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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

O.A.NO. 929 OF 2005

Cuttack, this the 30th day of October, 2007

Govinda Pradhan	Applicant
Vrs.	
Union of India and others	Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? *yes*.
2. Whether it be circulated to the Principal Bench of the Central Administrative Tribunal or not? *yes*.



(N.D.RAGHAVAN)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

O.A.NO. 929 OF 2005

Cuttack, this the 30th day of October, 2007
CORAM:

HON'BLE SHRI N.D.RAGHAVAN, VICE-CHAIRMAN
.....

Govinda Pradhan, aged about 62 years, son of late Sunapati Pradhan,
House No.21, H.I.G.-I, Phase I, Lingaraj Vihar, Pokhariput, P.O.
Airfield, Bhubaneswar, Dist. Khurda..... Applicant

Advocates for applicant - M/s M.K.Khuntia,
B.K.Kar and A.K.Apat.

Vrs.

1. Union of India, represented by its Chairman, Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, Government of India, North Block, New Delhi.
2. The Chief Commissioner of Income Tax, Orissa Region, Ayakar Bhawan, Rajaswa Vihar, Bhubaneswar.
3. Commissioner of Income Tax, Ayakar Bhawan, Ainthapali, Sambalpur
..... Respondents

Advocate for Respondents - Mr.R.N.Mishra,
ASC

.....
ORDER

SHRI N.D.RAGHAVAN, VICE-CHAIRMAN

This O.A. was placed before the Bench for hearing on 29.1.2007, 31.1.2007, 7.2.2007, 20.2.2007, 13.3.2007, 24.4.2007, 28.6.2007 and 3.7.2007, but was adjourned from time to time at the request of the learned counsel for either side.

2. On 25.7.2007 the learned counsels M/s M.K.Khunia, B.R.Kar and A.K.Apat for the applicant and the learned Additional Standing Counsel Mr.R.N.Mishra for the Respondents remained absent due to advocates' strike on



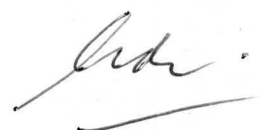
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Court work before this Bench purportedly on the basis of the CAT Bar Association
- any basis, like.
resolutions passed without substance or value but violating principles of natural
justice too. In this connection, I would like to refer to the decision in the case of
Ramon Services Private Limited Vrs. Subash Kapoor and Others, reported in
JT 2000 (Suppl. 2) Supreme Court 546, holding as follows:

“When the advocate who was engaged by a party was on strike, there is no obligation on the part of the court either to wait or to adjourn the case on that account. It is not agreeable that the courts had earlier sympathized with the Bar and agreed to adjourn cases during the strikes or boycotts. If any court had adjourned cases during such periods, it was not due to any sympathy for the strikes or boycotts, but due to helplessness in certain cases to do otherwise without the aid of a Counsel.”
(Judgment Paras-5 & 14)

“In future, the advocate would also be answerable for the consequence suffered by the party if the non-appearance was solely on the ground of a strike call. It is unjust and inequitable to cause the party alone to suffer for the self imposed dereliction of his advocate. The litigant who suffers entirely on account of his advocate's non-appearance in court, has also the remedy to sue the advocate for damages but that remedy would remain unaffected by the course adopted in this case. Even so, in situations like this, when the court mulcts the party with costs for the failure of his advocate to appear, the same court has power to permit the party to realize the costs from the advocate concerned. However, such direction can be passed only after affording an opportunity to the advocate. If he has any justifiable cause, the court can certainly absolve him from such a liability. But the advocate cannot get absolved merely on the ground that he did not attend the court as he or his association was on a strike. If any Advocate claims that his right to strike must be without any loss to him but the loss must only be for his innocent client, such a claim is repugnant to any principle of fair play and canons of ethics. So, when he opts to strike work or boycott the court, he must as well be prepared to bear at least the pecuniary loss suffered by the litigant client who entrusted his brief to that advocate with all confidence that his cause would be safe in the hands of that advocate.”

