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O.A. No. 21/05

ORDER DATED 26th May, 2008

Coram:

Hon'ble Shri Justice K. Thankappan, Member (J)

Hon'ble Shri C.R. Mohapatra, Member (A)

Heard Mr. U.B. Mohapatra, Ld. Sr. Standing Counsel for the Respondents and perused the averments in this O.A and the records submitted before this Tribunal. After going through the averments and after hearing the Counsel for the Respondents and the counter filed by the Respondents we are of the view that prima-facie the question raised in this present O.A. has already ^{been} considered by this Tribunal in O.A No.772/95.

2. The applicant subsequently alleged in this present O.A that he had worked more than the office hours which the Department now admitted. The applicant further stated in the O.A that this Tribunal may "declare/hold the 1/3 ceiling prescribed as clause 3(b) (iii) in O.T. Allowance Manual corresponding to O.M. dt.19.03.91 under Annexure-A-3 issued by the respondent No.1 as well as F.R.II under Annexure-A/4 of Fundamental Rule are ab-initio void, contrary to/violates/transgress Article 13, 14,21,23, 41, 42 43 46 and 300 (A) of the Constitution of India and also contrary to Sec.16 and 23 of the contract Act, contrary to public policy so also violates

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some of the provisions of Inter National Law and Human Rights Act and accordingly quash the same."

3. After going through the order of Annexure-A/2 passed by this Tribunal in the earlier O.A. No.772/95 we have seen that the same questions were already considered by this Tribunal and answered accordingly. In the above circumstances the present O.A. is not based on any deviation of prior to which the applicant had taken in the earlier O.A. The reading of Annexure-A/2 order would show that the question of night weightage was also considered by this Tribunal as this Tribunal had considered the same in Paragraph 4 of that order and have quoted as follows:

" As to the relief for striking down offices Memorandum dated 19.03.91, i.e. Rule-3(b)(iii) of the Over Time Allowance to the Central Government employees, we are to observe that the same is not maintainable in the absence of the concerned Ministry represented through secretary or concerned competent authority of the Ministry as a party in this application seeking an opportunity to counter. Without hearing the authority who issued the office Memorandum dated 19.03.1991, it is not permissible or desirable under law to strike down the rule as unconstitutional after hearing version of only one side, i.e. applicant as it would violate the principles of natural justice. It is true that Union of India has been impleaded as Respondent No.1 but this Union of India has been described to have been represented by Commissioner of Income Tax, Bhubaneswar and not the competent authority. Commissioner of Income Tax, Bhubaneswar can by no stretch of imagination be the competent authority representing the concerned Ministry who issued the instructions in this disputed Office Memorandum dated

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19.03.1991. Hence prayer in this regard is disallowed as being not maintainable.

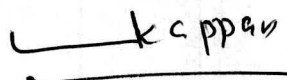
There is also controversy between the parties with regard to night weightage dated 04.10.1989 under Annexure-R/2 is same as that of Annexure-C to the Original Application. The very first paragraph of the Circular runs as under:

" The night weightage is not allowed to the categories of who have been included in the shift duty. Such categories of staff who have not been engaged in shift duty and are performing the duties of 8 hours a day and are performing duties between 22 hours to 6 hours are eligible to weightage of 10 minutes each hour as per Dept. of Personnel orders circulated."

A regarding of the above makes it clear that such night weightage allowance is admissible to the employees, who perform the duties between 22 hours. And 6 hours, besides performing duties eight hours a day. It is not the case of the applicant that during the relevant time, besides working 8 hours during day, he was also kept on duty during night. Viewed from this angle, this night weightage allowance is not admissible to the applicant."

In the above circumstances we are of the view that the prayers in the present O.A are not allowable and this Tribunal will not be justified in granting such prayers. Apart from the above fact the order in O.A 772/95 (Annexure-A/2) is already challenged before the Hon'ble High Court. Considering all these aspects this O.A is meritless which is accordingly dismissed.


Member (A)


MEMBER (J)