

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

O.A.NO. 423 OF 2006

Cuttack, this the 30th day of October, 2007

Sundari Sethi and another Applicants

Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? yes
2. Whether it be sent to the Principal Bench of the Central Administrative Tribunal or not? yes.


(N.D.RAGHAVAN)
VICE-CHAIRMAN

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

O.A.NO. 423 OF 2006

Cuttack, this the 3rd day of October, 2007

CORAM:

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

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1. Smt. Sundari Sethi, aged 52 years, w/o late Panu Sethi (Ex.Gr 'D', Polasara SO)
2. Sri Surya Narayan Sethi, aged about 27 years, s/o late Panu Sethi, both of the applicants are residents of village/Post: Dhudhua, Via: Bhanjanagar, Dist. Ganjam (O) 761126 Applicants

Advocate for applicants - Mr.P.K.Padhi

Vrs.

1. Union of India, represented by Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi 110001.
2. Chief Post Master General (Orissa Circle), At/PO: Bhubaneswar, Dist. Khurda 751001.
3. Sr. Superintendent of Post Offices, Berhampur Division, At/PO Berhampur, Dist. Ganjam (O) 760001.
4. Sri Sudhir Kumar Pradhan, (Postal Asst.), At/PO: Jajpur Road Post Office, Dist. Jajpur.
5. Sri Kedar Guru, Group D, At/PO: Ashok Nagar S.O., Bhubaneswar-9, Dist. Khurda 751009 Respondents

Advocate for Respondents 1 to 3: Mr.U.B.Mohapatra, SCGSC



ORDER

SHRI N.D.RAGHAVAN, VICE-CHAIRMAN

This O.A. was placed before the Bench for hearing on 26.7.2007 when the learned counsel Mr.P.K.Padhi for the applicant and the learned Senior Standing Counsel Mr.U.B.Mohapatra for the Respondent-Department remained absent due to advocates' strike on Court work before this Bench purportedly on the basis of *- any foundation, like* the CAT Bar Association resolutions passed without 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

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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. Applicant No. 1 is the widow and applicant No.2 is the son ~~late~~ Panu Sethi (hereinafter referred to as "the deceased Government servant") who passed away on 25.4.2001 while in service as a Group D employee under the Respondent-Postal Department. The prayer for compassionate appointment in favour of applicant No.2 having not been acceded to by the Respondent-Department, vide Annexure A/5, dated 17.5.2005 on the grounds that the applicant is "not in indigent condition in comparison to the recommended candidates and due to want of vacancy", this Original Application has been filed with the following prayer:

“8. Relief sought for:

In view of the facts stated above, it is therefore humbly prayed that the Hon'ble Tribunal may kindly be pleased to direct the Res.No.1 to 3 more particularly Res No.2 to consider the case of

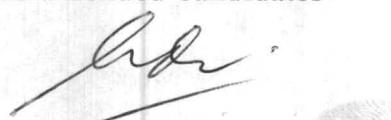
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applicant No.2 and provide him compassionate appointment to him in any Departmental/Gramin Dak Sevak Post."

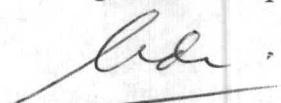
3. The applicants have arraigned two private Respondents, i.e., Respondent Nos.4 and 5 in the O.A. and have stated that whereas father of applicant No.2 passed away in the year 2001, the fathers of Respondent Nos. 4 and 5 passed away in the years 2002 and 2003, respectively, and that while the family of the applicants in the O.A. is more indigent than private Respondent Nos. 4 and 5, the case of applicant No.2 should not have been ignored, besides alleging mala fide in the matter of compassionate appointment of private Respondent Nos. 4 and 5. *ll.*