(Para-15)

“In all cases where court is satisfied that the ex parte order (passed due to the absence of the advocate pursuant to any strike call) could be



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set aside on terms, the court can as well permit the party to realize the costs from the advocate concerned without driving such party to initiate another legal action against the advocate."

(Para-16)

"Strikes by the professionals including the advocates cannot be equated with strikes undertaken by the industrial workers in accordance with the statutory provisions. The services rendered by the advocates to their clients are regulated by a contract between the two, besides statutory limitations, restrictions, and guidelines incorporated in the Advocates Act, the Rules made thereunder and Rules of procedure adopted by the Supreme Court and the High Courts. Abstaining from the courts by the advocates, by and large, does not only affect the persons belonging to the legal profession but also hampers the process of justice sometimes urgently needed by the consumers of justice, the litigants. Legal profession is essentially a service oriented profession. The relationship between the lawyer and his client is one of trust and confidence."

(Para-22)

"No advocate could take it for granted that he will appear in the Court according to his whim or convenience. It would be against professional ethics for a lawyer to abstain from the Court when the cause of his client is called for hearing or further proceedings. In the light of the consistent views of the judiciary regarding the strike by the advocates, no leniency can be shown to the defaulting party and if the circumstances warrant to put such party back in the position as it existed before the strike. In that event, the adversary is entitled to be paid exemplary costs. The litigant suffering costs has a right to be compensated by his defaulting Counsel for the costs paid. In appropriate cases, the Court itself could pass effective orders, for dispensation of justice with the object of inspiring confidence of the common man in the effectiveness of judicial system. Inaction will surely contribute to the erosion of ethics and values in the legal profession. The defaulting Courts may also be contributory to the contempt of this Court."

(Paras-24, 27 & 28)

Keeping in view the aforesaid case law laid down by the Hon'ble Supreme Court, condemning severely such strike as contempt of Court particularly Hon'ble Supreme Court itself and leaving the Ld.Counsels including those representing Government at the peril of facing the consequences thereof and in view of the



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provisions contained in Section 22(2) of the Administrative Tribunals Act, 1985 that Tribunal shall decide every application made to it as expeditiously as possible and ordinarily every application shall be decided on a perusal of the documents and written representations and after hearing such oral arguments, as may be advanced and in accordance with Rule 15 of the CAT (Procedure) Rules, 1987, the available record on hand has been perused for adjudicating the issue as below.

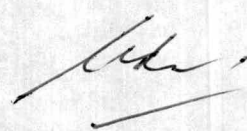
3. Applicant Shri Govinda Pradhan, who was a member of the Indian Revenue Service of 1970 batch and retired as Commissioner of Income Tax (CIT), has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, praying for the following relief(s):

“8. RELIEF(S) SOUGHT FOR:

In view of the facts mentioned in para 4 above the applicant prays for the following relief(s):-

- i) To direct the Respondents to sanction encashment of E.L. at the credit of the applicant.
- ii) To quash the order dtd. 28.11.02 issued by the Respondent No.3 under Annexure A/4.
- iii) To quash the order dtd. 18.5.04 issued by the Respondent No.2 under Annexure A/10.
- iv) To direct the Respondents not to deduct any amount from the leave salary of applicant in pursuance to order dtd.28.11.02.
- v) To direct the Respondents to grant 18% interest on the entitlement of the applicant i.e. unutilized E.L. amounting to Rs.3,26,320/- of 315 days.
- vi) To pass such other order/orders as deemed fit and proper”.

4. Brief facts of the applicant's case are that he was posted as CIT, Cuttack, with headquarters at Cuttack, where he joined on 16.6.1997. As per his entitlement, Telephone No. 602516, subsequently changed to 302516, was installed in his residential quarters, JO 5, Kala Vikash Kendra Road, Cuttack. Subsequently,



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the post of CIT, Cuttack, was redesignated as CIT, Sambalpur. Since he could not shift his family from Cuttack to Sambalpur because of his children's education at Cuttack, the then Chief Commissioner of Income Tax (CCIT), Patna, allowed him to retain the residential telephone at Cuttack. As the applicant was entitled to only one residential telephone, he did not avail of residential telephone at Sambalpur. The applicant vacated the State Government quarters at Cuttack on 30.6.2001 and shifted to a rented house at CDA, Cuttack, where his residential telephone number was changed to 366766.

