

6

O.A.No. 241 of 2007

Smt. S.Elamma

.....

Applicant

Vrs.

Union of India and others

.....

Respondents

ORDER DATED 31.8.2007.

This O.A. was placed before the Division Bench on 8.8.2007 for considering the question of admission. After hearing the learned counsel for the applicant, the Tribunal, by order dated 8.8.2007, directed issuance of notices to the Respondents returnable by 24.8.2007. It was also directed that the notices should be served on the Respondents by Dusti. Though inadvertently notices were issued to the Respondents by Registered Post initially, the Registry, having noticed the mistake, issued the notices once again by Dusti. The Acknowledgement Dues have returned from Respondent Nos. 2 and 3 who have received the notices on 20th and 21st August 2007. But the Respondents did not appear either in person or through their Standing Counsel (Railways) on 24.8.2007. On 24.8.2007 the learned counsel for the applicant sought for adjournment of the matter and accordingly the matter was adjourned to 30.8.2007. The Respondents have also not entered their appearance through their Standing Counsel or Panel Counsel nor have they produced the relevant records, as per the direction contained in the notices itself.

2. On the 30th day of August 2007 the learned counsels for the applicant have not appeared due to Advocates' strike on Court work before this Bench purportedly on the basis of CAT Bar Association resolutions. In this connection, I would like to refer to the decision of the Hon'ble Supreme Court in the case of Ramon



Services Pvt.Ltd. v. Subhash Kapoor and others, JT 2000 (Suppl.2) SC 546, wherein Their Lordships, in paragraphs 24, 27 and 28 of the judgment, have held that no Advocate can take it for granted that he would appear in the court according to his whims and fancies 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 appropriate cases the court itself can 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 and the defaulting Courts may also be contributory to the contempt of the Hon'ble Apex Court. Keeping in view the case law laid down by the Hon'ble Supreme Court, the materials available on record were perused and the order was reserved.

3. Applicant – Smt. S.Elamma aged 73 years, who claims to be the widowed mother of S.Bhagabati Rao, has filed this O.A. for a direction to the Respondents to pay her the DCRG, leave salary and amount accumulated in the PF account of late S.Bhagwati Rao and other benefits. It is stated by the applicant that her son S.Bhagabati Rao was working in the Railways w.e.f. 5.10.1964. He was transferred from Talcher to Khurda Road where he joined on 22.7.²²~~1975~~ as Fitter Gr.III. He was transferred from Khurda Road to Paradip where he joined on 13.10.1978. While working at Paradeep, he passed away on 31.8.2001. It is also stated by the applicant that S.Bhagabati Rao died bachelor. The grievance of the applicant is that her representations dated 3.12.2002, 10.2.2003 and 11.6.2003 (Annexures A/3, A/4 and A/5) made to the Divisional Railway Manager, East Coast Railway, Khurda Road



Division, Dist.Khurda (Respondent No.2) have not yielded any result and therefore, she has filed the present O.A. for the direction as aforesaid. Though the Original Application appears to be barred by limitation, yet considering the facts that the applicant is an old lady aged 73 years; that her son passed away while in service; and that the applicant's successive representations have yielded no response from the Respondent-authorities, I proceed to consider the applicant's grievances as raised in the O.A.

4. From a perusal of the records, I find that the applicant, in support of her claims, has filed the Death Certificate in respect of her son (Annexure A/1); a clearance certificate issued by the Senior Section Engineer (C&W), Mechanical, East Coast Railway, Paradeep, certifying that there was neither any T&P or Store material on his account nor any Railway quarters under his occupation; the legal heir certificate showing that the applicant is the sole legal heir of her son; the applicant's representations dated 3.12.2002 (Annexure A/4), dated 10.2.2003 (Annexure A/5), and dated 11.6.2003 (Annexure A/6) all addressed to the Divisional Railway Manager, East Coast Railway, Khurda Road Division (Respondent No.2); and an affidavit sworn by the applicant stating her to be the sole legal heir of her son who died bachelor. The applicant has neither disclosed the detailed particulars of service of her son, nor has she filed a single authenticated document issued by the Railway authorities to the applicant indicating the service particulars of her deceased ^{son} ~~son~~ who was claimed to be a Railway servant. But considering the fact that the applicant has made three successive representations vide Annexures A/4, A/5 and A/6, I feel that ends of justice would be met if a direction is issued to the Respondent Nos. 2 and 3 to consider the




9

- 4 -

said representations of the applicant on the basis of records and pass a speaking order and communicate the same to the applicant within a period of 90 (ninety) days from the date of receipt of copy of this order. If it is found by the said Respondents that the applicant is entitled to any dues, then prompt steps should be taken to grant the same. It is so ordered.

In the result, the Original Application is disposed of with the above observation and direction.


(N.D.RAGHAVAN)
VICE-CHAIRMAN

