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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.1330 OF 2004

DECIDED ON 03rd OF ~~SEPTEMBER~~, 2007

OCTOBER *lib*

Bhanumati Jena

.....Applicant

VERSUS

Union of India & Others

.....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? *No*
2. Whether it be circulated to all the Benches of Central Administrative Tribunal or not? *No*

lib

N.D.RAGHAVAN
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.1330 OF 2004
DECIDED ON 03rd OF ~~SEPTEMBER~~ 2007

OCTOBER *lib*

CORAM:

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

IN THE CASE OF:

Bhanumati Jena, Aged about 27 years, wife of Late Kailash Chandra Jena, Vill.Sebak Sahoopatna, P.O.Hakapada, P.S.Delang, District.Puri.

..... Applicant

Advocates for the Applicant

.....M/S.J.K.Khuntia,
K.Roy &
H.K.Rout.

Versus:

1. Union of India, represented through General Manager, East Coast Railway, Chandrasekharapur, Bhubaneswar, District.Khurda.
2. Divisional Manager, East Coast Railway, Khurda Road, Jatni, Dist.Khurda.
3. Divisional Manager, Personnel, East Coast Railway, Khurda Road, At/P.O.Jatni, District.Khurda.

..... Respondents

Advocate for the Respondents


.....Mr.R.N.Pal.

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ORDER**SHRI N.D.RAGHAVAN, VICE-CHAIRMAN**

This matter was listed before the Bench on 19.3.2007, 19.4.2007 and 22.5.2007 and was adjourned from time to time at the request of the learned counsel for either side. On 22.5.2007 the matter was adjourned to 26.7.2007 when the learned counsels M/s J.K.Khuntia, K.Roy and H.K.Rout for the applicant and the learned Panel Counsel (Railways) for the Respondent-Railways remained absent due to ~~due to~~ advocates' strike on Court work before this Bench purportedly on the basis of the CAT Bar Association resolutions passed without ^{- any foundation, *id.*} 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)



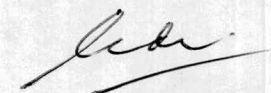
"In future, the advocate would also be answerable for the consequence suffered by the party if the non-appearance was solely on the ground of a strike call. It is unjust and inequitable to cause the party alone to suffer for the self imposed dereliction of his advocate. The litigant who suffers entirely 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 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



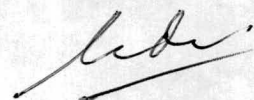
thereunder and Rules of procedure adopted by the Supreme Court and the High Courts. Abstaining from the courts by the advocates, by and large, does not only affect the persons belonging to the legal profession but also hampers the process of justice sometimes urgently needed by the consumers of justice, 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 provisions contained in Section 22(2) of the Administrative Tribunals Act, 1985 that Tribunal shall decide every application made to it



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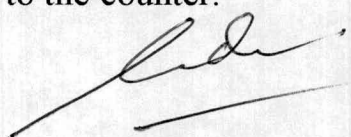
as expeditiously as possible and ordinarily every application shall be decided on a perusal of the documents and written representations and after hearing such oral arguments, **as may be advanced** and in accordance with Rule 15 of the CAT (Procedure) Rules, 1987, the available record on hand has been perused for adjudicating the issue as below.

2. From the pleadings of the parties, it reveals that the father-in-law of the applicant, while working as Store Khalasi under the erstwhile S.E.Railway (now E.Co.Railway), Khurda Road, retired from service with effect from 29.4.1999(Annexure A/1) after being medically declared invalid. Vide A/6 dated 16.4.2004 the retired employee made a representation to the Respondent-Railways to appoint his daughter-in-law under the rehabilitation assistance scheme. His prayer having been rejected in order dated 29.7.2004 (Annexure A/7), the present O.A. has been filed by his daughter-in-law with the following prayer:

“Under the above facts and circumstances, it is therefore prayed that this Hon’ble Tribunal may graciously be pleased to quash order dated 29.7.2004 passed by the Respondent No.3 and direct the Respondents to give an appointment to the applicant in any suitable post as per her educational qualification”.

3, Respondent-Railways have filed their counter opposing the prayer of the applicant.

