

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

Original Application No. 987/2013

Date of CAV: 19.11.2018

Date of Pronouncement: 20.11.2018

Between:

Ambadas Baggi, S/o. late Ramachandra Rao Baggi,
Aged about 59 years, Occ: Senior Accountant,
O/o. Principal Accountant General (A&E), Hyderabad.

... Applicant

And

1. The Principal Accountant General (A&E),
Saifabad, Hyderabad – 500 463.

2. The Senior Deputy Accountant General (Admn),
O/o. The Principal Accountant General (A&E),
Andhra Pradesh, Hyderabad – 500 463.

... Respondents

Counsel for the Applicant ... Dr. A. Raghu Kumar

Counsel for the Respondents ... Mr. V. Vinod Kumar, Sr. CGSC

CORAM:

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

Hon'ble Mr. Swarup Kumar Mishra, Member (Judl.)

ORDER

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

The OA has been filed by the applicant being aggrieved by the order dt. 18.07.2012 of the disciplinary authority imposing the penalty of reducing the pay of the applicant to the stage of Rs.18,210 + Rs.4600/- with immediate effect for a period of one year and during the period of penalty the applicant will not earn any increments of pay and on expiry of the period of penalty the reduction will have the effect of postponing his future increments of pay, which has been confirmed by the appellant authority vide Memo. dt. 18.09.2012.

2. Brief facts of the case are that the applicant is working as Senior Accountant in the respondents organization and he is also a member of the Executive Committee of the Accounts Category III Association, office of the Principal Accountant General (A&E). All India Audit and Accounts Association served a notice to observe strike on 28.02.2012 vide the General Secretary of Accounts Category III Association letter dt. 21.02.2012 in pursuance of a 22 – point Charter of Demands adopted by the Central Trade Unions. The applicant being an officer bearer of the Association participated in the strike on 28.02.2012. The respondents have issued instructions to the staff and Members of the Association not to participate in the proposed strike and that if anybody participates in the strike, disciplinary action would be initiated. For having participated in the strike, the 2nd respondent initiated disciplinary proceedings against the applicant and aggrieved by the same, the OA has been filed.

3. The applicant contends that it was a call given by the Central Trade Unions and he had to necessarily participate in the same being a member of the Association. The Association is recognized under RS (Rules) 1993 in 2001. In a democratic manner the Association pursues the interests of the employees. One of the tools of trade union action is strike, which is usually the last resort, when everything else fails. It is incumbent upon applicant to respond to the central call of going on strike for a day. All Central Government departments have treated the absence on the strike day as dies non. Stating so, the applicant represented to the respondents to drop the disciplinary action initiated against him vide Memorandum No.PAG(A&E)/CoC/CC-II/8-340-15/2011-12/TR.No.673 dt. 22.03.2012 under Rule 16 of CCS (CCA) Rules. Thereafter, another charge

sheet vide Memo. No. PAG(A&E)/CoC/CC-II/3-340-15/2012-13/TR.No.37 dt.08/ 09.05.2012 under Rule 16(1)(b) of CCS(CCA) Rules was issued proposing to hold inquiry into the charge in continuation of earlier charge memo dt. 22.03.2012. Having issued charge sheet under Rule 16(1)(b), without holding inquiry the disciplinary authority vide order dt. 18.07.2012 has imposed a major penalty of reduction of pay of the applicant to the stage of Rs.18210/- + Rs.4600 with immediate effect for a period of one years and during the period of penalty he will not earn any increments of pay and on expiry of the period of penalty, the penalty will have the effect of postponing his future increments of pay. The applicant claims that he sought time for preferring appeal. But, without conceding his request, the 1st respondent being appellate authority has confirmed the punishment imposed by the disciplinary authority vide Memo. No. PAG(A&E)/CC/CC-2/8-340-15/2012-13/TR dt.18.09.2012. The applicant claims that the appellate authority has power to issue notice for revision of penalty within six months as per the provisions of CCS (CCA) Rules, 1965 and that the appellate authority can interfere with the penalty only after the appeal is preferred by the employee. In the present case, the applicant did not prefer an appeal. Therefore, the orders of the appellate authority are vitiated. The applicant through his appeal dt. 21.09.2012 has brought to the notice of the appellate authority the illegalities that have crept into the appeal proceedings. Without examining the same, the appellate authority advised the applicant to prefer an appeal to the C & AG which is also illegal and arbitrary. Keeping this in view, the applicant made a revision petition to the Comptroller & Auditor General of India, but withdrew it vide his representation dt. 14.05.2013.

