

10

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK

O.A.NO.164 OF 2006

Cuttack, this the 30<sup>th</sup> day of October, 2007

Bijaya Kumar Sahoo

.....

Applicant

Vrs.

Union of India and others

.....

Respondents

FOR INSTRUCTIONS

- 1) Whether it be referred to the Reporters or not ? *No*
- 2) Whether it be circulated to the Principal Bench of the Central Administrative Tribunal? *No*

  
(N.D.RAGHAVAN)  
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK

O.A.NO.164 of 2006

Cuttack, this the 30<sup>th</sup> day of October 2007

CORAM:

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

.....

Bijaya Kumar Sahoo, aged about 28 years, son of late Dhaneswar Sahoo, At Kadalimunda (Boinda), P.O.Kishoraganj, P.S.Handapa, Dist.Angul

Advocates for applicant - ..... Applicant  
M/s Rabindra Nath Prusty, K.K.Ray &  
C.R.Kar.

Vrs.

1. Union of India, represented through the Chief Post Master General, Orissa Circle, Bhubaneswar, Orissa, Dist. Khurda.
2. Superintendent of Post Offices, Dhenkanal Division, At/PO/Dist. Dhenkanal 759001.
3. The Post Master, Kishoraganj Post Office, At/PO Kishoraganja, Via-Boinda, Dist. Angul. .... Respondents

Advocate for Respondents - Ms. S.Mohapatra, ACGSC

....  
ORDER

SHRI N.D.RAGHAVAN, VICE-CHAIRMAN

This matter was listed for hearing on 29.3.2007, 16.4.2007, 17.5.2007 and 13.7.2007 and was adjourned from time to time on the request of the learned counsel for either side. On 13.7.2007 the matter was adjourned to 25.7.2007 when the learned counsels M/s Rabindra Nath Prusty, K.K.Ray and C.R.Kar for the applicant and the learned Additional Standing Counsel Ms.S.Mohapatra for the Respondents remained absent



2 ✓  
due to advocates' strike on Court work before this Bench purportedly on the basis of the CAT Bar Association resolutions passed without <sup>any foundation, as</sup> 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

*[Signature]*



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. This is the second round of litigation initiated by the applicant, his earlier OA No. 607 of 2004 having been disposed of by the Tribunal on 1.7.2005. In the earlier O.A. No.607 of 2004, he had assailed the impugned order dated 25.3.2004 (Annexure A/4 to the present O.A.) rejecting his request for compassionate appointment. In that O.A. the Department had filed their counter and after hearing the parties, the Tribunal disposed of the matter as under:

“In the aforesaid premises, this Original Application is disposed of after hearing Mr.R.N.Prusty, Learned Counsel



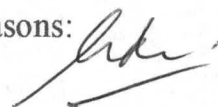
appearing for the Applicant and Ms.Swapna Mohapatra, learned Additional Standing Counsel appearing for the Respondents, with direction to the Respondents to reconsider the grievances of the Applicant (for providing him an employment on compassionate ground), because the Applicant has placed on record Annexure 6 dated 18.8.2002 to show that his younger brother (Ajaya) is living separately from the rest of the Family, which factum has been attested by the Local SARAPANCH. While reconsidering the grievance of the Applicant, the Respondents should keep in mind the instructions issued by the Department of Posts dated 02.02.1994 which inter alia provides as under:

“(4) In certain cases where there is already an earning member in the family but Huddia/Sarpanch or the M.P/MLA certified that the employed member is living separately and not rendering any financial assistance to the main family, the requests for compassionate appointment may be entertained and considered on merits. In certain cases, the literate dependants/near relatives are neither employed in Government service nor somewhere else but are engaged in cultivation etc. and not supporting the family of the deceased E.D.Agent, requests for compassionate appointment in such cases can be entertained.”

While parting with this case, liberty is hereby granted to the Applicant to place necessary further certificate from the local Sarpanch to show that his younger brother Ajaya is really living separately from the family.

The Respondents should give due reconsideration to the grievances of the Applicant (for providing him an employment on compassionate ground) within a period of 90(ninety) days from the date of receipt of a copy of this order.”

3. In compliance with the aforesaid direction of the Tribunal in OA No. 607 of 2004, the Respondent-Department considered the case of the applicant in PA/SA cadre in its meeting held on 14.1.2004 by the Circle Relaxation Committee and rejected the prayer for compassionate appointment, vide order dated 22.11.2005 issued by the Chief Post Master General (Annexure R/2) setting out the following reasons:





18

".....The Committee observed that besides one earning member in the family, the widow is getting family pension of Rs.3,919/- p.m. which is a recurring income and the candidate has also got annual income of Rs.9,600/-. The family owns a house to live in. In the synopsis Part II, the applicant has clearly mentioned that all the family members are living jointly at Kishoreganj. Even if the second son who is an earning member is living separately as per the certificate obtained from Local Sarpanch cannot escape from the responsibility of looking after his mother. Hence, the condition of the family is not considered indigent enough to consider appointment under compassionate ground...."

4. The applicant in the instant O.A. has prayed for the following relief:

"8. Relief(s) sought:-

In view of the facts as stated in paragraph 4 the applicant prays for the following:-

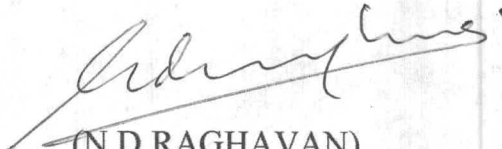
The respondents be directed to give the applicant appointment on the basis of compassionate ground in the interest of justice."

5. It is pertinent to mention here that the impugned order of rejection dated 25.3.2004, the validity of which was questioned in the earlier OA No. 607 of 2004, was ~~not~~ <sup>not</sup> quashed by the Tribunal and the applicant has annexed the same to the present O.A. as Annexure A/4 and the further order of rejection of his request for compassionate appointment (Annexure A/10) issued by the Respondent-Department in compliance with the direction of this Tribunal. The applicant has neither challenged nor prayed for quashing the said orders Annexure A/4 and A/10. Be that as it may, I have considered the contents of the O.A. as well as the counter. The



grounds on which the Respondent-Department have rejected the same have not been controverted by the applicant by filing a rejoinder to the counter.

6. Having regard to the facts and circumstances stated above, I do not find any merit in this O.A. which is accordingly dismissed. No costs.

  
(N.D. RAGHAVAN)  
VICE-CHAIRMAN

PPS

*fix for pronouncement*  
*ltd.*