4.1 Although the applicant's headquarters was at Sambalpur, he had to come to Cuttack or Bhubaneswar very often in connection with official works, such as, discussion of High Court cases in income-tax matters with Standing Counsel at Cuttack, discussion of income tax cases with officers of Income Tax Appellate Tribunal at Cuttack, finalization of audit objection in income tax matters, and also meetings with CCIT, Bhubaneswar, about important judicial and administrative matters. For the aforesaid purposes, the residential telephone installed in his residence was used, for which the CCIT, Patna, had verbally allowed him to retain the residential telephone at Cuttack. The applicant did not insist for any written order in that regard.

4.2 The official residential telephone of the applicant was retained by the applicant at Cuttack from 1997 to 30.6.2002, i.e., the date of retirement of the applicant from service. The Bills for the said telephone were received from the Telephone Department, Cuttack and paid by the office of CIT, Sambalpur after recording the required certificates for passing the bills.



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4.3 The office of CIT, Sambalpur, was audited in July-August 2000 for the period from August 1997 to 22.7.2000 by the Internal Audit Party, Zonal Accounts Office, CBDT, Calcutta. It was observed by the Audit Party in its report dated 1.8.2000 (Annexure A/1) that (i) there were excessive bill amounts in four bills, (ii) the certificates recorded on the bills for passing them need be countersigned by the controlling officer, (iii) certificate in some bills was absent, (iv) the precise nature of public interest served by allowing the residential phone to continue at Cuttack instead of Sambalpur need be elucidated, and (v) the department should obtain the computer print-out from the Telephone Department, Cuttack, for the 4 nos of bills and it may be examined to ensure whether the calls were on official account or otherwise.

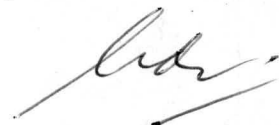
4.4 In pursuance of the Audit Objection, the compliance report (Annexure A/2) was submitted on 11.12.2003 stating that the CIT, Cuttack, was redesignated as CIT, Sambalpur w.e.f. 10.4.1998. When the office was functioning from Cuttack, the telephone at Cuttack was allotted to the CIT in his residence at Cuttack. The office of CIT was shifted to Sambalpur on 27.7.1998 and it took more than three months to bring the office at Sambalpur to working condition. So the CIT was most of the time functioning from Cuttack. His presence at Cuttack was otherwise essential for discussions with the Standing Counsel and the officials of the ITAT at Cuttack. The telephone bills were subsequently reduced substantially after the CIT's office fully started functioning from Sambalpur sometimes in November 1998 by 94% of the highest amount of Rs.47,000/- from November 1998. The CIT, being the Head of Department had full powers to incur expenditure on



telephone as per item No.24 of the Schedule V to Rule 13 of the Delegation of Financial Power Rules. With these replies, the audit objection was requested to be dropped.

4.5 The second audit of the office of CIT, Sambalpur was conducted in January 2002 for the period from 1.4.2000 to 31.3.2001 by the aforesaid Audit Party which did not raise any objection to the expenses on the residential telephone of the applicant at Cuttack for period from 1.4.2000 to 31.3.2001.

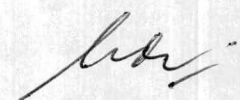
4.6 The applicant was allowed to retire on 30.6.2002 when as per Rule 39(2)(a) of the CCS (Leave) Rules, 1972, the competent authority should have granted him cash equivalent of leave salary for the earned leave, 315 days of earned leave being available to the credit of the applicant. But without any rhyme or reason, the same was not paid to him. After several representations made by him to the competent authorities, a letter dated 28.11.2002 (Annexure A/4) was issued by Respondent No.3 intimating the applicant that installation of a telephone in the residence of the applicant at Cuttack when he was functioning as CIT, Sambalpur, with headquarters at Cuttack and payment of the bills in respect of the same are contrary to rules and that Rs.2,29,968/- would be recovered from his leave salary. It was also intimated to the applicant that CIT being not entitled to mobile telephone, the amount of Rs.26,000/- paid by the office towards use of mobile telephone by the applicant would also be recovered from his leave salary. The applicant was also advised under the said letter to make a representation to the CCIT, Bhubaneswar, if at all he had any objection. Along with the letter dated 28.11.2002 (Annexure A/4), a statement showing the amounts of telephone bills paid during financial years



