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**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK**

**ORIGINAL APPLICATION NO.1333 OF 2004**  
Cuttack, this the 30th Day of October, 2007


Jyostnarani Behera ..... Applicant

... Vs.

Union of India & Others ..... Respondents

**FOR INSTRUCTIONS**

7. Whether it be referred to reporters.or not? No
8. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No

  
(N. D. RAGHAVAN)  
VICE-CHAIRMAN

Cuttack, this the .....<sup>3rd</sup>..... Day of October, 2007

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

Jyostnarani Behera, aged about 56 years, wife of Late Maheswar Behera, At/P.O.-Nischinta Sasan, Via-Tyandakura, Dist-Kendrapara.

By the Advocate(s) .....

V.

1. Union of India represented by the Chief Post Master General, Orissa Circle, Bhubaneswar.
2. Superintendent of Post Offices, Cuttack South Division, Cuttack.

Respondent(s)

By the Advocate(s)..... Mr.U.B. Mohapatra.

Adm.

## **ORDER**

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

This matter was listed before the Bench on 13.11.2006, 22.11.2006, 27.11.2006, 11.12.2006, 3.1.2007, 10.1.2007, 17.1.2007, 25.1.2007, 13.2.2007, 12.3.2007, 19.4.2007, 22.5.2007, 22.6.2007 and 12.7.2007 and adjourned from time to time at the request of the learned counsel for either side. The matter was last posted to ~~12.9.2007~~ *and 18.09.07 finally, etc.* when the learned counsels M/s S.B.Panda, P.K.Sahoo, P.K.Beura and M.K.Dash for the applicant and the learned Senior Central Government Standing Counsel Mr.U.B.Mohapatra for the Respondents remained absent due to advocates' strike on Court work before this Bench purportedly on the basis of the CAT Bar Association resolutions passed without *any foundation, etc.* 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



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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)

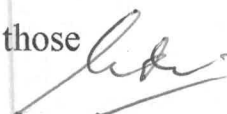
"Strikes by the professionals including the advocates cannot be equated with strikes undertaken by the industrial workers in accordance with the statutory provisions. The services rendered by the advocates to their clients are regulated by a contract between the two, besides statutory limitations, restrictions, 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



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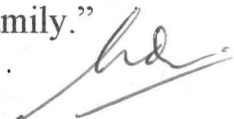
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representing Government at the peril of facing the consequences thereof and in view of the provisions contained in Section 22(2) of the Administrative Tribunals Act, 1985 that Tribunal shall decide every application made to it as expeditiously as possible 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. This is the second round of litigation initiated by the applicant before this Tribunal. Earlier the applicant had approached this Tribunal in O.A. No.284/02 because of non-consideration of her request by the Respondent-Department in the matter of providing compassionate appointment in favour of her son. That O.A. was disposed of vide order dated 13.05.02, at the stage of admission, with the following direction:-

“To consider the grievance of the applicant/applicant’s son Shri Manoj Kr. Behera for providing him an employment on compassionate ground ( as raised in the present O.A.) within a period of 120 days from the date of receipt of copies of this order.


Needless to say that the authorities, while giving consideration to the case of the Applicant/Applicant’s son with a view to providing a compassionate appointment and/or to assess the distressed condition of the family of the applicant should not take into account the terminal benefits given to the distressed family for the reason of premature death of the applicant’s husband because, terminal benefits/ pensionary benefits/ gratuity should not be computed for the purpose of determining the indigent condition of the family.”



3. It is the case of the applicant that since the above order of this Tribunal was not complied with by the Respondent-Department, she has moved this Tribunal for initiating contempt proceedings, vide C.P.50/03 which is still pending. While the matter stood thus, Respondent No.2, vide Annexure A/7 dated 10.02.04 intimated the applicant that compassionate appointment in favour of her son had been rejected by the Circle Relaxation Committee (C.R.C.) on the ground that the family has got no liability, like minor children and grown up unmarried daughter to be taken care of and also there was no vacancy. Thus, the applicant, challenging the impugned order dated 10.02.04 (Annexure A/7) has moved this Tribunal seeking the following relief:-

- .. .
- “(i) Admit the O.A.
  - (ii) Call for the relevant records/proceeding of the meeting of the Circle Relaxation Committee in which the case of the applicant's son has been considered and rejected.
  - (iii) After hearing be further pleased to quash the impugned order of rejection under Annexure-A/7 with further direction to take steps for providing appointment to the applicant's son on compassionate ground,
- And/or
- Pass such or such other orders as may be deemed just and proper, in the facts and circumstances of the case.”

4. In support of her case, the applicant has urged that the very purpose of compassionate appointment is to provide immediate financial relief to the deceased family members. But in the instant case, the very object of compassionate appointment has been given a go-by<sup>12</sup> by the Respondent-Department and that <sup>13</sup>his prayer has been rejected on flimsy grounds, which are not only contrary to rules, but also in isolation of the order of this



Tribunal and that the impugned order (Annexure A/7) is not otherwise sustainable in the eye of law.

