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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 316 OF 2000
Cuttack, this the 12th day of February 2001

Karan Chand Mishra

....Applicant

Vrs.

Principal, Kendriya Vidyalaya 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.*

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(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
12.2.2001

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 316 OF 2000
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CORAM:

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

.....
Karan Chand Mishra, aged about 58 years,
son of late Bhikari Mishra, At-Godabarish Nagar,
P.S-Baidyanathpur, Berhampur, Dist.Ganjam, at present working
as Post Graduate Teacher in Economics, At-Kendriya Vidyalaya,
Berhampur, At-Ambapura, P.O-Engineering School, Berhampur,
District-Ganjam

.....
Applicant

Advocates for applicant - M/s I.C.Dash
K.Rath
D.Rath

Vrs.

1. Principal, Kendriya Vidyalaya, P.O-Engineering School,
Berhampur, Dist.Ganjam.
2. Asst.Commissioner, Kendriya Vidyalaya Sangathan, Regional
Office, H.P-7, Laxmisagar, Bhubaneswar, Dist.Khurda.
3. Commissiner, Kendriya Vidyalaya Sangathan,
18-Institutional Area, Saheedjeet Singh Marg, New
Delhi-16.

..... Respondents

Advocate for respondents-Mr.Ashok Mohanty

ORDER

SOMNATH SOM, VICE-CHAIRMAN

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In this O.A. the petitioner has prayed for a declaration that the proviso in paragraph 7 of the punishment order dated 7.7.1994 at Annexure-3 is illegal and unjustified. He has also prayed for a declaration that the process of recovery of subsistence allowance directed in orders dated 24.5.2000 (Annexure-5) and dated 29.6.2000 (Annexure-6) be set aside and has also asked to quash the process of recovery of subsistence allowance.

2. By way of interim relief, the applicant had

prayed for staying operation of the orders at Annexures 5 and 6 and the process of recovery till the disposal of the O.A. In order dated 18.7.2000 after hearing the learned counsel of both sides, the order of recovery of subsistence allowance was stayed for a period of fifteen days from the date of filing of the counter after serving copy of the same on the petitioner. The respondents have filed showcause and had submitted on 24.1.2001 that the showcause filed by them may be treated as counter.

3. We have heard Shri I.C.Dash, the learned counsel for the petitioner and Shri Ashok Mohanty, the learned Senior Counsel for the respondents and have also perused the records.

4. The admitted position is that while the petitioner was working as Vice-Principal, Kendriya Vidyalaya, Bhubaneswar, in order dated 31.5.1990 (Annexure-1) he was placed under suspension with immediate effect pending initiation of departmental proceedings against him. The applicant challenged the said proceedings in OJC No. 5809 of 1991 which was disposed of in order dated 20.1.1992 (Annexure-2) with a direction to complete the enquiry within a period of three months from the date of the order and to pass final orders within two months therefrom. The Inquiring Officer submitted his report on 21.4.1992 holding the applicant guilty. The report of enquiry was supplied to him and he was asked to submit his explanation. According to the applicant, at this stage, the Inquiring Officer submitted another enquiry report on 15.11.1993. The applicant filed representation on 24.2.1994 objecting to the impropriety of a subsequent enquiry report. The disciplinary authority considered the enquiry report and passed the punishment order

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at Annexure-3 in which he accepted the finding of the Inquiring Officer holding the charge as proved. The disciplinary authority imposed the penalty of reduction to the lower post of Post Graduate Teacher until he is found fit by the competent authority to be restored to the higher post of Vice-Principal with the further direction that he will not regain his original seniority in the higher post of Vice-Principal. It was also ordered that the applicant's suspension is revoked with immediate effect with the proviso that the period of suspension will be treated as leave of the kind due and admissible under the Rules. The applicant's grievance is against this direction of treating the period of suspension as leave of the kind due and admissible. Against the order of punishment, the applicant filed an appeal in his representation dated 25.8.1994 at enclosure to Annexure-4. He has stated that even during the pendency of his appeal, in the impugned order dated 24.5.2000 at Annexure-5 he was informed that at the time of his suspension he had 4 days of EL and 129 days of Half Pay Leave, and after recasting of EL, Half Pay Leave and Extraordinary Leave, the period of suspension from 7.6.1990 to 20.10.1990 has been treated as leave with full pay and half pay, and the period from 21.10.1990 till 20.8.1995 has been treated as extraordinary leave. He has been further informed that for the period of suspension of which the period from 21.10.1990 to 20.8.1995 having been treated as extraordinary leave, he is due to refund Rs.22,5,961/- In the same order, for different dates indicated in the order from 21.8.1995 to 30.4.2000, another amount of Rs.21,004/- has also been shown as recoverable towards overpayment on account of extraordinary leave. He has been asked to refund the above amount, otherwise recovery

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would be effected from his salary and other payments. In a subsequent letter dated 29.6.2000 (Annexure-6) he has been informed that subsistence allowance paid to him will be deducted from his salary with effect from July 2000 as he has not paid back the amount which has been calculated as Rs.2,25,961/- . In the context of the above, the applicant has come up with the prayers referred to earlier.