1998-99, 1999-2000, 2000-2001, 2001-02 and 2002-03 in respect of the telephone installed in the residence of the applicant at Cuttack and the bill amount in respect of the mobile phone used by the applicant during 1.2.2002 to 31.5.2002 was furnished to the applicant. It was indicated that the total telephone bills for Rs.2, 29, 968/- and mobile bills for Rs.26,000/- were paid by the Department.

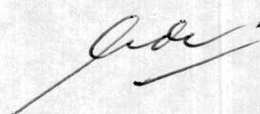
4.7 The applicant made a representation dated 21.12.2002 (Annexure A/5) to the CCIT, Bhubaneswar, pointing out that the expenditure incurred on his residential telephone at Cuttack and the mobile phone was in public interest and praying for releasing the leave salary along with interest from the date when the same became payable to him. The applicant also submitted further representations dated 9.12.2003, 9.2.2004, 4.4.2004 and 6.4.2004 (Annexures A/6 to A/9) to the CCIT, Bhubaneswar. In the last representation he requested the CCIT, Bhubaneswar, to exercise his discretionary power as Head of Department by according ex post facto approval to the expenditure so as to obliterate the audit objections which stand in the way of releasing his leave salary, which was not acceded to by the CCIT, Bhubaneswar, vide communication dated 18.5.2004 (Annexure A/10).

4.8 The applicant made a further representation dated 11.6.2004 (Annexure A/11) to the CCIT, Bhubaneswar. Thereafter, CIT, Sambalpur (Respondent No.A/12), by his letter dated 17.6.2004 (Annexure A/12) moved Respondent No.1 to issue sanction order for encashment of leave salary in favour of the applicant. The applicant also made a further representation dated 30.3.2005 (Annexure A/13) once again requesting the CCIT, Bhubaneswar, to accord ex post facto approval for



retention of the residential telephone at Cuttak and sanction the leave salary in his favour. In spite of all the above representations, when no decision was taken by the CCIT, Bhubaneswar, the applicant made a representation dated 5.10.2005 (Annexure A/15) to take a decision sanctioning the leave salary along with interest from the date it became payable to him. Soon after making the said representation (Annexure A/15), the applicant filed the present O.A. on 8.11.2005 before this Tribunal.

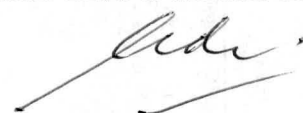
5. The Respondents have filed a detailed counter opposing the prayer of the applicant. They have, inter alia, stated that during the relevant period ~~the~~ while functioning as CIT, Sambalpur, the applicant's headquarters was Sambalpur and therefore, the retention of the telephone in his residence at Cuttack was contrary to rules and payment of the bills amounting to Rs.2,29,968/- was irregularly made by the Department. The applicant was also not entitled to mobile phone facility and the amount of Rs.26,000/- paid by the Department towards mobile phone bill was irregular. These irregularities were pointed out by the Internal Audit. So far as rules are concerned, the officers of the rank of applicant as CIT are entitled to residential phone with STD facility for 650 calls on bimonthly basis and unless the calls in excess of 650 calls are certified as official, the charges are to be recovered from the officers for calls beyond 650 calls. The Respondents have refuted the statement made by the applicant that CCIT, Patna, had verbally allowed him to retain the residential telephone at Cuttack. They have pointed out that in the absence of written order, such statement made by the applicant, who was holding the office of CIT, is not believable. The Respondents have denied the statement