5. Respondent-Department have filed a detailed counter in support of their action. In their counter, they have submitted as to what stood in the way for complying with the order dated 13.05.02 of this Tribunal in O.A. 284/02 till 14.04.04, when they considered the case of the applicant in pursuance of the direction of this Tribunal referred to above. It is the case of the Respondent -Department that as many as 32 candidates including the applicant were considered by the CRC against three available vacancies in the cadre of P.A. under compassionate appointment quota. Taking into consideration the financial condition of the family, its assets and liabilities, size of the family, number of minor sons and daughters, grown up unmarried daughters, etc., vis-à-vis the circumstances leading to the death of the Government servant and the age of the Government servant at the time of death and the number of posts available under the compassionate appointment quota, the C.R.C. rejected the case of the applicant on the ground that the family has got no liability, like, minor children and grown up unmarried daughter to be taken care of and due to want of vacancy.

6. It is the further case of the Respondent-Department that compassionate appointment by expression itself implies welfare and good will of the Government servant, keeping in view the work done by the deceased Government servant. The Respondent-Department have submitted that in course of employment the deceased husband of the applicant had misappropriated Government money to the tune of Rs.5,04,211.50 towards S.B/T.D deposits and thereby the Government



sustained loss which could not be recovered from the family of the deceased. Besides the above, the Respondent-Department have submitted that as per the instructions contained in Director General, Posts, New Delhi's letter dated 26.04.01 (Annexure R/3), the CRC recommended the most deserving cases. Respondent-Department in support of their stand have also placed reliance on the following decisions of the Hon'ble Supreme Court:-

1. U.K. Nagpal Vs. State of Haryana & Others  
(JT) 1994 (3) SC 525 (Para -17(6))
2. LIC of India Vs. Asha Rama Chandra Ambekar & Another  
(JT 1994 (2) SC 183)

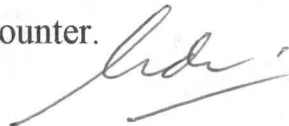
Lastly, they have prayed that the O.A. being devoid of merit is liable to be dismissed.

...

7. The applicant has filed rejoinder to the counter and has more or less the same pleas as taken in the O.A.

8. This matter was taken up for hearing on 18.09.07, when neither of the parties did appear <sup>- due to illegal strike aforesaid</sup> and therefore considering the fact that this is an old matter <sup>- ing as</sup> of 2004, particularly pertaining to compassionate appointment where pleadings are complete, on perusal of the pleadings, the O.A. was reserved for orders.

9. Having regard to the pleadings of the parties, the sole point for consideration is whether the conclusion arrived at by the CRC is right. In other words, whether Annexure-A/7 dated 10.02.04 is an outcome of the totality of the circumstances, as revealed by the Respondent-Department in sub-para-3 of paragraph 4 (at page 4) of their counter.



10. In this connection, the stand taken by the Respondent-Department is that the applicant is getting pension Rs.3250/- + D.A. per month, besides the annual income of Rs.2000/- per annum from agricultural land. But the fact remains that the Respondent-Department rejected the request of the applicant for compassionate appointment vide Annexure A/7 on the ground that the family has got no liability like minor children and grown up unmarried daughter to be taken care of. In fact the legal heir certificate (Annexure A/3) clearly establishes that the decision of the CRC suffers from non-application of mind, in as much as the family of the applicant consists of one grown up unmarried daughter, viz Sandhyarani Behera, 20 years, besides a married daughter, son and the applicant herself. Thus, the decision making process of the CRC being not ~~in~~ consistent with the legal heir certificate (Annexure A/3), the impugned rejection order dated 10.02.04 vide Annexure A/7 is liable to <sup>- be set</sup> quashed.

11. The Respondent-Department, in order to show their bona fide, have not produced any material as to who were those three more deserving candidates than the applicant recommended by the CRC for appointment to P.A. cadre under the compassionate appointment quota

12. As regards the plea raised by the Respondent-Department about misappropriation of Government money committed by the deceased Government employee, it is to be mentioned here that the Tribunal can only appreciate the submission, but cannot act on this, since there is no prohibition or restriction in the compassionate appointment scheme to take this aspect into consideration. Besides the above, I do not express any opinion on the sufficiency or otherwise of the applicant's family to maintain livelihood



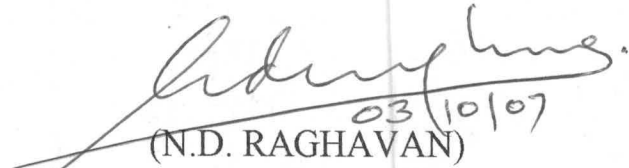
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with the pension of Rs.3250/-+ D.A per month, together with Rs.2000/- per annum from agricultural land.

12. In the light of the discussions held above, the impugned order dated 10.02.04 ( Annexure A/7) rejecting the prayer of the applicant for extending compassionate appointment in favour of her son is quashed and the Respondents are directed to reconsider the case of the applicant's son, keeping in mind that Sandhyarani Behera ( 20 years) is a grown up daughter in the family. In case there is no vacancy in the cadre of P.A. under compassionate appointment quota, the applicant's son be considered for any vacancy arising out of compassionate appointment quota other than P.A. cadre. This exercise shall be completed within a period of 120 days from the date of receipt of copies of this order.

13. In the result, the O.A. is allowed to the extent indicated above. No costs.

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

Fix for pronouncement.

