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**CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK**

ORIGINAL APPLICATION NO.175 OF 2005
DECIDED ON 03rd OF ~~SEPTEMBER~~, 2007

OCTOBER *h*

Ajaya Kumar BisoyiApplicant

VERSUS

Union of India & OthersRespondents

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* .


N.D.RAGHAVAN
VICE-CHAIRMAN

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ORIGINAL APPLICATION NO.175 OF 2005
DECIDED ON 03rd OF ~~SEPTEMBER~~ 2007
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CORAM:

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

IN THE CASE OF:

Ajay Kumar Bisoyi, aged about 27 years, S/O. Late Sibram Bisoyi,
At/P.O.Sowara Chochina, P.S.Kodala, Via-Beguniapada, Dist.Ganjam.

..... Applicant

Advocates for the Applicant

.....M/S.Siddharth Prasad Mishra,
M.K.Mishra,
A.Sinha &
D.Mitra.

Versus:

1. Union of India, represented by the Director General of Posts,
Department of Posts, Dak Bhavan, New Delhi-110001.
2. Chief Post Master General, Orissa Circle, Bhubaneswar-751001,
Dist. Khurda.
3. Senior Superintendent of Post Officers, Berhampur Division,
At/P.O./Town-Berhampur, Dist.Ganjam.
4. Inspector of Posts, Chatrapur, At/P.O.-Chatrapur, Dist.Ganjam.

.....Respondents

Advocate for the Respondents

.....Mr.B.K.Mohapatra.



ORDER

SHRI.N.D.RAGHAVAN, VICE-CHAIRMAN

This matter was listed before the Bench for hearing on 20.3.2007, 16.4.2007, 23.4.2007, 11.5.2007, 25.6.2007 and 9.7.2007 and was adjourned from time to time at the request of the learned counsel for either side. On 9.7.2007 the matter was adjourned to 30.7.2007 when the learned counsels M/s Sidharth Prasad Mishra, M.K.Mishra, A.Sinha and D.Mitra for the applicant and the learned Additional Standing Counsel Mr.B.K.Mohapatra for Respondent Nos. 1 to 4 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, like} 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

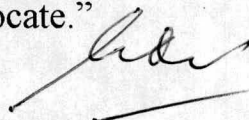


adjourned cases during such periods, it was not due to any sympathy for the strikes or boycotts, but due to helplessness in certain cases to do otherwise without the aid of a Counsel.” (Judgment Paras-5 & 14)

“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)

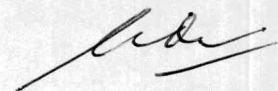
“Strikes by the professionals including the advocates cannot be equated with strikes undertaken by the industrial workers in accordance with the statutory provisions. The services rendered by the advocates to their clients are regulated by a contract between the two, besides statutory limitations, restrictions, 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 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. Perusal of the pleadings of the parties reveals that earlier the applicant had approached this Tribunal in O.A.No.1404/03 seeking a direction to the Respondents to consider his claim for compassionate appointment. The said O.A. was disposed of by this Tribunal vide order dated 13.1.2004 with direction to Respondent No.3 therein to take a final view on the representation of the applicant which was pending consideration by Respondent No.3 within 120 days. This order of the Tribunal having not been complied with, the applicant filed C.P.No.25/04. During pendency of C.P.25/04, Respondent No. 3, vide order dated 16.11.2004, considered and rejected the prayer of the applicant for compassionate appointment and thus, C.P. 25/04 was dropped. In this background, the applicant, challenging the



impugned order dated 16.11.2004 (Annexure A/3) has filed the present O.A. seeking the following relief;

“Quash/set aside the order dated 16.11.2004 at Annexure-4(sic) passed by the Respondents, being illegal and arbitrary.

Direct the Respondents to appoint the applicant in any suitable post in E.D. cadre of the postal establishment forthwith”.

3. From the counter filed by the Respondent-Department, it reveals that challenging the very same rejection order dated 16.11.2004 (Annexure A/3) the applicant had also filed another O.A. No.878/05, i.e., after filing of the present O.A. 175/05. The said O.A. was, however, disposed of vide order dated 3.11.2005, the full text of which is quoted hereunder:

“Prayer for his compassionate appointment having been rejected under Annexure-A/5 dated 16.11.2004, the applicant has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985. Before approaching this Tribunal, the applicant ought to have pointed out the lapses (that has been pointed out under Annexure-A/5) to the Authorities for a reconsideration. Therefore, on the prayer of the learned counsel appearing for the Applicant, this Original Application is hereby disposed of, as withdrawn, with liberty to the Applicant to approach the Respondents with a representation; which he should do by 18.11.2005. In the event such a representation is filed within the time specified herein, the Respondents should give due reconsideration to the prayer for providing a compassionate employment and pass a reasoned order and communicate the same to the applicant within a period of sixty days of receipt of such representation”.

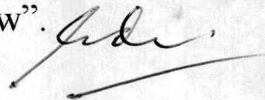


Based on the above order the applicant preferred representation on 19.1.2006, which was disposed of by the Respondents in the same manner as in Annexure A/3 dated 16.11.2004 vide R/2 dated 14.3.2006. The applicant, by filing M.A. 361/07, wants to amend the O.A. with a view to bringing the order dated 14.3.2006 within its ambit.

4. I have considered the pleadings of the parties. At the outset, I must observe that the applicant, by suppressing the fact that similar matter was pending before the Tribunal in O.A. 175/05, had filed another O.A. 878/05 impugning the same order as in O.A. 175/05 and the latter was disposed of by this Tribunal earlier than the former in order dated 3.11.2005, as extracted above.

5. Be that as it may, the Respondents have rejected the claim of the applicant for compassionate appointment on the following grounds, vide A/3 dated 16.11.2004:

“Reasons for rejection: The condition of the family is not indigent as it possesses 08 acres of agriculture land, a concrete building in the village. Rs.40000/- as annual income from the land and Rs.72,842/- received as terminal benefits from the Department. Besides the above, the family has a RD account with Rs.7000/-. There is no liability because both the sons of the widow are grown up. The elder being 31 years and the younger 28 years. In view of the above, it is not a fit case for giving compassionate appointment to either of the two sons of the widow”.




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6. No rejoinder has been filed by the applicant refuting the standpoint taken by the Respondents, although in the O.A. the applicant, with regard to his income, has averred that the conclusion arrived at by the Respondents in that behalf is based on no inquiry. However, the applicant has not produced the income certificate before the Tribunal to examine his contention that the conclusion arrived at by the Respondent-Department is wholly erroneous. Further, the impugned rejection order dated 14.3.2006 (Annexure R/2) filed by the applicant to M.A. 361/07 is a reasoned and speaking ^{- one line} in line with the order dated 16.11.2004 (Annexure A/3). Since there is no legal flaw or infirmity in both the orders rejecting the prayer of the applicant for compassionate appointment, there is hardly any substance to intervene in the matter, particularly when the applicant has failed to establish his case by producing the material evidence that the family is indigent. Therefore, by no stretch of imagination, it can be said that the decision making process of the Respondent-Department in rejecting the prayer of the applicant for compassionate appointment is wrong and/or based on no materials.

7. In the result, the O.A. being devoid of merit is dismissed. No costs.

8. In view of dismissal of the O.A. as above, M.A.361/07 also stands dismissed.


(N.D. RAGHAVAN)
VICE-CHAIRMAN

PPS

fix for pronouncement.

