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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 518 OF 1998

Cuttack, this the 20th day of July, 2000

Miss. C.T.M.Suguna Applicant

Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? *Yes*.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *No*.

(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
20.7.2000

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 518 OF 1998
Cuttack, this the 20 th day of July, 2000

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....
Miss. C.T.M.Suguna, IAS, aged about 38 years, daughter of
late C.T.Marudhachalan, working as Director of Industries,
Near Barabati Stadium, P.O-Buxibazar, District-Cuttack

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Applicant

Advocates for applicant-M/s Ganeswar Rath
S.N.Misra
A.K.Panda
S.R.Mohanty
T.K.Prahraj

Vrs.

1. Union of India, represented by its Secretary, Department of Personnel & Training, New Delhi.
2. State of Orissa, represented by the Principal Secretary, General Administration Department, Secretariat Building, Bhubaneswar, District-Khurda.
3. Accountant General, Orissa, Bhubaneswar, District-Khurda.

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Respondents

Advocate for respondents-Mr.A.K.Bose
Sr.CGSC(for R-1)
Mr.K.C.Mohanty
Govt.Advocate
for R-2.

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SOMNATH SOM, VICE-CHAIRMAN ORDER

In this application, the petitionier, who is a member of Indian Administrative Service, Orissa Cadre (1989 Batch), has prayed for quashing the order dated 24.8.1989 at Annexure-2 and for a direction to the respondents to pay the arrears of Dearness Allowance from 1.1.1998 to 31.7.1998 to the applicant in cash. The State Government have filed

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counter opposing the prayers of the applicant. Government of India have not filed counter, but the learned Senior Standing Counsel Shri A.K.Bose appearing for Government of India submitted that the matter relates to a policy decision of the State Government and beyond this he has no submissions to make. It is not necessary to refer to the averments made by both the sides in detail because these would be considered at the time of discussing the submissions of the learned counsel of both sides. In any case the facts of the matter are not disputed. We have heard Shri Ganeswar Rath, the learned counsel for the petitioner, Shri K.C.Mohanty, the learned Government Advocate for State Government and Shri A.K.Bose, the learned Senior Standing Counsel for Union of India and have perused the records. The learned Government Advocate has cited the following decisions which have also been taken note of:

- (i) S.A.Khan v. State of Haryana, AIR 1993 SC 1152;
- (ii) K.P.Gupta v. Controller, Printing & Stationary, AIR 1996 SC 408; and
- (iii) State of Punjab & others v. R.L.Baga,etc., AIR 1998 SC 1703.

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2. The applicant has stated that under Rule 3 of All India Services (Dearness Allowance) Rules, 1972, every member of the Service shall be entitled to draw Dearness Allowance at such rates and subject to such conditions as may be specified by Central Government from time to time in respect of officers of Central Civil Services, Class-I. It is also admitted that Government of India in their order dated 13.4.1998 at Annexure-1 granted Dearness Allowance at the rate of 16% of the pay from 1.1.1998. In this order in paragraph 3 it was mentioned that additional D.A. payable under these orders shall be paid in cash to all Central Government employees including armed forces and Railway personnel. It is stated that as Central Government employees

have been allowed Dearness Allowance from 1.1.1998 in pursuance of the order at Annexure-1, the petitioner is entitled to DA at the rate of 16% from 1.1.1998 and subject to the same conditions. Government of Orissa in their order dated 24.8.1998 allowed DA at 16% ^{of pay} to All India Service Officers from 1.1.1998. But in paragraph 2 of the order the State Government have directed that arrears of DA from 1.1.1998 to 31.7.1998 would be credited to the respective GPF accounts of the concerned members and from 1.8.1998 it would be paid in cash. In respect of members retiring by 31.12.1998 it has been ordered that the entire amount of additional instalment of DA would be paid in cash. The petitioner's grievance is that this additional instalment of DA from 1.1.1998 to 31.7.1998 should have been paid to her in cash and should not have been ordered to be credited to her GPF account. She has also stated that under the relevant GPF Rules it is for the subscriber to determine the quantum of subscription to be made by him or her to the GPF subject to a minimum and on that ground she has come up with the prayer referred to earlier.

