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CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.259 OF 1996.

Cuttack this the 7th day of March, 1997.

Chanchalesh Bhattacharya. Applicant.

Versus.

Accountant General (Audit-II), Orissa
and another. Respondents.

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

S. Somnath Som
(S. SOM)
VICE- CHAIRMAN 7.3.97

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CORAM :

THE HONOURABLE MR. S. SOM, VICE-CHAIRMAN.

Chanchalesh Bhattacharya,
Audit Officer (Retired)
Office of the A.G. (Audit-I),
Orissa, Bhubaneswar.

.... Applicant.

By the petitioner

: In person.

Versus.

1. Accountant General (Audit-II)
Office of the A.G. II, Orissa,
Bhubaneswar.

.... Respondents.

2. Comptroller and Auditor General of India,
10, Bahadur Shah Zaffar Marg, New Delhi
and Union of India and others.

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Mr. Ashok Mohanty,
Senior Standing Counsel (Central)

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O R D E R.

S. SOM, VICE-CHAIRMAN : This is a petition under Section 19 of the
Administrative Tribunals Act, 1985 filed by C. Bhattacharya,
retired Audit Officer of the office of Accountant General
(Audit-I), Bhubaneswar. The respondents are Accountant General
(Audit-II) (respondent No.1) and Comptroller and Auditor General
of India, New Delhi (respondent No.2). The petitioner argued
his case in person and full opportunity was given to him to
put forth his submissions. In his petition as also in course
of his oral submissions, the petitioner has made the following

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three monetary claims.

- (1) 21% penal interest on Rs.862/- for the period from October, 1992 to 11.11.1996.
- (2) Payment of lodging charges for Rs.5,142.05 paise along with interest on the amount at 21% from 7.4.1992 to 16.1.1994 ; and
- (3) Payment of Rs.2.50 lakh as compensation for causing injury by disobedience of law.

Before considering the submissions of the petitioner, the facts of the case can be briefly stated.

2. The petitioner, prior to his superannuation, was an Audit Officer in the office of the Accountant General, Orissa, Bhubaneswar. His work involved supervision of audit parties in the field. He had the programme to inspect two audit parties i.e. Party No.3 and Party No.6 at Bhawanipatna from 11.5.1992 to 2.6.1992. For this period, for the reasons which would be discussed below, 8(eight) days from 24.5.1992 to 31.5.1992 were treated not as duty but as dies non and the petitioner was asked to apply for leave for this period.

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Subsequently, this period has been treated as duty and the salary of the petitioner for this period has been paid to him. This apparently amounts to Rs.862/- and on this amount, the petitioner has claimed interest at 21% from October, 1992 to 11th November, 1996. Secondly certain lodging charges claimed by him while on tour from October, 1992 to January, 1994 on different occasions for 34(thirty-four) days of tour were disallowed in part and on this account, he has claimed Rs.5,142.05 paise along with penal interest on that amount

at 21% from 7.4.1992 to 16.1.1994. Lastly he has claimed that the respondents have unlawfully withheld the lodging charges from being paid to him as also interest due on his salary for eight days and on lodging charges not paid and thereby caused injury to him. On this ground he has made a claim of Rs.2.50 lakh in torts against the respondents.

3. Before proceeding in the matter further, I must record that the petitioner at different places of his petition made certain totalling mistakes regarding his claim thereby complicating the matter. Two such mistakes are there at page 5 of his petition. For the purpose of determining his claim, I have taken the correct totalling figures. The difference is generally a rupee or a few paise. But as the petitioner has been very vocal about the last paise of his claim, it is necessary for me to mention this.

4. Taking up his first claim about payment of interest on the salary for eight days amounting to Rs.862/-, the circumstances under which the Accountant General initially disallowed those eight days as duty and treated those days as dies non have to be mentioned.

5. As earlier noted, the petitioner as Audit Officer was asked to take up supervision of Audit Party No.3 auditing the office of the Civil Supplies Officer, Bhawanipatna from 11.5.1992 to 20.5.1992 and from 1.6.1992 to 2.6.1992. In between i.e. from 21.5.1992 to 30.5.1992 he was required to supervise the Audit Party No.6 which was auditing the office of the Lift Irrigation Division, Bhawanipatna. This party completed the audit on 23.5.1992 surrendering six working days

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from 25.5.1992 to 30.5.1992 and reported at Headquarters for being deputed for further audit work. The petitioner who was required to supervise the work of this Audit party No.6, however, did not report at Headquarters but took up, on his own, supervision of Audit party No.3 from 24.5.1992 onwards instead of from 1.6.1992. As his stay at Bhawanipatna purportedly for the purpose of supervising the work of Audit party No.3 was not authorised, this period was treated initially as dies non. The petitioner in his representation to the departmental authorities claimed as is borne out by the Accountant General's letter dated 28.10.1994 (Annexure-C to the petition) that he had sent the revised programme through the Audit party No.6 returning from Bhawanipatna; but as a matter fact this was denied by the Audit party No.6. In his petition, as also in course of his oral submissions before me, the petitioner claimed that he had sent a note on 22.5.1992 through normal post regarding the modification of the programme done by him but no orders on this were received by him. It is submitted by the learned Senior Standing Counsel for the respondents that this letter was received by the respondents only on 28.5.1992 and naturally there was no time to communicate any orders to him. The petitioner has made much of the fact that by S.T.D., Trunk call, telephone or a letter by a special messenger instructions could have been sent to him and the time for such instruction to reach him would have ranged between five minutes to one day. But he, on his own part, did not intimate the Headquarters by any of those methods of despatch of information. His original

