

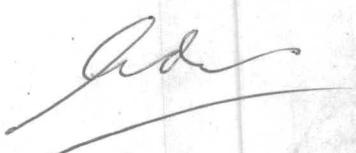
Present:

Advocate for applicant -	Mr.N.R.Routray
Advocate for Respondent No.1-	Mr.P.C.Panda, Railway Panel Counsel
Advocate for Respondents 2 to 4 -	None.

Order dated 07/05/2007

Applicant Jamuna, d/o Megharaj, claiming to be working as Multi-Purpose Khalasi (MPKH) under FA & CAO(Con), East Coast Railway, Chandrasekharpur, Bhubaneswar (Respondent No.3), filed this O.A. on 6.7.2005 for a direction to the Respondents to grant first financial upgradation as per the ACP Scheme under Annexure A/2 of the O.A. from 1.10.1999 and pay the differential arrear salary..

2. Notices were ordered to be issued to the Respondents by this Tribunal's order dated 12.7.2005 and service thereof was treated as sufficient. Thereafter, the matter was placed before the Registrar on 5.9.2005, 18.10.2005, 30.11.2005, 14.12.2005, 6.2.2006, 28.3.2006, 18.4.2006, 27.4.2006 and 20.7.2006 and before the Bench on 25.7.2006 and 11.4.2007 for the purpose of filing of counter. The Registry's notes dated 1.9.2005 show Shri P.C.Panda, learned Railway Panel Counsel, to have entered appearance for Respondent No.1, i.e., 'Union of India, represented through General Manager, E.C.Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda';. On verification of the Vakalatnama filed by Shri Panda on 31.8.2005 it is found that the Vakalatnama has been executed by one Mr. S.K.Patra, Dy.General Manager, East Coast Railway, Bhubaneswar. But the said officer Dy.General Manager is not a party-respondent to the O.A. Shri Panda filed a Preliminary Counter purported to be on behalf of Respondents on 2.4.2007 after serving copy thereof on the learned counsel appearing for the applicant. It is to be pointed out here that there is no provision in the A.T.Act, CAT (Procedure) Rules and CAT Rules of Practice for filing of a reply to the O.A. styling the same as 'Preliminary Counter'. The contents of the Preliminary Counter have been verified by Sr.A.F.A.(Con) working in the office of

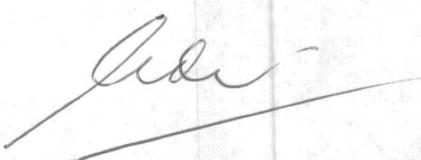


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Respondent No.3, who, as stated above, has not entered appearance in the O.A. It is stated in paragraph 3 of the said Preliminary Counter that an office order granting 1st financial upgradation to the applicant has been filed therewith, but no such office order has been enclosed with the Preliminary Counter. When the matter was taken up by the Bench on 11.4.2007, the above defects were pointed out to Mr.Panda and accordingly the Registry too was directed to ensure removal thereof. Instead of ensuring removal of the defects as stated above, the Registry listed the matter with such defects before the Bench on 30.4.2007 for hearing.

3. In the course of hearing, the learned counsel for Respondent No.1 Mr.Panda, drawing our attention to paragraphs 3 and 4 of the Preliminary Counter, submitted that the applicant has already been granted and paid the consequential financial benefits w.e.f. 17.9.2000 arising out of A.C.P. and accordingly, ^{therefore} the relief prayed for by the applicant in the O.A. having already been met, the O.A. has become infructuous. The learned counsel appearing for the applicant, not only agreed with the above submission of the learned counsel for Respondent No.1, but also filed in Court a Memorandum dated 30.4.2007 indicating therein that during pendency of the O.A. the applicant was granted 1st financial upgradation vide order No.82/2006 dated 27.7.2006 and therefore, the O.A. might be disposed of as per the order dated 27.7.2006 under Annexure R/1.

4. Notwithstanding the defects, as pointed out in the preceding paragraph No.2 above, we have carefully considered the submissions made by the learned counsel for both parties and the Memo dated 30.4.2007 filed by the applicant's counsel. As the order No.82/2006 dated 27.7.2006, purported to have been filed as Annexure R/1 to the Preliminary Counter, has not in fact been filed or placed before us even on 30.4.2007, we are unable to have the benefit of perusing the same. As the said order dated 27.7.2006 is not at all available on records, we refrain ourselves from expressing any opinion on it. In consideration of submission by both parties, we hold that nothing survives for adjudication in the O.A. which is accordingly disposed of.



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5. Last but not the least, we would like to observe that despite service of notices on the Respondents, they have not duly entered appearance either in person or through counsel. They have also not taken steps authorizing any of their officers to act as Presenting Officer to present their case before the Tribunal in terms of Section 23 of the Administrative Tribunals Act, 1985. This, in our considered view, is an indifferent attitude of the Respondents to keep the proceedings before the Tribunal in a state of impasse. This apart, the lackadaisical manner in which the Respondents have dealt with the matter and thereby forced the poor applicant to approach the Tribunal amounts to unnecessary harassment unwarranted on her. In view of all this, we deem it fit and proper to impose a cost of Rs.1000/- (Rupees One Thousand) upon the Respondents which shall be paid to the applicant by way of Bank Draft within a period of three months from the date of receipt of copy of this order. We make it clear that the said amount of Rs.1000/- (Rupees One Thousand) to be paid to the applicant may be recovered from the officer/s who is/are responsible for such lapses after, however, affording the concerned officer/s opportunity of being heard.

6. The Registry of this Bench is directed to send a copy of this order to the General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar, by Registered Post for due compliance.

In the result, this O.A. is disposed of as infructuous with costs, accordingly as above.

B.B.M.
(B.B.MISHRA)
ADMINISTRATIVE MEMBER

Adm/s
07-05-07
(N.D.RAGHAVAN)
VICE-CHAIRMAN