

Purna Nag **Applicant**
Vrs.
Union of India and others **Respondents**

ORDER DATED 21st SEPTEMBER 2007

By order dated 16.8.2007 notices of motion for admission as well as on the point of limitation were issued to the Respondents returnable by 30 days and the O.A. was posted to 17.9.2007.

2. On 17.9.2007 M/s N.R.Routray, S.P.Mishra and A.Singh, the learned counsels for the applicant are absent on account of Advocates' strike on Court work before this Bench on the basis of purported 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 will 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 order was reserved.

3. Applicant Purna Nag, aged about 62 years, filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, on 2.8.2007 praying for quashing the order



dated 28.5.2005 (Annexure A/3) and for a direction to the Respondents to grant pension and pay the arrear pension.

4. Brief facts of the applicant's case are that he was initially appointed as a Gangman in S.E.Railway in the year 1964 under Divisional Railway Manager, Chakradharpur. While working as a Gangman in Gang No.8 under P.W.I., Sambalpur, in the year 1985 he met with an accident and his left leg from thigh was amputated. He took retirement from Railway service with effect from 1.1.1986 on medical ground. At the time of retirement, he was paid DCRG, PF, Leave Salary and other financial benefits except pension. His representation for grant of family pension was regretted by the authorities vide order dated 19.11.1991. He once again made a representation to Respondent No.2 on 14.2.2005 (Annexure A/1). Respondent No.3 vide order dated 19.8.2005 (Annexure A/3) rejected representation on the grounds that he did not opt for pension and was in the Contributory Provident Fund Scheme. Consequent upon the recommendation of the Fifth Central Pay Commission, the ex gratia payment to the SRPF © beneficiaries who retired between the period from 1.4.1957 and 31st December 1985 at the rate of Rs.600/- per month with effect from 1.11.1997 was granted subject to the condition that such person should have rendered at least 20 years of continuous service prior to their superannuation for becoming eligible to the ex gratia payment. The Railway Board also issued **RBE No.19/1998** to that effect.

5. The applicant has filed MA No.414 of 2007 for condonation of delay in filing the O.A. In consideration of the facts that the applicant stated in the O.A. as well as in the M.A. that in the course of his employment, he met with an accident and his left leg from thigh was amputated, as a result of which he had to retire from Railway service and that being an illiterate and poor man he was



unable to take appropriate legal steps for filing the O.A. before the Tribunal and his submission that pension is a recurring right and that denial of pension is a continuing cause of action, the delay, if any, is not fatal to the Original Application. The M.A. 414 of 2007 is disposed of accordingly.

6. It is the grievance of the applicant that he having not been specifically called upon to exercise his option either to continue under the CPF Scheme or to come over to the Pension Scheme, his claim for pension should not have been rejected by the Respondent-Railways. It is also his grievance that Respondent No.3 has failed to consider his case in the light of the R.B.E. No.19/1998 and the Railway Services (Extraordinary Pension) Rules,1993 and therefore, Annexure A/3, the order 19.8.2005 is not sustainable in the eyes of law.

7. Upon perusal of the records, it is found that the applicant has not filed the copies of the order appointing him as a Gangman in S.E.Railway in the year 1964 under Divisional Railway Manager, Chakradharpur, the medical certificate/papers showing that in the year 1985 he met with an accident and his left leg from thigh was amputated; the Service Certificate/retirement order showing his retirement from Railway service with effect from 1.1.1986 on medical ground; and the payment order showing disbursement of DCRG, PF, Leave Salary and other financial benefits except pension. He has also not filed the copy of his representation for grant of family pension which was regretted by the authorities vide order dated 19.11.1991. In his representation dated 14.2.2005 (Annexure A/1) to the Divisional Railway Manager, South Eastern Railway,Chakradharpur, the applicant has stated that he took retirement during the year 1985 on medical ground. He has not stated in the O.A. that he was under the Pension Scheme and not



under the CPF Scheme. He has pleaded that the Respondents having not specifically called for option from him either to continue under the CPF Scheme or to come under the Pension Scheme, he should have been deemed to be under the Pension Scheme and therefore, he is entitled to pension. The applicant has not claimed the ex gratia payment in terms of the RBE 19/1998 and Disability Pension under the R.S.(Extraordinary)Pension Rules, 1993 in his representation dated 14.2.2005. He has also not prayed for the said benefits in the present O.A., though he has made averments about the same in the O.A. In view of this, no fault can be found with the Respondent No.3 in rejecting the applicant's representation for grant of pension. Though notices were issued in this O.A., the Respondent-Railways have preferred not to appear either in person or through any of the Panel Counsels (Railways). The Respondents have also failed to authorize an officer to appear and produce the relevant file before the Tribunal to decide the matter. Therefore, in the absence of the relevant documents in support of the claim raised by the applicant and in view of the fact that the Respondent-Railways were not moved by the applicant to examine his grievances as made by him in the present O.A., it is difficult on the part of the Tribunal to effectively adjudicate upon the matter.

8. In consideration of all the above, it is felt that ends of justice would be met if the Respondents are directed to re-examine the claim of the applicant on the basis of the relevant service records of the applicant and take a view with regard to the claim of the applicant for getting pension, or ex gratia payment in terms of the RBE 19/1998, or Disability Pension in terms of the R.S. (Extraordinary Pension) Rules, 1993 and communicate their



decision to the applicant, within a period of three months from the date of receipt of copy of this order. It is ordered accordingly.

9. The applicant shall file postal requisites for communication of this order to the Respondents within seven days from the date of receipt of copy of this order.

10. With the aforesaid observation and direction, the Original Application is disposed of at the stage of admission itself.

N.D. RAGHAWAN
(N.D. RAGHAWAN)
VICE-CHAIRMAN

fix for pronouncement

on 21-09-07

Adu