5. Before proceeding further, it must be noted that neither the applicant nor the respondents have specifically mentioned the date on which the applicant was put under suspension and the date on which after revocation of the suspension in pursuance of the order dated 7.7.1994 (Annexure-3) he joined his duties. But from the impugned order at Annexure-5 it appears that the applicant was under suspension from 7.6.1990 to 20.8.1995, i.e., for a period of more than five years. The respondents have pointed out that the appeal filed by the petitioner against the punishment order has been disposed of in order dated 2.5.1995. In the present application, the petitioner's grievance is only with regard to the order treating the period of suspension as leave due and admissible and the consequential order of recovery of Rs.2,25,961/- from his salary. From Annexure-6 it appears that this amount represents the subsistence allowance received by the applicant during the period of suspension after adjusting the leave salary payable to him during the period of half pay and full pay leaves granted to him from 7.6.1990 to 20.10.1990 out of the above period of suspension.

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6. It is seen that the order of punishment in this case has been issued on 7.7.1994 which contains the direction about treating the period of suspension as leave due and admissible. The respondents have stated in the showcause that his appeal has been disposed of on 2.5.1995.

In the rejoinder filed by the applicant, he has stated that he has no knowledge about disposal of the appeal till the filing of the showcause. The first point which arises for consideration is, if under the circumstances the present prayer of the applicant is barred by limitation. We note that the direction regarding treating the period of suspension as leave due and admissible is not a punishment. Different types of punishment which can be imposed under Central Civil Services (Classification, Control & Appeal) Rules, 1965 have been specifically mentioned in Rule 11. This direction is thus a consequential order to the penalty imposed on the applicant. The second aspect of the matter is that even though this order has been issued on 7.7.1994, the respondents have initiated the action for recovery of the subsistence allowance from the applicant in their order dated 24.5.2000 (Annexure-5). In view of this, we hold that the prayer of the applicant is not barred by limitation.

7. The next question for consideration is whether, under the circumstances mentioned above, the subsistence allowance can be recovered from the applicant. The respondents have stated that this is permissible in accordance with the circulars dated 25.4.1953, 22.2.1954 and 2.3.1954. The gist of these circulars has been printed at pages 253 and 254 of Swamy's Compilation of CCS CCA Rules, 24th Edition. It has been mentioned therein that a question has arisen whether in cases where the period of suspension is ordered to be treated as one spent on leave and when on conversion it is found that the greater part of the period is to be treated as extraordinary leave for which no leave salary is admissible, the recovery of the subsistence allowance already paid would be in order. The Ministry of

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Finance in consultation with the Comptroller & Auditor General of India, have decided that in the case of persons who are not fully exonerated, the conversion of the period of suspension into leave with or without allowances has the effect of removing the stigma of suspension and all the adverse consequences following therefrom. The moment the period of suspension is converted into leave, it has the effect of vacating the order of suspension and it will be deemed not to have been passed at all. Therefore, if it is found that the total amount of subsistence and compensatory allowances that an officer received during the period of suspension exceeds the amount of leave salary and allowances, the excess will have to be refunded and there is no escape from this conclusion. It has to be noted that in cases where the period of suspension is covered entirely by sanction of Earned Leave or even Half Pay Leave, no question of recovery of subsistence allowance would arise because subsistence allowance is to the tune of half average pay. But in cases where a major part of the period of suspension has been treated as Extraordinary Leave, for that period the concerned employee will not be entitled to any leave salary and allowances. In the instant case, the applicant was under suspension for more than five years even though the Hon'ble High Court in their order dated 20.1.1992 in OJC No.5809 of 1991 directed that enquiry should be completed within a period of three months from that day and final order passed within two months thereafter. In other words, the final order on the enquiry report should have been passed by the respondents by 20.6.1992. Instead of that, the final order in the disciplinary proceedings has been passed after passage of more than two years from expiry of the time period fixed by the Hon'ble High Court. In their showcause

the respondents have not mentioned as to why in spite of the order of the Hon'ble High Court, so much time was taken in passing the final order in the disciplinary proceeding nor have they mentioned if they had approached the Hon'ble High Court for extending the period of time indicated by the Hon'ble High Court for finalising the enquiry and passing the final order. Thus, it is clear that the question of recovery of a large sum of more than Rs.2,25,000/- has arisen because of long period during which the applicant was kept under suspension. The law is well settled that during the period of suspension, subsistence allowance is paid to the employee for his sustenance. Thus, right to get subsistence allowance flows from the right to life not only of the delinquent employee but also of his dependants. There are also decisions of the Hon'ble Supreme Court laying down that where a suspended employee has not been granted subsistence allowance, such denial of subsistence allowance per se results in denial of reasonable opportunity to him to defend himself in the disciplinary proceedings. These developments of law arising out of different decisions of the Hon'ble Supreme Court cannot be set at naught by circulars issued about fifty years ago. In the instant case, the applicant was kept under suspension for more than five years notwithstanding a specific direction of the Hon'ble High Court to conclude the proceedings quickly, and by sanctioning extraordinary leave for a major part of the period of suspension the applicant cannot be divested of his right to get subsistence allowance. In the light of the above, we hold that the amount of subsistence allowance is not recoverable from the applicant. The orders at Annexures 5 and 6 are, therefore, held to be

legally not sustainable and are quashed.

8. In the result, therefore, the Original Application is allowed but without any order as to costs.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
12.2.2001

February 12, 2001/AN/PS