4. The respondents resist the claim of the applicant stating that Rule 7 of CCS (Conduct) Rules prohibits a Government servant from participating in demonstrations/ Dharnas. They also contend that there is no common disciplinary authority for all the departments/ offices. The Disciplinary authority in each department is free to exercise his judgment based on the merits of the case as assessed by him. The respondents claim that to impose a major penalty, the charge sheet should necessarily be issued under Rule 16(1)(b) and therefore, in continuation of the earlier charge sheet issued under Rule 16, charge sheet under Rule 16(1)(b) was issued. The applicant did admit that he had participated in the strike and based on his admission, penalty order referred to above has been issued. As per rule, charged official has to submit appeal within 45 days of the receipt of the punishment order imposed by the disciplinary authority. After expiry of the said period, the applicant sought time on multiple occasions, but he did not submit his appeal. Hence, the appellate authority examined the merits of the case and confirmed the penalty imposed by the disciplinary authority.

5. Heard learned counsel and perused the documents on record. Learned counsel for the applicant argued that since the strike was only for a day, most of the central government organizations have treated it as dies non. It was a legitimate activity of a trade union to respond to the call of the central union. It is not a fraud committed by the applicant that it has to be viewed so seriously as to initiate disciplinary action. It is a collective action which has to be viewed from a broader perspective of trade union rights. The respondents proceeding against the applicant is too harsh and more so, when similarly placed and other organizations have treated the same as dies non and the respondents action needs to be annulled. Learned counsel for the respondents forcefully argued that a

government servant cannot be indisciplined. Participation in a strike is an indisciplined action. Therefore, the respondents are right in their own way to initiate action against the errant applicant. If such action is not taken, then administering a huge organization like the one in question will come to standstill. Therefore, the OA is to be dismissed.

6. It is a fact that the applicant has participated in the All India Strike called by the Central organizations. The applicant has admitted that being a member of the Association, he had to participate to further the cause of the employees. The applicant claims that in most of the central government departments, absence on strike day was treated as dies non. The respondents instead of following the same as has been followed by the other central government departments initiating disciplinary proceedings against is unfair. The respondents claim that since the applicant has violated the disciplinary norms, he has to be proceeded against as per rules. The claim of the respondents is correct to this extent. They did issue Rule 16 charge memo, but in order to impose a major penalty, a fresh charge sheet under Rule 16(1)(b) was issued. While issuing the fresh charge sheet under Section 16(1)(b), the respondents are expected to drop the earlier charge sheet which they have not done. Even after issuing charge sheet under Section 16(1)(b), the mandatory requirement of conducting inquiry was overlooked. The respondents claim that since the applicant has admitted that he had participated in the strike, there was no necessity of inquiry to be conducted. This is incorrect since the respondents themselves have issued fresh charge memo under Rule 16(1)(b) of CCS (CCA) Rules. The essential element of Rule 16(1)(b) is to conduct an inquiry and give an opportunity to the applicant to defend himself. The main premise of Rule 16(1)(b) is an inquiry. Even if the

applicant were to admit in his written representation, the same is to be got confirmed in the inquiry by intimating the charges levelled and his defence, if any. Otherwise, the very purpose of issuing Rule 16(1)(b) charge memo is defeated. As the respondents have not followed the procedure prescribed under Rule 16(1)(b), the fresh charge sheet issued is vitiated and consequently, the punishment that has been issued pursuant to the said charge sheet is stands invalid. The contention of the applicant that the appellate authority has confirmed the punishment without making an appeal is incorrect. The appellate authority has given him ample opportunities to prefer an appeal. As he did not do so, the appellate authority has every right to revise the penalty order. However, as an inquiry stipulated under Rule 16(1)(b) was not followed the charge sheet is void and the punishment imposed thereof has to go. Hon'ble Supreme Court has stated that rules have to be strictly followed in T.Kannan and ors vs S.K. Nayyar (1991) 1 SCC 544 wherein it was held that "*Action in respect of matters covered by rules should be regulated by rules*". Again in Seighal's case (1992) (1) supp 1 SCC 304 the Hon'ble Supreme Court has stated that "*Wanton or deliberate deviation in implementation of rules should be curbed and snubbed.*" In another judgment reported in (2007) 7 SCJ 353 the Hon'ble Apex court held "*the court cannot de hors rules*". In view of the above, as the respondents have failed to follow the rules, their action is irregular and arbitrary. Hence, the OA fully succeeds.

8. Therefore, the orders issued by the respondents vide Memo. No.PAG(A&E)AP/CoC/CC-II/8-340-15/2012-13 dated 18.07.2012 of the 2nd respondent and Memo. No. PAG(A&E)/CC/CC-2/8-340-15/2012-13/TR dated 18.09.2012 of the 1st respondent are quashed. The respondents are directed to consider:

i) restoring the pay and allowances of the applicant and other consequential benefits as are due to him consequent to the quashing of the impugned orders cited above.

ii) Time allowed is three months from the date of receipt of copy of this order.

9. OA is allowed as above, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (JUDL.)

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

Dated, the 20th day of November, 2018