

3

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.71 of 2007
Cuttack, this the 5th day of March, 2007.

Prasanta Kumar Mishra ... Applicant
Versus
Union of India & Others ... Respondents

FOR INSTRUCTIONS

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

13/3/07
(B.B.MISHRA)
MEMBER(A)

Dated:
05-03-07.

[Signature]
(N.D.RAGHAVAN)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.71 of 2007
Cuttack, this the 5th day of March, 2007.

C O R A M:

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

Prasanta Kumar Mishra, Aged about 52 years, S/o. Godabarish Mishra, TGT English at Kendriya Vidyalaya, Berhampur, Po:Berhampur, Dist. Ganjam.

Applicant.

By legal practitioner: M/s. Ashok Das, L.M.Nanda,
P.K.Dhal, P.Ranjan, Advocates

-Versus-

1. The Commissioner, Kendriya Vidyalaya Sangathan, 18 Industrial Area, Sahid Jeet Singh Marg, New Delhi-110 016.
2. The Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, At/Po:Bhubaneswar, Dist. Khurda.
3. The Principal, Kendriya Vidyalaya Berhampur, At/Po:Berhampur, Dist. Ganjam.

...Respondents.

By legal practitioner: Mr. Ashok Mohanty, Sr. Counsel.



5

ORDER

MR.N.D.RAGHAVAN, V.C:

This case is listed on 28.02.2007 because of an urgent motion made by Learned Counsel for the Applicant on 27.02.2007.

2. The Learned Counsel for the Applicant submitted as under:

The Applicant is a Trained Graduate Teacher (English) in Kendriya Vidyalaya, Berhampur. A minor disciplinary proceedings initiated against him resulted in stoppage of two increments in his pay scale by order dated 24.02.2007 (Annexure-A/6), taking effect from today. Hence, interim order is sought against the intended disallowance of the increment.

3. Learned Additional Standing Counsel who got a copy of this Original Application on 28.02.2007 stoutly opposed this OA as below:

The Departmental remedy has not been exhausted by the applicant. Since the impugned



order is the outcome of disciplinary proceedings initiated under Rule-16 of CCS (CCA) Rules, the Applicant should have preferred an appeal before the Appellate Authority provided under the Rules and that it was for the latter to dispose of the same as per Rule. Thereafter, if he had any grievance against such appellate order, he could have agitated against it before this Tribunal. Since it has not been done, this OA needs to be dismissed at the threshold itself.

4. Learned Counsel for the Applicant replied that he has filed representation dated 05.02.2007 (Annexure – A/5) which should be deemed as an appeal.

5. We have given careful thought to the rival submissions of both the parties and gone through the record available before us. The Applicant has been punished under Rule-16 of the CCS (CCA) Rules and he has challenged it straight before us, seeking relief by quashing the impugned order. The Interim prayer is that, pending final decision on this OA,





Annexure-6 should be stayed. It is not shown in the OA or even known as to when the next increment is due nor the date from which the loss is going to be suffered by the Applicant. Therefore, we do not see any urgency in the prayer of the Applicant.

6. It is found that the applicant's representation to the Assistant Commissioner, Kendriya Vidyalaya Sangathan (Respondent No.2) was filed on **05.02.2007** while the impugned order was passed on **24.02.2007**. Since the representation was filed prior to the disposal of the disciplinary proceedings, by no stretch of imagination can such representation be deemed to be an appeal.

7. Further, paragraph 4 of the aforesaid representation says that "the Principal is bent upon awarding him minor penalties by mis-utilizing his powers. If Principal does not desist from such an activity, he would rather be compelled to move the judiciary for the security and protection of his job". This neither sounds like a representation nor like an appeal but rather an ultimatum indeed!. That apart, whether or not it is a representation or appeal, even then this OA shall not be admitted U/s. 21 of the A.T.Act, 1985 since it stipulates that this Tribunal shall not admit

an application, in a case where an appeal or representation such as is mentioned under Section 20(2) (b) has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

8. While so, the relevant provision applicable here i.e. Section 20 of the Administrative Tribunals Act, 1985 unequivocally provides as under:

“20. Application not to be admitted unless other remedies exhausted – (1) A

Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievance.

(2) For the purposes of subsection (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances,-

- (a) if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or



- (b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.”

9. In view of all the reasons aforesaid and more particularly the applicant having not exhausted the alternative remedy of appeal provided under the CCS(CCA) Rules under which the applicant has been proceeded against and as Section 20 of the A.T. Act, 1985 does not vest this Tribunal with power to entertain any Original Application filed under Section 19 there-
-under, if such alternative remedy is not exhausted, we have no other alternative than to reject this OA at this stage of admission itself.

10. In the result, this OA stands dismissed *in limine*.

11. Send copies of this order to the Respondents along with copies of the OA and free copies of this order be given to Learned Counsel for both sides.

18/3/07
(B.B.MISHRA)
MEMBER(A)

05/03/07
(N.D.RAGHAVAN)
VICE-CHAIRMAN