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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.153 of 2004
Cuttack, this the 28th day of February, 2007.

Akshaya Kumar Parida ... Applicant
Versus
Union of India & Others ... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? *ym*
2. Whether it be circulated to all the Benches of the CAT or not? *ym*

ndi
(N.D.RAGHAVAN)
VICE-CHAIRMAN

ym 28/02/07
(B.B.MISHRA)
MEMBER(A)

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.**

Original Application No.153 of 2004
Cuttack, this the 28th day of February, 2007.

CORAM:

THE HON'BLE MR. N.D.RAGHAVAN, VICE-CHAIRMAN
AND
THE HON'BLE MR.B.B.MISHRA, MEMBER (A)

Sri Akshaya Kumar Parida, aged about 57 years, son of late Keshab Chandra Parida, Village/Po:Bilikana, Ps:Aul, Dist. Kendrapara, at present Senior Auditor, Office of the Principal Accountant General (Audit-I),Orissa, Bhubaneswar.

..... Applicant.

By legal practitioner: In person.

-Versus-

1. Union of India represented through the Principal Accountant General (Audit-I), Orissa, At/Po: Bhubaneswar, Dist. Khurda.
2. The Accountant General (Audit-II), Orissa, At/Po: Bhubaneswar, Dist. Khurda.
2. The Senior Deputy Accountant General (Administration), Office of the Principal Accountant General (Audit-I), Orissa, At/Po: Bhubaneswar, Dist. Khurda.
- 3.

... Respondents.

By legal practitioner: Mr. U.B.Mohapatra, SSC.

ORDER

MR.B.B.MISHRA, MEMBER(A):

Without going into unnecessary details, it would suffice to say that Shri Akshaya Kumar Parida/Applicant while working as Sr. Auditor under the Respondents was placed under suspension with effect from 09.05.1994 to 09.03.1998 vide order No.19(5) dated 05.05.1994 on account of two criminal cases instituted/under trial against him. During his suspension, he was sanctioned 50% of his basic pay as Subsistence Allowance (in short 'SA'), according to him though he was entitled to 75% of pay as SA. The Respondents revoked the order of suspension vide order 10.03.1998(Annexure-A/2). According to applicant, since his period of suspension was not regularized and he was not paid the differential pay and other allowances, he submitted representations. However, vide order dated 19.12.2003 (Annexure-A/3) the entire period of his suspension was regularized by treating the same as duty and vide order dated 19.01.2004 (Annexure-A/4) it was ordered that the applicant is entitled to pay and allowances to which he would have been entitled had he not been under suspension in terms of the provisions contained in FR 54-B(3) read with Sub-Rule-8. Thereafter vide order dated 06.02.2004 (Annexure-A/5) pay of applicant was revised. On 27.01.2004 applicant made a representation to the Principal Accountant General (Audit-I),Orissa, Bhubaneswar requesting to pass necessary orders to credit the entire differential arrears of pay and bonus to his GPF account and grant him 12% interest on the same from the date of due or else he should be paid the arrears with interest. Alleging no

action on the said request of the applicant, he has filed the present Original Application under section 19 of the Administrative Tribunals Act, 1985 with the following prayers:

“Necessary/order/orders/directions be issued to the Learned Respondents to pay the arrear dues (Pay and allowances and Bonus etc.) of the applicant from 09.05.1994 to 03.08.2000 duly calculating the same each month/year wise and also direct to merge the dues into the GPF accounts of the applicant from its due month/year wise from 05/1994 onwards and the balance amount arising out of regularization of illegal suspension period and revision of pay and allowances be granted with the penal interest from the respective month/year wise and also be directed to be followed in respect of Bonus of its due month/year wise along with interest since the entire period of suspension stands wholly unjustified, ab-initio bad, irregular and the entire amount is under the custody of Government Respondent since 1994 onwards for mis-judgment of the Learned respondents. Besides, since the learned respondents have deliberately, intentionally and willfully have not paid the dues; of the applicant in time in spite of requests time and again and forced the applicant to move before this Hon’ble Tribunal for redressal of such harassment, the application may kindly be allowed with heavy cost.”

