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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO.809 OF 2005
CUTTACK, this the 13th day of November, 2007

Lakshmidhar Mishra Applicant
-Versus-
Kendriya Vidyalaya Sangathan & Ors Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? *Yes -*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *Yes -*


(G.SHANTAPPA)
MEMBER(JUDL.)

CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.809 OF 2005
(CUTTACK, this the 13th day of November,2007)

CORAM:

HON'BLE SHRI G.SHANTAPPA, MEMBER(JUDICIAL)

Lakshmidhar Mishra, aged about 50 years, S/O. Raghunath Mishra, presently working as T.G.T.(Sanskrit), Kendriya Vidyalaya, Charbatia, At/PO Charbatia, District: Cuttack-754028, Resident of Plot No.4D/1439, Sector 9, C.D.A., Cuttack-753014.

.....Applicant

Advocate for the ApplicantMr. D.K.Mohanty.

Versus:

1. Kendriya Vidyalaya Sangathan, represented through its Commissioner, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi-110016.
2. Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Bhubaneswar, District:Khurda.
3. Principal, Kendriya Vidyalaya, Koraput, At/PO/Dist.Koraput.
4. Principal, Kendriya Vidyalaya, Charbaria, At/PO-Charbatia, District-Cuttack-754028.

..... Respondents
Advocates for the RespondentsM/S.Ashok Mohanty,
J.Sahu,H.K.Tripathy,
J.P.Patra & S.Ray

ORDER

HON'BLE SHRI G.SHANTAPPA, MEMBER(JUDL.)

I have heard the Ld.Counsel for the applicant and the Sr.Counsel for the Respondents. The above O.A. is filed under Section 19 of the AT Act,1985 seeking the following relief:

"To quash the orders/letters of recovery (Annexures-A/3 and A/5) and the Internal Audit report, with the declaration that the applicant was entitled to the Additional HRA and was lawfully paid and that the same is not recoverable from him."

2. The Respondents have issued an impugned order dated 16.08.05 (Annexure-A/3) in which it is mentioned as per clause No.15 of the Transfer Guidelines 2005 the recovery of Rs.8,877/- was paid to the applicant who worked in Kendriaya Vidyalaya, Koraput up to 02.06.05 towards the additional HRA. There was an Internal Audit objection raised by the Audit as the conditions for the payment were not fulfilled. Hence there was a recovery order.
3. Applicant has supported his case that he can retain the quarters as per the Transfer Guidelines of 2005 clause-15 (which is extracted below):

"Transfer T.A. will be regulated as per orders of the Government of India on the subject, KVS employees who are transferred after completing three years of stay in the North Eastern Region, Andaman islands and other hard stations and after completion of two years of stay at very hard stations, will



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be entitled to transfer T.A. by treating their choice posting as in public interest. Further, those teachers who are proceeding on transfer to very hard station or hard station, in public interest, will be eligible for grant of H.R.A./retention of accommodation provided by KVS, at par with those who are proceeding to North Eastern Region. He can retain his family at the old station or at any other station.”

4. The applicant is also relying on the OM dated 24.09.03 which was published in the Swamy's Handbook i.e. regarding benefit of two HRAs. After service of the impugned order, the applicant submitted his representation dated 25.08.05 (Annexure-A/4). Subsequently, the Principal has issued the order dated 9/12.09.05 (Annexure-A/5) in which he has supported the earlier action. The orders relating to the double HRA are only prospective in nature. Those rules are not applicable to the facts of the case.

5. The Counsel for the applicant submitted that the applicant submitted another representation on 21.09.05 along with rule position i.e. Appendix-9 of the Fundamental Rules regarding the payment of double House Rent Allowance. The applicant is also challenging the impugned order on the ground of discrimination that some of the teachers and the staff of the KVS at Aizwal, ONGC Agartala, Duliajan, Kailashhar, Zaknama and Tuly under the regional office of KVS, Silchar have been given the benefit of additional HRA notwithstanding the fact that their staying in Sangathan/Government accommodation at the new station. The applicant is challenging the impugned order on the ground that it is not a speaking order and no notice was given prior to passing the order and a copy of the audit objection was also not served on the applicant.



