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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO.962 OF 2005
Cuttack, this the 3rd..... Day of October, 2007

Atul Chandra Pati & Others..... Applicant

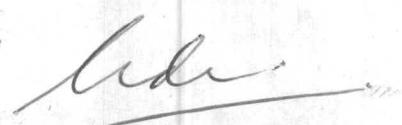
Vs.

Union of India & Others Respondents

FOR INSTRUCTIONS

9. Whether it be referred to reporters or not? No .

10. Whether it be circulated to all the Benches of the Central
Administrative Tribunal or not? No .


(N. D. RAGHAVAN)
VICE-CHAIRMAN

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO.962 OF 2005
Cuttack, this the 3rd..... Day of October, 2007

CORAM:

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

IN THE CASE OF:

1. 1. Atul Chandra Pati, Aged about 62 years, S/o. Late C. Pati, working MCM/SSEC&W, E.Co. Railways, Khurda, at present residing at Village-Baral Pokhari, Po/Dist-Bhadrak.
2. 2. B.D. Mohanty, Aged about 62 years, S/o. Mohanty, Retd. Shunter of E.Co. Railways, Loco Bhadrak, residing at Village-Baral Pokhari, Po/Dist-Bhadrak.
3. Chakradhar Panda, S/o.S. Panda, Aged about 62 years, Retd. Gr.I Fitter C&W, E.Co. Railways, at present residing At/Po.Baral Pokhari, Via-Charampa, Dist. Bhadrak.
4. Sudam Das, 63years, S/o. Late Bhola Das, Retd. Fit. Gr.I, At/Po. Baral Phokhari, Via-Charampa, Dist. Bhadrak.
5. Somanath Singh, 64 years, S/o. Late Jogendra Singh, Rtd. Dresser of S.E. Rlys./E.Co. Rlys., At-Kirikichia, Po. Joypur, Mayurbhanj.
6. Sk. Ahamed, 63 years, S/o. Late Md. Hanif, Retd. Driver Loco Bhadrak, SE/EC Railways, residing At-Patharadi, Po. Charampa, Dist. Bhadrak. Applicants

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By the Advocate(s) M/s S.B. Jena, S. Behera,
S.S. Mohapatra, P. Chuli

Vs.

1. Union of India represented through its Chairman, Railway Board, Rail Bhawan, New Delhi.
2. Union of India represented through its General Manager, E.Co. Railway, Chandrasekharpur, Bhubaneswar.
3. Chief Personnel Officer, E.Co. Railway, Chandrasekharpur, Bhubaneswar.
4. FA & CAO, E.Co. Railway, Chandrasekharpur, Bhubaneswar. Respondent(s)

By the Advocate(s)..... Mr.R.C. Rath.



ORDER

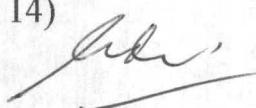
SHRI N.D.RAGHAVAN, VICE-CHAIRMAN

This matter was listed before the Bench for hearing on 5.7.2007 and 12.7.2007 and adjourned to 31.7.2007 at the request of the learned counsel for either side. On 31.7.2007 the learned counsels M/s S.B.Jena, S.Bhera, S.S.Mohapatra and P.Chuli for the applicants and the learned Panel Counsel (Railways) Mr.R.C.Rath 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~~ 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

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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. This Original Application has been filed by the applicants, Shri A.C.Pati and five others, who are retired railway pensioners, seeking the following relief:

“...to immediately issue revised P.P.O. deleting the word ‘PARTY NOT ENTITLED FOR MEDICAL ALLOWANCE’ to the concerned pension disbursing Banks/Applicants;

AND/OR to direct the Respondents to issue necessary orders directing the pension disbursing Banks to release the fixed medical allowance of Rs.100/- in favour of the applicants with their pension”.