2. Respondents have filed their Counter stating therein that in view of the criminal offences under trial, in exercise of the powers under Rule 10(1)(B) of the CCS (CCA) Rules, the appointing authority placed the applicant under suspension. During the period of his suspension, he was paid subsistence allowance @ 50%. It has been stated that enhancement of Subsistence Allowance from 50% to 75% is not automatic. It is subject to other conditions stipulated in the Rules. On receipt of his request for enhancing the SA to 75% the same was duly considered by the competent authority but it could not be accepted due to continuance of criminal cases leading to his arrest. The decision of the authority was under challenge in

OA No.363/96 but this Tribunal in its order dated 15.10.1996 dismissed the said OA holding that there was no case for varying the SA. It has been maintained that it is obligatory on the part of the DDO vide GI order No.5 below Rule 53 to effect recovery of repayment of loans and advances like LTC and House Building. Hence there were no irregularities in effecting recovery of interest on LTC and HBA from the SA. As regards the delay in paying the differential arrears, it has been maintained that there was no delay. The delay if any occurred was not intentional but due to checking etc. It has been stated that arrears of pay and allowances amounting to Rs.73,800/- (net), arrear of SA of Rs.745/- and Bonus amounting to Rs.7,257/- have already been paid to the Applicant on 22.6.2004. It has further been stated that out of the arrear pay and allowances of Rs. 2,06,397/- a sum of Rs.1,32,588/- has been credited to his GPF account as intimated to him vide letter No.455 dated 09.06.2004. They have also stated that if the applicant was aggrieved by any action, instead of filing any appeal he has straightaway moved this Tribunal and, therefore, the OA needs to be dismissed. Applicant has filed a rejoinder.

3. Heard the Applicant in person and Mr. U.B. Mohapatra, Learned Senior Standing Counsel for the Respondents and went through the materials placed on record.

4. Applicant has submitted that Government/authorities have been empowered to place a Government Servant under deemed suspension if on arrest he is kept 48 hours in policy/judicial custody. But in this instant case, though he was released on bail within 24 hours, he was unnecessarily kept away from his duty especially when his arrest was

unconnected with his official work. It has also been argued by him that as a necessary corollary his period of suspension should have been regularized soon after the order of revocation of the order of suspension dated 10.03.1998 and he should have been paid the differential salary and allowances. But intentionally and deliberately the Respondents did not pass any order regarding this and it was done only after repeated representations in order that too dated 19.12.2003 and 19.01.2004 and despite the orders, he was not actually paid his salaries and other allowances illegally. In this connection relying on the following decisions he has fervently prayed for allowing his prayers made in this OA.

1. Sirajul Mirza v. State of W.B. and Ors., 2003(6)SLR-CAL 234;
2. Dr. Durga Das v. The Chief Secretary, Government of NCT of Delhi and Others, 2001(3) SLJ CAT 45(PB-ND)CAT;
3. R.G.P.Singh v. Union of India & Others, 1998 (6) SLR-101 (Patna);
4. Ram Chetan v. State of UP, 1996 (2) LLN-114 (ALL);
5. State of Kerala & Others v. M. Padmanabhan Nair, AIR 1985 SC 356;
6. R.S. Sehgal v. Union of India & Others, 1985 (I) SLJ 716(P&H);
7. A.S.Randhaw v. State of Punjab through the Principal Secretary to Government, Irr. Power Deptt.& Others, 1999(I) SLJ 81 (P&H) (Full Bench Decision);
8. R.R.Bhanot v. Union of India and othrs, 1994 (2) SCC 406;
9. Jaiwanti Tidu v. State of Jharkhand and others, 2004(3) SLR 469;
- 10.O.P.Gupta v. Union of India and others, AIR 1987 SC 2257;
- 11.B.C.Gupta v. Union of India and others, AIR 1984 SC 380;
- 12.S.Samson Martin v. Union of India and others, (1990) 12 ATC 643, CAT(Madras).