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made by the applicant that no decision was taken in the matter of release of his leave salary. The Respondents have stated that due to the pending audit objection, as referred to above, the applicant was informed that after recovery of the total amount of telephone bills and mobile phone bill, the balance amount of leave salary would be paid to him, vide letter dated 20.12.2005, to which the applicant did not respond. As regards the applicant's representation dated 5.10.2005 (Annexure A/15) to the Chairman, CBDT, New Delhi (Respondent No.1), it has been stated that the applicant was intimated by letter dated 15.2.2006 (Annexure R/4) that pending his willingness to adjust (pending settlement of audit objection) expenses incurred excessively on account of telephone and mobile, the release of payment of leave encashment was not possible. With regard to the scope of recovery of Government dues, if any, it has been pleaded in the counter that the applicant was the CIT, Sambalpur when he retired and incidentally was the Head of Department and that the gratuity and commuted value of pension were drawn under the mistaken impression that the audit objection was settled. But when it came to light that the audit objection was pending, steps were taken for recovery of the dues from his leave salary. The Respondents have denied the allegation of mala fide made by the applicant and submitted that the action taken by them was for protection of public money and that as it would be difficult to recover such a huge amount from his pension at later date, step was rightly taken to recover the same from the leave salary of the applicant.

6. The applicant has filed a rejoinder urging more or less the same contentions as raised by him in the O.A. The applicant also filed a written note of



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arguments on 3.5.2007 after serving copy thereof on the learned Additional Standing Counsel for the Respondents who, however, did not file any written note of submission in reply thereto.

7. It has been contended by the applicant that if at all there were any Government dues, the same should have been recovered from his gratuity under Rule 73 of the CCS (Pension) Rules, 1973 and that since the full gratuity amount was paid to him on 31.5.2004 without any recovery, it has to be implied that there were no Government dues outstanding against him. The Respondents have taken the plea that the applicant was CIT, Sambalpur when he retired and incidentally was the Head of Department. The gratuity and commuted value of pension were drawn under the mistaken impression that the audit objection was settled. Subsequently, it came to light that the audit objection was pending and accordingly step was taken to recover the irregular and wrong payments made by the Department on account of the residential telephone installed in the applicant's residence at Cuttack and the mobile phone, to which he was not entitled under the rules. In view of the facts that the applicant was unable to satisfy the Respondent-Department about his entitlement to have a residential telephone at his residence at Cuttack and also the use of mobile phone, when he was working as CIT, Sambalpur, with headquarters at Sambalpur; and that the applicant admittedly sought for the ex post facto approval of the CCIT, Bhubaneswar, to the expenditure made on those counts and the competent authority did not accede to his request in the absence of rules, and in consideration of the plea of the Respondents that it



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would be difficult to recover the huge amount from the pension of the applicant, I am unable to accept the contention of the applicant.

8. It has been next contended by the applicant that Rule 39(3) of the Central Civil Services (Leave) Rules, 1972 does not empower the competent authority to withhold the leave salary as has been done in the case of the applicant. Rule 39(3) of the CCS (Leave) Rules, 1972 prescribes that the authority competent to grant leave may withhold whole or part cash equivalent of earned leave in the case of a Government servant who retires from service on attaining the age of retirement while under suspension or while disciplinary or criminal proceedings are pending against him, if in the view of such authority there is possibility of some money becoming recoverable from him on conclusion of the proceedings against him and that on conclusion of the proceedings, he will become eligible to the amount so withheld after adjustment of Government dues, if any. The applicant has submitted that as he was neither placed under suspension nor were any disciplinary or criminal proceedings pending against him at the time of his retirement, the Respondent-Department should not have withheld the leave salary. I have carefully considered this contention of the applicant. The power conferred on the competent authority under Rule 39(3) of the CCS (Leave) Rules, 1972 to withhold the leave salary of a retiring employee who was under suspension or against whom disciplinary proceeding or criminal proceeding was pending on the date of his retirement, is to meet the contingency of recovery of any Government dues from the said retired employee if found payable to the Government by such retired Government employee upon conclusion of the disciplinary or criminal

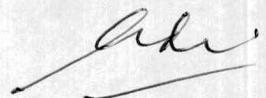


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proceeding pending at the time of his retirement. Even if the contingencies prescribed under Rule 39(3) are absent in the case of the applicant, yet in view of the fact that the applicant has not been able to establish his entitlement to have residential telephone facility at Cuttack and the use of mobile phone when he was CIT, Sambalpur, with headquarters at Sambalpur, and that a huge amount of Rs.2,55,968/- was wrongly and irregularly paid by the Department for the residential telephone installed at his residence at Cuttack and mobile phone, to which he was not entitled under the rules, I am unable to accept the contention of the applicant, more especially when Rule 39(3) has not specifically forbidden the competent authority from recovering any Government dues from the retired employees in a contingency as has arisen in the case of the applicant and when there is scope for recovery of Government dues from the retired Government employee.