6. Per contra the Respondents have filed a detailed reply statement by supporting their action in the impugned order. The Respondents have taken their contention that when the applicant was transferred to KV Koraput, neither the Government of India order nor clause-15 of Transfer Guidelines was in force and as such during the relevant point of time, the applicant was not entitled for retention of quarter and/or for HRA at the last place of posting. The said clause is applicable for grant of HRA or retention of quarter as provided by the KVS as far of North Eastern region is applicable in respect of persons who are to proceed on transfer to very hard stations or hard stations in public interest. The Applicant having joined at Koraput on 6.12.2000, his case is not covered under the said transfer guidelines. The Ld.Counsel for the Respondents submits that even if the notice is given to the applicant for that he has already submitted his representation subsequent to the impugned order, there will be no change in the circumstances. It is only for formality sake for that he has requested the impugned order need not be quashed. When the applicant is not entitled for payment of double HRA, the same has been erroneously paid to the applicant, the order of recovery is valid and there is no infirmity so far as recovery is sought to be made.

7. I carefully considered the statement made by the Ld.Counsel for both sides and also pleadings as mentioned.

8. The impugned order is not sustainable on three grounds:

1. The impugned order is in the form of stencil which is a printed one and the same is filled wherever the words, dates and the names are required.

GR.

2. Admittedly there was no notice of personal hearing before passing the impugned order.
3. As referred in the impugned order there was an Internal Audit objection, that objection was not supplied to the applicant.

9. The Ld.Counsel for the Respondents submits that the applicant has already submitted his representation to the impugned order at Annexure-A/4 dated 25.08.05. The same can be considered as objection to the notice. Based on the objection filed by the applicant, the Principal, Koraput has passed a reasoned order.

10. I considered the submission made by the Ld.Counsel for the Respondents and his argument is not tenable in the eye of law. When a competent authority who is an Administrative Authority acts in the capacity of Quasi Judicial Authority, reasons are an essence of the order, Sine qua non of an order passed in this capacity is fairness, which would not be unless there are reasons apparent on the face of the record. Though a discretion vested in Administrative Authorities has to be exercised in their own wisdom but the aforesaid exercise should be done by recording reasons by Quasi judicial Authority to have fair play in their action. It has two fold objects, firstly, it gives transparency to the order passed and facilitates the concerned to challenge the same in a judicial forum where on judicial review the aforesaid is being scrutinized, the second aspect is that once the reasons are there, the judicial forum shall be assisted and facilitated to adjudicate the controversy. For want of reasons, there seems to be non-application of mind but when there are reasons, it shows application of mind. In the present case admittedly no notice was given and copy of the objection by the Internal Audit was also not

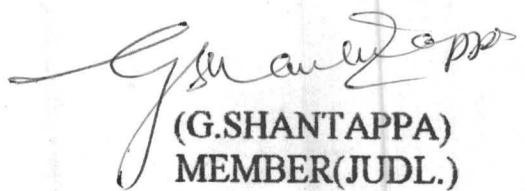


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supplied to the applicant before passing the orders and also the impugned order is in the form of fill-in the-blank that too printed form. Such an order is not sustainable in the eye of law hence the principles of natural justice is not followed. On these legal grounds mentioned at para-8 supra, the impugned order at Annexure-A/3 is quashed. The applicant is entitled for additional HRA as it was granted to the teachers as referred in para-5 of this order. The respondents have shown discrimination to the applicant.

11. The impugned order is quashed and declared that the applicant was entitled to the additional HRA.

12. With the above observation, this O.A. is allowed. No order as to costs.



(G.SHANTAPPA)
MEMBER(JUDL.)