5. Mr. U.B.Mohapatra, Learned Senior Standing Counsel for the Respondents has vehemently resisted the prayer of the applicant by stating that consequent upon involvement of the applicant in criminal case, in

exercise of the powers conferred on the appointing authority, the applicant was rightly placed under suspension. When he was acquitted in the criminal cases, the said order of suspension was revoked and after necessary orders regularizing the period of his suspension were issued, the matter was processed and he was paid all his dues. He has submitted that question of payment of interest would arise only where the exercise of power was not legal and/or if a Government servant was kept out of his duty illegally. Since in this case utilization of the power by authorities was not at all unjustified, he is not entitled to any interest especially when he has already been paid all his dues to which he was entitled to under the Rules. He has submitted that since the facts of those cases deal with regard to non payment of retirement dues etc. these have no application to the present dispute. Therefore, he has fervently prayed for dismissal of this OA.

6. Applicant has been placed under suspension vide order dated 5th May, 1994 under Sub-Rule (1) of Rule 10 of CCS (CCA)Rules, 1965 which *inter alia* provides as under:-

“ 10. SUSPENSION.

- (1) The appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the President, by general or special order, may place a Government servant under suspension-
 - (a) where a disciplinary proceeding against him is contemplated or is pending; or
 - (aa) where, in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State; or;
- (b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial:

(P)

Provided that, except in case of an order of suspension made by the Comptroller and Auditor-General in regard to a member of the Indian Audit and Accounts Service and in regard to an Assistant Accountant-General or equivalent (other than a regular member of the Indian Audit and Accounts Service), where the order of suspension is made by the authority lower than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order was made".

7. It is not in dispute that there were criminal cases as against the applicant and he was arrested and released on bail. Therefore, placing the applicant by invoking the sub rule (1) of Rule 10 of CCS(CCA) Rules, cannot be said to be unjustified in any manner. However, since the order of suspension is not under challenge in this OA, we refrain from framing any opinion on the same.

8. It is an admitted fact that the applicant has already received all his dues. Therefore, the only question involves in this case is in regard to interest on the arrear dues of the applicant.

9. Blind reliance on a particular judgment without considering the fact and situation has been discouraged by the Hon'ble Apex Court in **Ashwani Kumar Singh v. U.P. Public Service Commission, (2003)11 SCC 584** relevant portion of which are quoted herein below:

"Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear. Judgment of Courts are not to be construed as statute. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark

upon lengthy discussion but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes their words are not to be interpreted as statutes. In circumstantial flexibility one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper."

As regards *ratio decidendi*, a Constitution Bench of the Apex Court in **Islamic Academy of Education v. State of Karnataka** (2003) 6 SCC 697 held as follows:

"The answers to the questions, in the majority judgment in T.M.A. Pai case (2002) 8 SCC 481 (in para 161 therein) are merely a brief summation of the ratio laid down in the judgment. The ratio *decidendi* of a judgment has to be found out only on reading the entire judgment. In fact, the ratio of the judgment is what is set out in the judgment itself. The answer to the question would necessarily have to be read in the context of what is set out in the judgment and not in isolation. In case of any doubt as regards any observations, reasons and principles the other part of the judgment has to be looked into. By reading a line here and there from the judgment, one cannot find out the entire ratio *decidendi* of the judgment."

In the case of **Kesar Devi v. Union of India** (2003) 7 SCC 427, the Apex Court ruled that the judgment of the Court is not to be incorporated like a statue, where every word, as far as possible, has to be given a literal meaning and no word is to be ignored. Further it has been held by the Apex Court in the case of **State of Orissa and othes vrs. Md. Illiyas**, -2006 SCC (L&S) 122 that a decision is a precedent on its own facts- Reliance on the decision without looking into its factual background is clearly impermissible-Words in judgment are not to be read as if they are

words in Act of Parliament-Every judgment must be read as applicable to the particular facts proved or assumed to be proved.