3. Brief facts of the case, according to the applicants, are as _____ follows:

3.1 Fifth Central Pay Commission (in short C.P.C.) in its report recommended Rs.100/- per month as fixed medical allowance to the Central Govt. pensioners/family pensioners. In pursuance of this recommendations, the Government of India, in the Ministry of Personnel, Pensions & Public Grievances, issued O.M. dated 19.12.1997 (Annexure-A/1) extending the said benefit to the Central Government pensioners/family pensioners,

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residing in areas not covered by the Central Govt. Health Scheme administered by the Ministry of Health & Family Welfare and corresponding Health Schemes administered by the Ministries/Departments for their retired employees for meeting expenditure on day to day medical expenses that do not require hospitalization. By virtue of this O.M. the present applicants were in receipt of Rs.100/- per month towards fixed medical allowance. While the matter stood thus, the Ministry of Railways, vide Annexure- A/2 dated 21.4.1999 issued instructions, pursuant to the decision of the Government of India (Annexure A/1) whereby it was directed for the grant of fixed medical allowance @ Rs.100/- per month to the railway pensioners/family pensioners outside the city/town/municipality limits of places where a Railway hospital/health unit/lock up dispensary is situated subject to fulfillment of several conditions, as laid down therein. Being aggrieved by the aforesaid decision of the Railway Ministry, some railway pensioners challenged the validity of Annexure-A/2 dated 21.4.1999 before the C.A.T. Ernakulam Bench in O.A.No.430/2000. The Ernakulam Bench quashed Annexure/2 dated 21.4.1999 holding the same illegal, illogical and arbitrary. This view of the Ernakulam Bench was also upheld by the Hon'ble High Court of Kerala.

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3.2 In this background, since the grievance of the applicants were not redressed after much endeavours, applicant Nos. 4, 5 and 6 of this O.A. had approached this Tribunal in O.A. No.949/03, which was disposed of by this Tribunal vide its order dated 18.11.2003, in the following terms:

“...to examine the cases of each of the applicants for granting them the fixed medical allowance of Rs.100/- per month by the end of December, 2003 and in appropriate case clear up their arrears, if any, by the end of March, 2004. Liberty is, however, granted to the applicants to represent their cases individually by the end of November,2003”.

3.3 The above direction of this Tribunal having not been complied with by the Respondent-Railways, the applicants filed C.P.No.22/04, which was disposed of on the disclosure by the Respondents that the Railways had already issued necessary instructions on 1.3.2004.

3.4 The grievance of the applicant, as ventilated by them vide Annexure A/5, is that although they are residing beyond 2.5 kms. from the Railway hospital/health unit and have submitted the same to the Respondent-Railways, they are yet to receive Rs.100/- per month as fixed medical allowance. Hence this Original Application with the aforesaid prayer.

4. The Respondent-Railways have filed their counter. In their counter filed on 17.1.2007, they have at first raised the point of



maintainability of this O.A. on the grounds that before approaching the Tribunal, the applicants have not exhausted the departmental remedies and that a joint application with different cause of action is not maintainable.

4.1 On the merits of the matter, the Respondent-Railways have submitted that the circular dated 21.4.1999 (sic) issued by the Railway Board, which is in accordance with the order passed by the Hon'ble High Court of Kerala, the minimum distance for becoming eligible to receive fixed medical allowance is 2.5 kms. This vital criterion having not been fulfilled by the applicants, they are not eligible to get the fixed medical allowance. The Respondent-Railways have filed Annexure R/1, dated 24.3.2006, the relevant portion of which is quoted hereunder:

“ According to the latest circular and Undertaking Form-Annexure-1 of Rly Board circulated vide RBE No.45/2004 dated 01.03.2004, the Pensioners/Family Pensioners who are residing at a distance beyond 2.5 K.Ms. from the nearest Rly Hospital/Health Unit as per PPO address, they are eligible for payment of Fixed Medical Allowance of Rs.100/- P.M.