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3. The State Government in their counter have taken the stand that against the order at Annexure-2 the applicant has a statutory remedy under Rule 16 of All India Services (Discipline & Appeal) Rules, 1969 which lays down that against any order passed by the State Government varying the conditions of service of a member of All India Service/he or she has a right of appeal to Central Government. It is submitted that as the applicant has not availed of this remedy, the present petition is not maintainable. In support of the above contention the learned Government Advocate has relied on K.P.Gupta's case (supra) and S.A.Khan's case(supra)

It is stated by the State Government that in the order at Annexure-2 the State Government have already ordered for payment of the amount of DA instalment sanctioned by Government of India in their order at Annexure-1 and the applicant has no cause of action. It is further stated that salary and allowances of the applicant are being borne by the State Government and they have taken a conscious decision in the matter of payment of arrears to the employees under its control. The same condition of payment of arrear instalment from 1.1.1998 to 31.7.1998 has also been made applicable to the State Government employees. It is stated that stringent financial position of the State Government does not permit payment of arrears of instalment of DA in cash. This is a policy decision of the State Government. As regards the applicant's averment regarding violation of the provisions of All India Services (Provident Fund) Rules, it is stated that impounding of arrears of DA instalment or DA is not the same thing as subscription to provident fund and thus the relevant provision of All India Services (Provident Fund) Rules, 1955 is not attracted. On the above grounds, the State Government have opposed the prayer of the applicant.

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4. Before considering the various submissions of the learned counsel for both sides the precise nature of the present controversy has to be stated. In order dated 13.4.1998 Government of India have ordered for payment of DA at the rate of 16% of pay for Central Government employees. That does not, however, mean that the entire 16% of DA is being paid for the first time from 1.1.1998. Prior to this, from 1.7.1997 the rate of DA was increased to 13% of basic pay. Thus, in this order at Annexure-1 the Central

Government have allowed another 3% of DA making it 16% of pay. So far as the earlier rate of DA at 13% from 1.7.1997 the applicant is getting the same in cash. The present controversy is only with regard to the additional 3% which has been allowed from 1.1.1998. The second point to be noted is that the State Government in their order dated 12.8.1998 had sanctioned DA instalments on the pattern of DA allowed by the Central Government, to the State Government employees from 1.7.1996 and with regard to the period from 1.1.1998 till 31.7.1998 which is the period with which we are concerned in this case, for State Government employees also, the State Government have directed that the amounts should be credited to the provident fund account of the concerned State Government employee and from 1.8.1998 the amount should be paid in cash.

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5. The first point urged by the learned Government Advocate is that as the applicant has not filed any appeal to the Central Government, the application is not maintainable. We find some force in this contention because the applicant's case is that under the relevant rules relating to payment of DA to all-India Service officers referred to by us earlier, she is to get DA at the same rate and subject to the same conditions as are applicable to officers of Central Civil Services, Class I. All India Service officers are working in all the States and while sanctioning them DA as per the rates announced by Government of India, the State Governments have in the past impounded the DA in the manner complained of by the applicant. Thus, the

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applicant's grievance though individual in nature has large all-India implications and for considering this in the proper perspective the applicant should have at the first instance filed an appeal to Government of India. Rule 16 of All India Services (Discipline & Appeal) Rules, 1969 under which the applicant has a right to file appeal against the order at Annexure-2 is quoted below:

"16. Orders against which appeal lies.-Subject to the provisions of Rule 15 and the explanations to Rule 6, a member of the Service may prefer an appeal to the Central Government against all or any of the following orders, namely:

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(iii) an order of a State Government which -

- (a) denies or varies to his disadvantage his pay, allowances or other conditions of service as regulated by rules applicable to him; or
- (b) interprets to his disadvantage the provisions of any such rule;

xx xx"

As the State Government have ordered for impounding of her arrear instalment of DA from 1.7.1998 to 31.7.1998 and the applicant has not been paid the amount in cash, the order is certainly to the disadvantage of the applicant and therefore, an appeal would lie under the above Rule to Government of India. In this case the arrear instalment of DA for the above period has already been sanctioned by the State Government and presumably credited to her Provident Fund account. Therefore, there is no urgency in the matter which prevented the applicant from filing an appeal to Government of India. In view of this, we dispose of the Original Application by holding that as the applicant has not exhausted the statutory remedy the present application is not maintainable. The

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applicant, if she is so advised, may file an appeal to Government of India, more specifically to respondent no.1. We also direct that in case such an appeal is filed by the applicant, then respondent no.1 should dispose of the same within a period of 120 days from the date of the receipt of the appeal.

6. In the result, the O.A. is disposed of in terms of the observation and direction above but without any order as to costs.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
20.7.2000
VICE-CHAIRMAN

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