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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O.A.No. 167 of 2010

Dinesh Kumar Jaiswal Applicant

Vs

UOI & Ors. Respondents

1. Order dated: 15 July, 2011.

C O R A M

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

..... Heard Learned Counsel for both sides and perused the materials placed on record. It appears from the record that after being unsuccessful to get the relief claimed in OA No. 427 of 1995, he has approached before the Hon'ble High Court of Orissa in WP (C) No. 1049 of 2003 challenging Rule 26 of the Central Civil Service (Pension) Rules, 1972. But vide order dated 09.04.2009 the Writ Petition was dismissed by the Hon'ble High Court of Orissa with observation that the ~~virtus~~ of the rules can also be challenged before the Tribunal. Hence this OA with prayer to declare Rule 26 of the CCS (Pension) Rules, 1972 as ultra vires to the Constitution of India especially because this is in violation of the provisions enshrined in Articles 14, 21 and 300-A of the Constitution after which direction be issued to the Respondents to grant him pension and pensionery benefits within a reasonable period. Respondents filed their counter objecting to the points taken by the Applicant in support of his relief.

2. This matter has been listed today for hearing. The prayer of the Applicant in this OA is to declare the provision of Rule 26 of the CCS (Pension) Rules, 1972 as ultra vires to the Constitution of India and, therefore, necessarily this OA can only

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be heard and disposed of by the Division Bench. Today the Division Bench is not functioning. As such I was inclined to adjourn this matter to be placed before the DB. But Learned Counsel for the Applicant contended that the applicant is out of any means of livelihood and, as such, this matter needs urgent adjudication. Therefore, it was contended by the Learned Counsel for the Applicant that for the time being he does not seek to insist on his prayer to declare the rules ultra vires as he seeks to make mercy application to the appropriate Department of the Government seeking the relief claimed in this OA within a specified period to be fixed by this Tribunal and accordingly prays that the authority to whom such representation would be addressed be directed to consider the grievance of the applicant and pass a reasoned order within a stipulated period. As I find no prejudice would be caused in case such prayer of the applicant is allowed, this OA is disposed of with liberty to the Applicant to make his mercy appeal/representation to the appropriate Department of the Government of India ventilating his grievance and I hope and trust the appropriate authority to whom such representation would be addressed would sympathetically consider the grievance and communicate the result thereof to the Applicant within a reasonable period of time. No costs.


(C.R.MOHAPATRA)
Member(Admn.)