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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH.

Original Application No.499 of 1993.

Date of decision : February 10, 1994.

K.K.Bhanot

...

Applicant.

Versus

Union of India and another ...

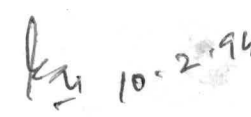
Respondents.

(FOR INSTRUCTIONS)

1. Whether it be referred to the Reporters or not ? *Ad*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not ? *Ad*


(H. RAJENDRA PRASAD)
MEMBER(ADMINISTRATIVE)

10 FEB 94


(K.P. ACHARYA)
VICE-CHAIRMAN.

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Respondents.

For the applicant ...

M/s. M. M. Basu,
A. Mohanty,
D. Chakraborty,
B. Mohanty, D. Dey,
P. Pattajoshi, Advocates.

For the respondents ...

Mr. Akhyaya Kumar Misra,
Addl. Standing Counsel
(Central)

CORAM:

THE HON'BLE MR. K. P. ACHARYA, VICE-CHAIRMAN

A N D

THE HON'BLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN)

ORDER

K. P. ACHARYA, V.C., In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays to quash the disciplinary proceeding initiated against him and a further prayer is made to direct the respondents to reinstate the applicant and to pay all back wages to the applicant from 1986.

2. Shortly stated, the case of the applicant is that he was an employee under the Indian Council of Agricultural Research and was posted as Scientist Gr. II

in the Central Inland Fisheries Research Institute, at Barackpur(W.B.) and was transferred to Fresh Water ACquaculture Training Centre, at Kausalyagang. On 14.8.1985 the applicant prayed to grant him leave for two years with effect from 1.10.1985 and permission to leave headquarters to prosecute studies under the Head of Zoology Department of Punjab University, in order to obtain a Ph.D.degree. Leave was not sanctioned. The applicant was found absent from duty and hence a disciplinary proceeding was initiated against him and ultimately an order of removal from service was passed against the applicant on 20.12.1988. This Bench was moved to quash the order of punishment. This formed subject matter of O.A.340 of 1990 disposed of on 8.7.1992. Enquiry was dispensed with on the ground that it was not reasonably practicable to hold an enquiry. The Bench came to the conclusion that the case did not come within the purview of the law laid down by the Hon'ble Supreme Court in the case of Union of India and another vrs. Tulsiram⁴/Patel and others reported in 1985(2) SLJ 145 and in the case of Satyavir Singh and others vs. The Union of India and others reported in 1986(1)SLJ 1. This Bench quashed the order of removal imposed on the applicant and directed a regular enquiry to be conducted against the applicant. The enquiry is now in progress. At this stage, the applicant has come up with the aforesaid prayer.

3. No counter has been filed despite the fact that several adjournments were given from 17.9.1993 till 20.1.1994. For this reason, prayer of Mr. Akhyaya Kumar

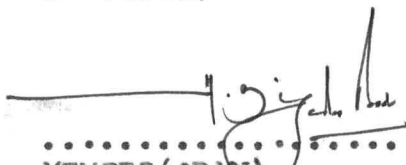
Misra to grant further adjournment has been rejected.


4. We have heard Mr. M. M. Basu, learned counsel for the applicant and Mr. Akhyaya Kumar Misra, learned Addl. Standing Counsel (Central) for the respondents. It is not necessary to dilate over the details of this case. Since the Bench has already demanded the case for further enquiry, we cannot sit over the judgment as an appellate authority. We are bound by the findings and directions given by the Bench in the judgment passed in O.A. 340 of 1990. Therefore the question of quashing the proceeding does not arise and this part of the prayer stands dismissed. However, we would direct the Enquiry Officer to hold day to day enquiry and ~~dispose of the enquiry and~~ submit his report to the disciplinary authority within 90 days from today and within 30 days from the date of submission of the enquiry report, the disciplinary authority would pass final orders failing which the Bench will consider the quashing of the proceeding. In case, the applicant takes any adjournment, the period of adjournment taken by the applicant shall be added to the stipulated period mentioned above.

5. As regards payment of back wages, the allegation is under enquiry and the applicant has not rendered any service to the Department. No enquiry could be conducted against an officer who is not a Government servant. Since an enquiry is being conducted against a Government Officer, it would be deemed that he is under suspension and therefore we would direct

subistence allowance as per Rules be paid to the applicant with effect from 8.7.1992 namely the date on which the judgment in O.A. 340 of 1990 was passed. We would further direct that the arrear subsistence allowance as per Rules be calculated and paid to the applicant within 30 days from the date of receipt of a copy of this judgment failing which consequences of law would follow against the respondents. Though Mr. Basu pressed on us that subsistence allowance should be paid from April, 1986, we keep this matter open namely whether the applicant is entitled to subsistence allowance with effect from April, 1986 to 7.7.1992. We give liberty to the applicant to agitate this matter at the appropriate stage.

6. Thus, this application is accordingly disposed of.
NO costs.


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MEMBER (ADMIN)
10 FEB 94


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VICE-CHAIRMAN.

Central Admn. Tribunal,
Cuttack Bench, Cuttack.
February 10, 1994/Sarang, Sr.P.A.