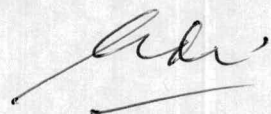
9. It is also the contention of the applicant that no amount can be recovered from his retiral dues until and unless the same is declared as 'Government dues' to be recovered in a duly constituted departmental proceeding or in a competent court of law. The applicant has himself stated in the O.A. about the audit objection to the payment of huge amount of Rs.2,29,968/- towards telephone bill in respect of the telephone retained by him in his residence at Cuttack while he was CIT, Sambalpur, with headquarters at Sambalpur, and also payment of Rs.26,000/- towards mobile telephone bill for the period from 1.2.2002 to 31.5.2002 and the communication received by him from the office of the CCIT, Bhubaneswar, rejecting his request to accord ex post facto approval to the aforesaid



expenditure. He has also filed all the documents in support of his above statements. In consideration of this, the contention of the applicant that the 'Government dues' have not been determined and therefore, no recovery should be effected from his leave salary is untenable.

10. The applicant has also submitted that no Government dues can be recovered from his leave salary without initiation of departmental proceeding. In support of his submission the applicant has relied on the Government of India circular dated 25.8.1958, filed as Annexure A/2 to the written note of submission filed by the applicant on 3.5.2007. I have gone through the relevant portion from the said circular (Annexure 2). It has been mentioned therein that the failure or refusal of a pensioner to pay any amount owed by him to Government cannot be said to be misconduct within the meaning of Rule 8 of the CCS (Pension) Rules, 1972 and that the possible way of recovering/demanding Government dues from a retiring officer, who refuses to agree in writing to such dues being recovered from his pension is either to delay the final sanction of his pension for some time which will have the desired effect for persuading him to agree to recovery being made therefrom or take recourse to Court of law. Considering the facts and circumstances of the case, I do not find any applicability of the said circular to the case of the applicant.

11. I have gone through the decisions cited by the applicant reported in AIR 1999(2) SC 1212, *Dr. Uma Agarwala v. State of U.P.*; 1999(II) OLR 433, *Dhruba Ch.Panda v. State of Orissa*; 1992(7)SLR 270 (Bom.) *Balichandra Chintamai Gadgil v. Union of India*; and 2000(3) SLJ 204, *Arjun Behera v. Stat.*



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The facts of those cases are different from the facts of the instant case and therefore, the ratio laid down therein has no application to the case of the applicant.

12. The other aspect of the matter is that the Respondent-Department have withheld the entire amount of leave salary. It is their case that Rs.2,55,968/- is liable to be recovered from the leave salary of the applicant. Perusal of the documents filed by both the applicant and the Respondent-Department clearly reveals that the Respondents had full knowledge of the fact that after adjustment of the said amounts of Rs.2,55,968/-, the balance amount of leave salary was payable to the applicant even on the date following the date of his retirement, i.e., 1.7.2002. In the facts and circumstances of the case, I hold that withholding of the balance amount of leave salary admittedly payable by the Respondent-Department to the applicant is unjust and unreasonable. The Respondents should have made the payment of the said balance amount within a reasonable period from 1.7.2002. In consideration of this, I hold that the Respondents are liable to pay the applicant the balance amount of leave salary with interest at the rate of 12% per annum from 1.7.2002 till the date of actual payment. It is ordered accordingly.

13. With the aforesaid observations and direction, the Original Application is disposed of. No costs.


(N.D. RAGHAVAN)
VICE-CHAIRMAN

PPS

fix for pronouncement
on 03/10/07 at PM