PPO address of Sri Bansidhar Mohanty

AT/PO-BARALAPOKHARI, PS & DIST-BHADRAK

PPO Address of Sri Sk.Ahmed

AT-RLY COLONY, PO-CHARAMPA, DIST-bhadrak

The Rly Health Unit is situated in Rly Colony of Bhadrak. Baralapokhari is also nearer to the Rly Colony and not more than 2.5 kms. from the Rly Health nit available at Bhadrak. Hence the above mentioned two pensioners are not eligible for payment of fixed medical allowance of Rs.100/- per month. As regards the other 4 pensioners, it is not possible to give

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remarks, since their names and PPO Numbers reference have not been furnished. If the 4 other also either belong to Barakapokhari or Charampa, they are also not entitled for payment of fixed medical allowance of Rs.100/- p.m. as per Rly Board's circular cited above".

With the above submissions, the Respondent-Railways have prayed for dismissal of this O.A. being devoid of merit.

5. Though copy of the counter has been served on the applicants on 15.1.2007, no rejoinder has been filed.

6. From the above pleadings of the parties, the sole point for consideration is whether the applicants are entitled to fixed medical allowance @ Rs.100/- per month by virtue of the Railway Board's circular dated 1.3.2004 (Annexure A/5) issued in compliance with the order passed by the C.A.T., Ernakulam Bench and affirmed by the Hon'ble High Court of Kerala.

7. Before trying the point in issue, it would be proper to deal with the point of maintainability of this O.A. as raised by the Respondents. Applicant Nos. 4, 5 and 6 had earlier approached this Tribunal in O.A. No.949/03 which was disposed of by this Tribunal with the direction, as quoted above, vide its order dated 18.11.2003 and also in C.P.No..22/2004. This fact has not been controverted by the Respondent-Railways in their counter. The present O.A. being an offshoot of earlier O.A. 949/03 filed in

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—pursuance of Annexure-A/5 dated 1.3.2004 it cannot be said that the present O.A. is not maintainable in respect of applicant Nos. 4, 5 and 6. As regards applicant Nos. 1 to 3, apparently, they have not exhausted the departmental remedies. Besides the above, it cannot be said, with reference to the places of residence in the PPOs, that all the applicants are having a common grievance and similarly, they cannot also be held to have had a common cause of action. Be that as it may, since the matter at hand can be disposed of on merits, keeping in view that the applicants are retired persons, it would not be proper to reject the matter on the ground of technicality, thereby impelling the old applicants to once again approach the Tribunal.

8. In order to decide the point in issue, Annexure-A/5 dated 1.3.2004 is the criterion for consideration. The applicants have stated that they have submitted their undertakings in pursuance of Annexure A/5 dated 1.3.2004 that they are residing beyond 2.5 kms. from the Railway hospitals/health units. However, the applicants have not produced any corroborative materials before the tribunal to show that in fact they have produced such undertakings. The respondents, as quoted above, vide Annexure R/1 to the counter, have made the matter more conspicuous. They have stated that the applicant Nos. 2 and 6, viz., S/Shri B.D.Mohanty and Sk.Ahmed, respectively, as per their address given in the PPOs,

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Baralapokhari is nearer to Railway Colony which is not more than 2.5 kms. from the Railway Health Unit available at Bhadrak, and therefore, they are not eligible for payment of fixed medical allowance. As regards applicant Nos. 1,3, 4 and 5, the Respondents have refrained themselves from passing any remarks since those four applicants have not submitted to the Respondents their names and PPO Nos. However, the Respondent-Railways have made it clear that if they either belong to Baralapokhari or Charampa, they are not entitled for payment of fixed medical allowance in view of Railway Boards letter dated 1.3.2004 (Annexure A/5). These statements of the Respondent-Railways have not been rebutted by the applicants by filing rejoinder. As indicated above, the applicants have also not produced any documents to show that in fact they had furnished their names and references of PPO Nos. to the Respondent-Railways in pursuance of Annexure A/5 dated 1.3.2004. This being the situation, Respondents were not under obligation to make a roving enquiry about the names and references of PPOs in respect of applicant Nos. 1,3, 4 and 5 and thereby, their action cannot be said to be illegal or arbitrary

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


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

fix for pronouncement.

