state, friendly relations with foreign States, public order, decency or morality, or which involves contempt of court, defamation or incitement to an offence, or

(ii) 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.

7. The applicant association has conducted only a General body meeting which obviously is of a peaceful nature. It is neither a demonstration nor a strike. It was conducted during lunch hour which is a legitimate break from office work. For reaching out to a large gathering mikes are required. It was a peaceful gathering of employees to promote their interests and that of the organisation by motivating the employees for better productivity. There can be thus be no public

disorder since it is within the office premises confined to a group of employees. Had it been causing inconvenience to the general public it would have been a different matter. Therefore, when the gathering is neither a demonstration nor a strike, invoking of this article in the charge sheet is inappropriate and hence the very charge sheet is vitiated and therefore the punishment imposed. In addition preventing a recognised association to conduct its legitimate meetings by imposing unreasonable restriction is excess use of power by the authority concerned. Power has to be used in a balanced and in a restrained manner. More so, by pushing the association to a situation where they had no other alternative but to defy the order of the respondents out of sheer necessity as they too had a legitimate responsibility to discharge. When such meetings were happening over the years without any issue, it is not understood as to why such restrictions have been imposed. Even after the charge sheet when asked for inquiry the 3rd respondent did not agree which is against principles of Natural Justice. When the applicant was praying to be heard, the minimum was to hear him and decide. This would enabled the applicant to present his case effectively in a full- fledged inquiry and the respondents could have had an opportunity to know the facts through an independent and impartial source namely an inquiry officer. Reason and balance would have had a better say than in the present case where the disciplinary authority and the applicant association were at the opposite end each trying to prove their point. Respondents the power and the applicant association the resistance. Hence the conflict and the resultant exercise all the way up to the tribunal. In sum, we find that the charge sheet is technically on a wrong footing by invoking rule 7(1) of CCS (conduct) Rules. Besides, Principles of Natural Justice have been violated when ardently prayed for.

8. Hence the impugned orders issued by the 3rd, 2nd and the 1st respondents are set aside with all the consequential benefits thereof to the applicant. Action to be taken in 90 days from the date of issue of receipt of this order.

9. In the result, the OA is allowed accordingly. No order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (JUDL.)

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 17th day of September, 2018

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