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**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK**

**ORIGINAL APPLICATION NO. 505 OF 2008**

**Cuttack, this the ~~27th~~ day of March, 2010**

Sri P.K. Panda ..... Applicant

**Vs.**

Union of India & Others ..... Respondents

**FOR INSTRUCTIONS**

1. Whether it be referred to reporters or not?
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not?

**(C. R. MOHAPATRA)  
ADMN. MEMBER**

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NOs. 505 OF 2008  
Cuttack, this the 29<sup>th</sup> day of March, 2010

CORAM:

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

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Sri P.K. Panda, aged about years, At-Garasahi Baliapal, Via-Gingal, Dist-Balasore, Working as Primary Teacher, Kendriya Vidyalaya Sangathan (Under Suspension) ..... Applicant

By the Advocate(s)..... M/s. S. Mohapatra,  
J.K. Khandayatray

Vs.

1. Union of India represented thorough its Commissioner, Kendriya Vidyalaya, 18, Institutional Area, Saheed Jeet Singh Marg, New Delhi-110 016.
2. Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office at Pragati Vihar, Mancheswar, Bhubaneswar, Dist-Khurda.

..... Respondents

By the Advocate(s).....Mr. Ashok Mohanty, Sr. Advocate,  
M/s- S.K. Patnaik, U.C. Mohanty,  
P.K. Pattnaik, D. Pattnaik,  
S. Pattnaik, H.K. Tripathy,

O R D E R

HON'BLE MR. C. R. MOHAPATRA, MEMBER(A)

The applicant working as a primary Teacher of Kendriya Vidyalaya has been placed under deemed suspension by an order of Commissioner Kendriya Vidyalaya dated

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13/14.03.2008. He has approached this Tribunal in this O.A. filed under Administrative Tribunals Act, 1985 seeking the following relief:-

- “ (i) direct/order the Respondent No.2 to release the subsistence allowance from the period 04.10.1999 to 12.03.2008 within a stipulated period as may be prescribed by this Hon'ble Tribunal and further be pleased to revise the current subsistence allowance as per the pay fixation on 01.01.2006.
- (ii) quash the order of suspension dated 13.03.2008 by concurrently holding the same as bad, illegal and not sustainable or maintainable in the eye of law and thereby allow the applicant to be reinstated in the duty;
- (iii) pass such other orders/directions as may be deemed fit and proper in the bonafide interest of justice.

2. The background of the case is that as a result of the departmental proceedings the applicant was compulsorily retired from service on 04.10.99. His appeal having been rejected he had preferred O.A. No.620/2000 in which the Tribunal quashed the order of compulsory retirement and remitted the matter back to the concerned authority to start the

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proceeding from the stage of cross examination of vital witness. The Respondents challenged the order of this Tribunal in the Hon'ble High Court of Orissa in W.P.( C) No.9371/2004 which was dismissed on 31.10.2007. Thereafter, Respondent No.3 reinstated the applicant and passed the order of deemed suspension vide Annexure-A/3. The applicant claims that because of this order he is deemed to be under suspension from 04.10.1999 to 13.03.2008. Hence, the applicant contends that he is entitled for subsistence allowance for this period. The applicant apprehends that because of the Para (iii) of the order dated 14.03.2008 vide Annexure-A/3, the arrear of subsistence allowance shall not be released to him. He further submits that after the order of suspension vide Annexure-A/3 Respondents have not reviewed the order of suspension nor allowed 75% of subsistence allowance even after expiry of 10 months.

3. In the counter filed for and on behalf of the Respondents it has been stated that Kendriya Vidyalaya Sangathan challenged the order dated 20.04.2004 in O.A. No.620/2000 before the Hon'ble High Court of Orissa in W.P.( C) No.9371/2004 and by the order dated 31.10.2007 Hon'ble

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High Court of Orissa dismissed the said writ application. Thereafter, the Respondents reinstated the applicant in service by order dated 13.03.08 under Annexure-A/3 but simultaneously placed him under deemed suspension and attached him to Kendriya Vidyalay No.1 Bokaro and directed the disciplinary authority to continue the enquiry from the stage of examination of witness by the prosecution. The Respondents have urged for the dismissal of this O.A. on the above grounds.