10. Keeping in view the above settled position, we have gone through the decisions relied on by the Applicant and we find that the facts/issues involved/answers in those cases are totally different from the present one. Those decisions relate to either long continuance of the order of suspension or non payment of dues after retirement for which the authorities have been asked to pay interest.

11. But in this case question is payment of interest on the differential emoluments received by the Applicant after revocation of the order of suspension. Admittedly the order of suspension has been revoked vide order dated 10.03.1998 under Annexure-A/2. But the Respondents took time till 19.12.2003 to pass an order regularizing the period of service and then in order dated 19.01.2004 (Annexure-A/4) ordering that the period of suspension of applicant are regularized treating the same as duty in terms of FR-54(B). Consequently, the applicant was paid pay and allowances to which he would have been entitled had he not been suspended in terms of the provision contained in FR-54-B(3) read with Sub Rule- 8. As admitted by the Respondents the differential amount was drawn and paid to the applicant only on 22.06.2004. No satisfactory explanation has been given for such delayed payment.

Fundamental Rules 54-B and 54-B(3) reads as under:-

"F.R. 54-B(1) When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement(including premature retirement) while under suspension, the authority competent to order

PM

reinstatement shall consider and make a specific order-

- (a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement(including premature retirement),as the case may be; and
- (b) whether or not the said period shall be treated as a period spent on duty;
- (2) Notwithstanding anything contained in Rule 53, where a Government servant under suspension dies before the disciplinary or the Court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purpose and his family shall be paid the full pay and allowances for that period to which he would have been entitled had he not been suspended subject to adjustment in respect of subsistence allowance already paid.
- (3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall, subject to the provisions of sub rule (8) be paid the full pay and allowances to which he would have been entitled, had he not been suspended.”

12. Further admitted position is that the applicant was acquitted in the criminal cases instituted against him and there was no departmental proceedings initiated against him soon after the order of suspension. On a bare reading of the provisions of FR 54 B the irresistible conclusion is that while revoking the order of suspension, the authorities are obliged to pass orders regarding the pay and allowances to be paid to the government servant for the period of suspension ending with reinstatement. This was also the views expressed by the Hon'ble Apex Court in the case of **O.P.Gupta v. Union of India and others**, AIR 1987 SC 2257. In paragraph 10 of the aforesaid decisions, Their Lordships have held that “....As already

stated, the authority competent to order reinstatement failed to make an order in terms of FR 54 after the appellant had been reinstated in service on May, 25,1970 within a reasonable time. Looking to the long lapse of time, the High Court was entitled to go into the question as to whether the appellant upon his reinstatement was entitled to the full pay and allowances to which he would have been entitled had he not been suspended.....". In this case for no fault of the applicant he was illegally denied his legal dues from 10.3.98 till the actual payment is made even if it is held that utilization of the power of suspension is justified.

13. In view of the discussions made above, we cannot but say that the order under Annexure-A/2 dated 10.03.1998 was not passed in accordance with Fundamental Rule 54-B and for the delay in deciding the period of suspension the applicant was deprived of his legitimate rights which he would have been entitled to. Further had it been paid in time, it would have generated interest. We, therefore, cannot approve such failure on the part of the Respondents and as a consequence, the Respondents are hereby directed to pay the Applicant interest @ 8% on the total arrears accrued in favour of the Applicant with effect from 10.03.1998 till the actual payment is made within a period of 60(sixty) days from the date of receipt of the order. We however, make it clear that on failure to pay the interest within the stipulated time, as above, the Applicant shall be entitled to compound interest. In order to over come the financial burden on the Exchequer, the Respondent No.1 is at liberty to cause an enquiry in the matter and fix responsibility on the officer who is responsible for such delay in the matter. *(Signature)*

14. In the result, this OA is allowed to the extent stated above. There shall be no order as to costs.

Arulay
(N.D.RAGHAVAN) 28/02/07
VICE-CHAIRMAN

BB/28/07
(B.B.MISHRA)
MEMBER(A)

KNM/PS.