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CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH

OA No. 672 of 2005  
Cuttack, this the 24th day of September, 2008

Sri Ajaya Kumar Sahoo ..... Applicant  
Vrs.  
Natinoal Council of Educational Research & Training and anr... Respondents

FOR INSTRUCTIONS

- 1) Whether it be referred to the Reporters or not?
- 2) Whether it be sent to the P.B. of CAT or not?

(C.R.MOHAPATRA)  
ADMINISTRATIVE MEMBER

  
(K.THANKAPPAN)  
JUDICIAL MEMBER

CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH

OA No. 672 of 2005

Cuttack, this the 24<sup>th</sup> day of September, 2008

CORAM:

HON'BLE SHRI JUSTICE K.THANKAPPAN, JUDICIALMEMEBR  
And

HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER

Sri Ajaya Kumar Sahoo, aged about 43 years, son of Keshab Chandra Sahoo, LD Clerk (under suspension), Reginal Institute of Education, Bhubaneswar ..... Applicant

For applicant - M/s K.C.Kanungo, Miss.C.Padhi & S.Behera.

Vrs.

- 1) National Council of Educational Research & Training, New Delhi, represented through its Secretary, Sri Aurobindo Marg, New Delhi 110 108.
- 2) Principal, Regional Institute of Education, Bhubaneswar, Dist.Khurda, Orissa ..... Respondents

For respondents - Mr.U.B.Mohapatra, SCGSC for R-1  
Mr.J.K.Nayak for R-2

O R D E R

K.THANKAPPAN, JUDICIAL MEMBER

Challenging Annexure A/4 order, dated 8.4.2005, passed by the Principal & Disciplinary Authority (2<sup>nd</sup> Respondent), by which the request of the applicant for increasing the rate of subsistence allowance has been rejected, the applicant has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985. The applicant has prayed for quashing the said Anenxure A/4

*AD*

and also for a direction to the Respondents to consider the claim for increasing the rate of subsistence allowance.

2. The question mooted in this O.A. is whether the 2<sup>nd</sup> Respondent is justified in passing the impugned order dated 8.4.2005 or not.

3. The backdrop of the case is that while working as LDC in the Regional Institute of Education, Bhubaneswar, the applicant was served with Annexure A/1 suspension order, dated 25.11.2004, in contemplation of a disciplinary proceeding against him under the Central Civil Services (CCS) Rules, 1965. The applicant, on receipt of the charge memo, filed his written statement of defence. While the inquiry proceedings were in progress and since the period of suspension exceeded three months on 22.2.2005 the applicant filed a representation to the Disciplinary Authority for enhancement of the rate of subsistence allowance in terms of FR 53(1)(ii)(a). However, on considering his representation, the impugned order has been passed stating that "the review committee, after going through the facts and circumstances of the case, decided not to vary the quantum of subsistence allowance". Aggrieved by the above order, the applicant now submits that the impugned order is against the principles contained in FR 53(1) and unknown to service law.

4. This Tribunal heard the learned counsel appearing on either side. In support of the case of the applicant, the learned counsel appearing for him submits that the 2<sup>nd</sup> Respondent is not justified in passing the impugned order only on the

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basis of the recommendation of the Review Committee. The learned counsel further submits that the question of getting any recommendation, or sanction, or even permission, of the Review Committee has not been contemplated under FR 53 of the Fundamental Rules. According to the learned counsel, under Rule 10(6) of the CCS (CCA)Rules, 1965, the Review Committee is entitled only to consider the facts and circumstances of the case and give its recommendation with regard to extension or revocation of the suspension before expiry of ninety days from the effective date of suspension, whereas FR 53 (1)(ii)(a) of the Fundamental Rules is a special power in exception of Rule 10(6) of the CCS(CCA)Rules and confers power on the Disciplinary Authority to increase the rate of subsistence allowance if the suspension period exceeds three months. Hence according to the learned counsel, the order impugned has to be quashed by this tribunal.

5. Though the learned counsel for the Respondents, relying on the counter filed for and on behalf of the respondents, tried to justify the impugned order, he was not in a position to substantiate his stand or to repudiate the arguments advanced by the learned counsel for the applicant. Though the learned counsel for the Respondents submitted that the impugned order is justifiable based on recommendation made by the Review Committee, he was not fortified by any legal provision in support of his submissions.

6. It is further to be noted that after filing of counter, a rejoinder has been filed by the applicant, in which it is specifically stated that all the averment contained in paragraph 7 of the counter is not correct in as much as the period of

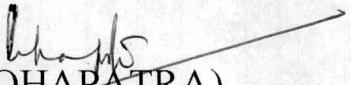
AB

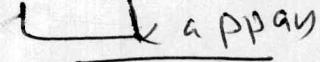
suspension of the applicant exceeded three months on 22.2.2005 and the stand taken in the counter that the inquiry proceeding is continuing only because of the fault of the applicant is not correct. It is also stated in the rejoinder that the applicant has only filed some petitions to extend the time for arranging a defence assistant for him. That by itself, according to the learned counsel for the applicant, is not a reason to hold that the delay in completing the inquiry has been caused by the applicant. In this context, it reveals that the applicant has challenged the inquiry proceedings before this Tribunal and the matter is pending. However, we are now concerned only with the question whether the impugned order is justifiable or not. A reading of Annexure A/4 would show that the 2<sup>nd</sup> Respondent, the disciplinary authority has not made up his mind while passing the impugned order. The disciplinary authority has simply quoted the recommendation of the Review Committee. We are of the view that the impugned rejection of the claim of the applicant for enhancement of the rate of subsistence allowance on the recommendation of the Review Committee is not sustainable in as much as the Review Committee has only got the power to take the facts and circumstances of the case into consideration and recommend extension of the period of suspension or revocation of the suspension, with reasons to be recorded in their recommendation. In short, we are of the view that the order impugned is not supported by any legal principle. FR 53 of the Fundamental Rules confers power on the disciplinary authority to enhance the rate of subsistence allowance if the suspension period exceeds three months or above. In the above circumstances, we

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hereby quash Annexure A/4 and direct the 2<sup>nd</sup> Respondent to consider the representation of the applicant dated 1.4.2005 (Annexure A/3) afresh and pass appropriate orders thereon within fifteen (15) days of receipt of copy of this order. It is also made clear that the stand taken in the counter filed on behalf of the respondents that the delay in finalizing the disciplinary inquiry is due to the fault of the applicant shall not be considered without giving a chance to the applicant to explain the circumstances. However, as directed above, the representation of the applicant shall be considered as per law and appropriate order passed.

7. In the result, the O.A. stands allowed to the extent indicated above. No order as to costs.

  
(C.R. MOHAPATRA)  
ADMINISTRATIVE MEMBER

  
(K. THANKAPPAN)  
JUDICIAL MEMBER