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4. Perusal of the counter filed on behalf of Respondent Nos. 1 to 4 reveals that Respondent-Department have not specifically denied or admitted and/or precisely replied to the averments made by the applicants in paragraphs 4(v) and (vi) and what they have hidden is more than replying. It also further reveals from Annexure R/1, dated 29.4.2005, annexed by the Respondent-Department to their counter that there was only one post in the cadre of Postal Assistant each which fell under compassionate appointment quota for the years 2003 and 2004 and there was no vacancy for the years 2003 and 2004 in any other cadre, i.e., Postman or Group D, as the case may be. It is seen therefrom (Annexure R/1) that none of the 21 candidates, who were considered for compassionate appointment including applicant No.2 of the present O.A. (Sl.No.15), was recommended by the Circle Relaxation Committee (CRC) meeting held on 10/11.3.2005 on the common ground: "Not in indigent condition in comparison to the recommended candidates



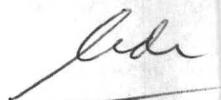
and due to want of vacancy". It is most surprising that the name(s) of the recommended candidate(s) what they call the most deserving does not find place in the list of 21 candidates who have been considered against one vacancy of P.A. for the year 2003 and one vacancy of Group D for the year 2004. Admittedly, there was no vacancy in the cadre of Postman or Group D under compassionate appointment quota for the years 2003 and 2004 and therefore, there could not have been any selection for those cadres against 'Nil' vacancy. However, for two posts of Postal Assistant, under compassionate appointment quota, as indicated above, if at all any of these 21 candidates have been considered, it cannot be said that "due to want of vacancy", although regarding indigent condition, assessment could be made and remarks given. This apart, the facts that the demise of the fathers of Respondent Nos. 4 and 5, as submitted by the applicants in the years 2002 and 2003, was later than the demise of applicant No.2's father and that private Respondent Nos. 4 and 5 respectively were appointed to the cadres of Postal Assistant and Group D under the compassionate appointment quota, have not been disputed by the Respondent-Department in their counter. Therefore, the clinching issue that emerges for consideration is, if at all applicant No.2, whose father passed away in the year 2001, was considered for compassionate appointment in the year 2005 then, when and where the cases of Respondent Nos. 4 and 5, whose fathers passed away later than applicant No.2's father, i.e., in the years 2002 and 2003, were considered and how could they be appointed, as mentioned above, in the cadres of Postal Assistant and Group D, their names having not found place in



the list of 21 persons who were considered by the CRC in its meeting held on 10/11.3.2005 (Annexure R/1).

5. Although notices were issued to all the Respondents, private Respondent Nos. 4 and 5 have neither appeared nor filed their counter. The applicants have also not prayed for quashing the appointments of Respondent Nos. 4 and 5, probably, being in between the devil and the deep sea, nor have they challenged the legality and validity of the impugned order dated 17.5.2005 (Annexure A/5) and prayed for quashing thereof; instead they have merely prayed for a direction to the Respondents to consider the case of applicant No.2 and provide him compassionate appointment in any Departmental/Gramin Dak Sevak post.

6. Having regard to what has been discussed above, I direct Respondent No.1, the Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi 11001 to cause an enquiry as to how S/Shri Sudhir Kumar Pradhan and Kedar Guru (private Respondent Nos. 4 and 5) could be appointed to the cadres of Postal Assistant and Group D respectively, particularly when their cases were not put up before the CRC in its meeting held on 10/11.3.2005 and/or their names did not find place in the list of 21 candidates (Annexure R/1). If Respondent No.1 comes to the conclusion that those 21 candidates were considered for the Postman or Group D, it shall also enquire into the reason of considering those candidates against 'Nil' vacancy for 2003 and 2004, apart from enquiring as to how Respondent No. 5 could be considered (when his name does not find place in the list of 21 candidates)



and appointed as Group D. The said Respondent No.1 shall report compliance to this Tribunal within a period of six months of the receipt of this order.

7. However, since the entire selection by the CRC, vide Annexure R/1, as directed above, is now to be enquired into by Respondent No.1, in the fitness of things, it would be proper if I direct Respondent No.2, i.e., the Chief Post Master General, Orissa Circle, Bhubaneswar (Respondent No.2) to reconsider applicant No.2's case for compassionate appointment against any GDS post, in which event, he shall issue necessary orders and communicate the same to the applicants within a period of three months from the date of receipt of this order. It is ordered accordingly.

8. The Original Application is thus disposed of. No costs.


(N.D.RAGHAVAN)
VICE-CHAIRMAN

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fix for pronouncement