

ORDER DATED 4-9-2001.

Heard Mr. D. N. Mohanty, learned counsel for the applicant and Shri Ashok Mohanty, learned Senior Counsel appearing for the Respondents.

In this Original Application, the applicant has prayed for a direction to the Respondents 3 and 4 to release the arrear salary and other entitlements amounting to Rs. 62,147/- alongwith interest. Case of the applicant is that he joined as TGT in Sanskrit in KVS-I, Port Blair (Andaman and Nicobar Island) on 11.10.1993. After four years, he was transferred to KVS, BCCL at Dhanbad. Applicant has stated that during his incumbency at Port Blair, he was not paid arrear salary for five days from 7-12-1997 to 11-12-1997. He has stated that he joined ~~in~~ KVS, BCCL at Govindpur, Dhanbad on 12.12.1997. He has stated that 5th Pay Commission's scale was introduced w.e.f. December, 1997 by KVS and accordingly he was eligible to get salary at the revised rate from 12.12.1997 to February, 1998. Applicant has made averments about how differential salary is ~~entitled~~ ^{required} ~~and~~ to be paid to him. He has also stated that increments were withheld. He was also not allowed transfer T.A. for his transfer from Port Blair to Govindpur, Dhanbad. It is further stated that KVS, BCCL, Govindpur, Dhanbad was closed down and the applicant was transferred to KVS, Anugul. His transfer order to Anugul is dated 30.3.2000 which is at Annexure-4. He joined at KVS, Anugul on 31.3.2000. In the above context, he has come up in this Original Application with the prayers referred to earlier.

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Respondents in their counter have stated that the salary is to be paid to the applicant by KVS, Govindpur, Dhanbad which is now closed and not by KVS, Port Blair. They have stated that the same will be paid as soon as the amount is received from the BCCL, on the basis of records showing the entitlement of the applicant in accordance with rules. It is further stated that at the conclusion of minor penalty proceedings, applicant's three increments were stopped and therefore, he is not entitled to the increments. They have further stated that the Respondents are not denying any amount which is legally due to be payable to the applicant as per records and therefore, no direction need be issued by the Tribunal and the amount will be paid as per the applicant's entitlement. We have already noted the averments of the Respondents that three increments of the applicant were stopped because of punishment imposed on him in a minor penalty proceedings. In the order transferring him from KVS-I Port Blair to Dhanbad it has been mentioned that he is not entitled to Transfer TA. Applicant has asked for Transfer TA on various grounds which need not be considered by us. We have considered the averments of the Respondents that the amounts due to be paid to the applicant will be paid as per his entitlement after the same is received from the BCCL, which was the sponsoring Agency of the KVS at Govindpur, Dhanbad. We are unable to accept the above stand. The applicant is an employee of the KVS and therefore, the Respondents 2, 3 and 4 can not escape from their liability and obligation to make payment to the applicant of his salary and other emoluments strictly in accordance with rules and according to his entitlements. In view of this we

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direct the Respondents 2,3 and 4 to calculate the amount due to be paid to the applicant in respect of the claims made by him in this O.A. strictly in accordance with Rules and instructions and as per the eligibility of applicant to receive the same and pay the amount to the applicant within a period of 150 days from the date of receipt of a copy of this order. we make it clear that we are not taking a view with regard to entitlement of applicant to get the Transfer TA or the increment which has been withheld. These matters will be settled by the Respondents, 2,3 and 4 strictly in accordance with rules. we also make it clear that payment of the amount due to be paid to the applicant ~~can not be~~ withheld on the ground that the amount has not been paid by the BCCL. Respondents, 2, 3 and 4 will pay the amount and will have ^{the} right to recover the same from the BCCL or ^{the} Ministry concerned and as per the agreement between the KVS and the sponsoring agency but payment to the applicant can not be withheld because of the fact of non-recovery of the amount from the sponsoring agency or the Ministry concerned..

J M

The applicant has asked for interest. From the pleadings of the parties we find that the applicant has not averred all the facts in the O.A. He has suppressed the fact that increments were withheld on the basis of a minor penalty proceedings drawn up against him. In view of this the prayer of applicant for payment of interest is rejected.

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The Original Application is therefore, partly allowed in terms of our observations and directions made above. No costs.

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(G. NARASIMHAM)
MEMBER (JUDICIAL)

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Somnath S. M.
(SOMNATH S. M.)
VICE-CHAIRMAN (200)
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KNM/CM.

Free copy of order
off. 4/9/2001 issued
to the counsel for
both side.

S.O.
Received
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