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statement that he sent the revised programme through the departing Audit party is not borne out by his application before me as also his oral submissions. The Accountant General, therefore, would have been perfectly right to treat this period of eight days as dies non which he had done initially. It is a fact that the audit parties have to work far away from the Headquarters and instances are not rare when some members or the party are not found at their place of work. That is why instructions with regard to functioning of audit parties and the supervisory officers are rather strict and these are generally strictly applied. Considering this, the original order of the Accountant General treating this period as dies non cannot be held to be unreasonable. But subsequently in view of superannuation of the petitioner, the Accountant General has been kind enough to treat this period as duty. This, to my mind, is a favour shown to the petitioner and it is not reasonable on his part to claim interest on this amount that too at 21% for the period mentioned earlier. His claim originally was rightly withheld and has been allowed subsequently as a matter of favour to him. Thereby no right has accrued to him to get interest on that amount. This prayer is, therefore, rejected.

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6. The second prayer of the petitioner is regarding disallowing the lodging charges and interest on that. These claims fall into two parts. For April, 1992 and May, 1992 he has claimed an amount of Rs.3, 242.05 paise as the amount disallowed from his gross claim for these two months. Another amount relating to March, 1993, December, 1993 and January, 1994 amounting to Rs.1900/-

has been disallowed basing on A.G.'s circular No.58 dated 12.4.1991. These two disallowed claims together come to Rs.5,142.05 paise. The case of the petitioner is that he was asked to supervise the Audit party at Rairakhol. But during the relevant period he did not stay at Rairakhol but stayed at Sambalpur which is at a distance of 65 Kms. approximately from Rairakhol. According to the office order dated 12.4.1991 of the Accountant General(Audit), Orissa, which is at Annexure-K to the petition, it was laid down that no member of the local audit party will be permitted to stay at a place other than the place of duty or beyond a distance of 40 Kms from the place of duty. It was further laid down in this circular that on reaching the new tour station intimation regarding non-availability of boarding and lodging facilities at the place of duty and the intention of the person concerned to stay at a particular place where these facilities are available should be given to the Headquarters along with his temporary residential address. This intimation was required to be sent to the Headquarters by each member of the party on the day on which he reaches the place of duty. He is also required to intimate the distance between the place of duty and his intended place of stay. In this case, the other members of the audit party did stay at Rairakhol but the petitioner instead of staying at Rairakhol, went to Sambalpur and stayed there and as Sambalpur is beyond 40 Kms. from Rairakhol, his lodging charges for this period had been disallowed. It has been submitted by the petitioner that at Rairakhol there were no lodging facilities and as such, he was forced to go to Sambalpur

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and stay there even though it is beyond 40 Kms. from Rairakhol. The petitioner, however, admitted in course of his oral submissions that the audit party whose work he was required to supervise at Rairakhol did stay at Rairakhol. He stated that the audit party stayed in the jungles and he could not be expected to do so. It is not ^{100m} believable that the audit party stayed in the jungle. They must have found some accommodation for themselves and the petitioner could have stayed there. In any case, the purpose of fixing a distance of 40 Kms. within which the members of the audit party are obliged to stay is to ensure that much time is not taken for coming to the place of audit from the place of stay. It cannot be said that such an instruction is unreasonable. The petitioner could have stayed with the audit party and had his food at some nearby Dhaba. He is apparently accustomed to taking food at Dhabas which is borne out by the fact that he had obtained a certificate about his stay at Bhawanipatna with regard to the first claim discussed earlier, from the local Dhaba owner whom he must have patronised in course of his stay. This is borne out by Annexure-B to the petition. I, therefore, find nothing wrong in the order of the Accountant General in disallowing the lodging charges as detailed earlier and this claim of the petitioner is therefore rejected. Consequently therefore, his claim for interest on this amount also fails.

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7. The petitioner's last claim is about payment of Rs.2.50 lakh as damages in torts. In view of my negation of his first two claims, there is obviously no basis for a

claim for damages. In any case, such a claim cannot be agitated in a petition like this. A claim for payment of damages for a civil wrong has to be agitated before the appropriate Civil Court. As such, this claim is also held to be totally misconceived and is rejected.

8. In the result, therefore, all the claims of the petitioner having been rejected, the petition is held to be devoid of any merit and is dismissed. No order as to costs.

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VICE-CHAIRMAN. 7.7.97

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