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OA No.102 of 2008

Prasanta Kumar Mishra Applicant
Versus
UOI & Ors. Respondents

1. Order dated 21th August, 2009.

C O R A M

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

Applicant is a Trained Graduate Teacher

(English) of the Kendriya Vidyalaya presently posted at Berhampur. He was imposed with punishment of withholding of increments by two stages for a period of two years without cumulative effect as a result of proceedings initiated against under Rule 16 of CCS (CC&A) Rules, 1965 under Annexure-5 dated 24.02.2007. Against the said order under Annexure-5 he preferred appeal under Annexure-5 dated 7.03.2007. Apprehending implementation of the order of punishment imposed on him under Annexure-5 even before consideration of his appeal, he approached this Tribunal by filing the present OA on 13th February, 2008 with the following reliefs:

“....to quash the impugned order vide Annexure-5 dated 24.02.2007 passed by the Respondent No.3...”

2. By filing counter by the Respondents it has been brought to the notice of this Tribunal that there

was no miscarriage of justice in the decision making process of the matter as the punishment was imposed on the applicant after following the Rules and principle of natural justice. It has further been brought to the notice of this Tribunal that the order of punishment imposed by the Disciplinary Authority under Annexure-5 has got modified by the order of the Appellate Authority dated 22.08.2008 replacing the order of "**withholding of increments by two stages for a period of two years without cumulative effect**"

BY "*withholding of next increments for a period of one year*"

without cumulative effect". Accordingly, prayed that as the aforesaid order of the Appellate Authority has not been brought to the challenge of this OA, this OA is liable to be dismissed for becoming infructuous .

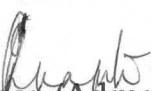
4. Heard Learned Counsel for both sides and perused the documents placed on record. Learned Counsel for the Applicant argued that the order of the Appellate Authority dated 22.08.2008 being part and parcel of the order of the Disciplinary Authority it is not necessary to incorporate the said order within the challenge of this OA nor in absence of the challenge of



the order of the Appellate Authority the OA would become infructuous. He also pointed out that in spite of copy of the order at Annexure-R/1 having been marked to the applicant in the order in fact no such copy was ever served on the Applicant and he only came across such an order from the counter filed by the Respondents. According to him as the order of punishment under Annexure-5 is not sustainable in the eyes of law any order passed thereon is also void. Hence, this OA is not rendered infructuous even in absence of challenge of the order of the Appellate Authority dated 22.8.2008. This was strongly opposed by the Learned Counsel for the Respondents by stating that it is the cardinal principle of law that an order of suspension merges with the order of punishment subsequently passed and, therefore, in the instant case, the order of disciplinary authority merged with the order of Appellate Authority and since the order of appellate authority has not been brought within the challenge of this OA by making any amendment this OA is rendered infructuous. He also emphatically denied to have not served the copy of the order of the appellate authority on the Applicant.

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5. The cardinal principle of service law is that the order of disciplinary authority is merged with the order of appellate authority like the order of suspension with the order of punishment of removal imposed against the employee, AIR 1955 SC 600 (Om Prakash Gupta v State of Uttar Pradesh). The Applicant has neither brought the Appellate Authority's order to challenge by filing any amendment petition nor sought time to file any such petition. Rather he insisted on deciding the matter on the basis of the order of the disciplinary authority. Therefore, I am not at all persuaded with the argument advanced by Learned Counsel for the Applicant that absence of challenge of the order of the Appellate Authority subsequently passed modifying the order of punishment imposed by the Disciplinary Authority, would not render this OA infructuous. Hence by applying the ratio of the aforesaid decision of the Hon'ble Apex Court, this OA is dismissed for being infructuous. No costs.


Member (Admn.)