The Respondents have justified the deemed suspension by invoking sub-rule 4 of Rule-10 of C.C.S. (CC & A) Rules, 1965. However, they have accepted that the person suspended is entitled to be paid the subsistence allowance as per Rule-53 of the Fundamental Rules. They have further stated that the matter of suspension was considered by the Review Committee on 03.04.2009 and on 22.05.2009 and it was decided not to revoke the suspension order. The Disciplinary Authority vide order dated 07.12.2009 has already enhanced the rate of subsistence allowance beyond the period of 90 days by 50% of the initial sanction and the payment of

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subsistence is subject to submission of non-employment certificate as required under FR-53. In para 10 of the counter the Respondents have also submitted that the claim of enhancement of subsistence allowance in view of the pay revision introduced by the 6<sup>th</sup> Central Pay Commission report, the applicant is required to exercise the option under FR-23, if he desires to come over to the new scale of pay. As soon as the applicant exercises the said option, the subsistence allowance will be revised and paid to him in the revised scale of pay. At the time of admission of this case the Ld. Counsel for the Respondents had clarified that the applicant had been paid subsistence allowance and other allowances in November, 2008 and he shall be paid the same for the period beyond November, 2008 on production of non employment certificate.

4. Heard Ld. Counsel for the parties and perused the available records produced before the court. As regards the release of subsistence allowance for the period from 04.10.1999 to 13.03.2008 Respondents have already produced a document of Kendriya Vidyalaya Sanghatan letter No. F- PKP/KVB1/2008 where under it is categorically stated that



subsistence allowance has been paid upto Nov., 2008 and the amount beyond this period will be paid to the applicant on production of non employment certificate. Since production of non employment certificate is mandatory under FR-53 (2) there is nothing wrong in insisting production of such documents. In case the applicant has produced the same there shall be no impediment to the release of subsistence allowance. In the event of non production of such a certificate, the release of subsistence allowances shall be governed by the provision of FR-53(2). As regards revision of subsistence allowance w.e.f. 01.01.06, the Respondents have already accepted that in case the applicant desires to have the revised subsistence allowance he has to apply vide FR-23 whereunder he has to exercise the option. In case such an option is exercised by the Applicant, the Respondents shall finalise the pay fixation w.e.f. 01.01.06 under the Revised Pay Rules within a period of one month from the date of submission of the option papers by the Applicant.

5. The applicant has also prayed for quashing of the order of suspension dated 13/14.03.2008. It is observed

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that the order of suspension has been issued under Rule -10 (4) of CCS (CC & A) Rules, 1965 as a consequence to the order of this Tribunal setting aside the order of compulsory retirement vide its order dated 20.04.04 in O.A. No.620/2000. It is also noted that the order of suspension has already been reviewed by the competent authority and decision has already been taken not to revoke the suspension and subsistence allowance has been increased as per Rules. Hence I do not find any infirmity in the decision of the Respondents in issuing the order of suspension and continuing the same. The Respondents have fairly considered the claim of the applicant to release the suspension allowance as per the pay revision consequent to 6<sup>th</sup> CPC pay revision w.e.f. 01.01.06 on the exercise of option as indicated above. It is for the applicant now to exercise the option under FR - 23 and if he does so within a period of 15 days from the date of receipt of the copy of this order the Respondents shall process the same and pass necessary orders for release of the arrears of subsistence allowance at the revised rate w.e.f. 01.01.06 within a period of 30 days therefrom.

6. At the same time this Tribunal can not close its eye to the very fact that the applicant has been under deemed suspension for the period 04.10.1999 to 13.03.2008 due to disciplinary proceedings. Though I am not inclined to quash the order of deemed suspension, the Respondents are hereby directed to complete the disciplinary proceeding continuing after the order of the appellate authority dated 13/14.03.08 at an early date preferably within a period of 120 days from the date of receipt of the copy of this order.

7. With the above observations and directions this O.A. stands disposed of. No costs.

  
(C.R. MOHAPATRA)  
ADMN. MEMBER