4. The applicant has also filed rejoinder to the counter.



5. I have considered the materials available on record. The ground of rejection of the request for employment assistance on compassionate ground in favour of the applicant, as communicated vide Annexure A/7 dated 29.7.2004, reads as under:

“Sub: Request for employment assistance on compassionate ground in favour of Smt.Bhanumati Jena, wife of late adopted son Kailash Chandra Jena:

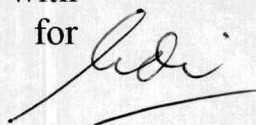
Ref: Your representation dated 23.01.2003:

Your representation for employment assistance on compassionate ground in favour of your daughter-in-law Smt.Bhanumati Jena, W/o. Lt.Kailash Chandra Jena was examined. It is to inform that there is no provisions to consider employment assistance on compassionate ground in favour of your daughter in law”.

6. From the reference given by the Respondent-Railways, it is to be noted that the father-in-law of the applicant had made a representation dated 23.1.2003, the result of which, as quoted above, has been communicated to him vide Annexure A/7 dated 29.7.2004, which is impugned in this O.A.

7. In the above background, it is ^{it} ~~worthwhile~~ to quote hereunder what the Respondents have in Paras-7 & 8 of their counter stated.

“That Sri Anoo filed a representation dated 23.10.2003 to Sr.DPO, Khurda with a request to provide employment assistance on compassionate ground to the applicant. In the said representation Sri Anoo has stated that, he was invalid for service w.e.f. 29.04.1999. As he is issueless, he has adopted Sri Kailash Ch.Jena as son who met with an accident on 03.05.2002. He requested for



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compassionate appointment to his daughter-in-law (the applicant) the wife of Late K.C.Jena.

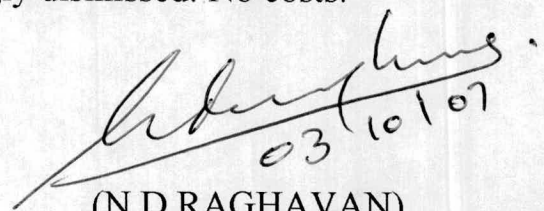
That after receipt of the representation, the competent authority has examined it and passed order as per Annexure-A/7 to O.A. where—in it has stated that there is no provision to consider employment ——— assistance on compassionate ground in favour of his daughter-in-law. After receipt of the letter dt. 29.7.2004 the applicant filed the → instant O.A.”

8. In the rejoinder filed, the applicant has not refuted the statement made by the Respondents in Para-7 of their counter. Therefore, the statements of the Respondents that the retired employee Anoo Jena was issueless and had adopted one Shri K.C.Jena as his son stand uncontroverted in view of his representation dated ²³23.10.2003 addressed to Sr.DPO, Khurda. However, the main stay of authority of the applicant is the legal heir certificate dated 1.6.2004 (Annexure A/4) issued by the Revenue Authority in Misc.Certificate Case No.254/2004, which however, has been annexed to the O.A. without being attested to be the true copy. Besides the above, the applicant has also failed to adduce any other corroborative materials, i.e., certificate or testimonial and/or birth certificate in respect of her late husband K.C.Jena to substantiate her claim that late K.C.Jena was the legitimate child of Anoo Jena and not the adopted son. In addition to this, the applicant has also not been able to establish her right to be considered for compassionate appointment by producing any rules/instructions issued by

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the Railway Administration from time to time. In the absence of all these, the inescapable conclusion that only could be arrived at ^{- is that} that the applicant even does not have any right to be considered for compassionate appointment.

9. Since the applicant, for the reasons discussed above, has failed to establish that her husband K.C.Jena is the legitimate son of Anoo Jena; that Anoo Jena is the natural father of K.C.Jena; and that K.C.Jena is not the adopted son of Anoo Jena, in my considered view, delving into other aspects, i.e., indigent condition of the family, the object of providing compassionate appointment, etc., is unwarranted and uncalled for.

10. Having regard to the facts and circumstances stated above, I find no merit in this O.A., which is accordingly dismissed. No costs.


03/10/07
(N.D.RAGHAVAN)
VICE-CHAIRMAN

fix for pronouncement.
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