

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 538 OF 1995
cuttack, this the 6th day of August, 2002.

Kumar Songa & Others. Applicants.

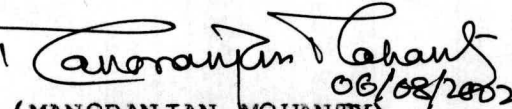
-Versus-

Union of India & Others. Respondents.

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? No.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No.


(S.K. HAJRA)
MEMBER (ADMINISTRATIVE) M


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)
06/08/2002

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH;CUTTACK.

ORIGINAL APPLICATION NO. 538 OF 1995.
Cuttack, this the 6th day of August, 2002.

C O R A M

THE HONOURABLE MR. S.K. HAJRA, MEMBER (ADMINISTRATIVE)

AND

THE HONOURABLE MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL) .

....

1. KUMAR SONGA,
S/o. Late John Songa,
A permanent resident of
Madhusudan Nagar, Jatni,
District-Khurda.
2. MATRU KHAN,
S/o. Late Fakir Khan,
a permanent resident of Motari,
PO: Motari, District: Puri.
3. SHISHIR,
S/o. Late Pitabas Mohanty,
presently residing at Gr.No.A/212-B,
Loco Colony, Khurda, Dist: Khurda.
a permanent resident of Nadhara,
PO: Nadhara, District-phenkanal.
4. RAJU,
S/o. Late Aparti Charan Dalei,
presently residing at Retang Colony,
Jatni, District-Khurda, A permanent
resident of village- Apila,
PO: Ganganarayanpur, Dist: Puri.
5. NABI,
S/o. Mahi Udin,
a resident of Baliana,
PO: Baliana, Dist. Khurda.
6. SK. KADAR,
S/o. Late Lal Khan,
a resident of Gungarpur,
PO: Bhairpur, Dist. Cuttack.

All Applicants are working as Bridge Erector Grade-I/
Bridge Erection Khalasi Grade-I. Applicants 1, 2, 4 & 5

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are working in the office of Bridge Inspector, North, Khurda Road Railway Station, Jatni, Dist. Khurda. Applicant No.3 is working in the O/O the Bridge Inspector, South, Khurda Road, Railway Station, Jatni, District, Khurda. Applicant No.6 is working in the Office of Bridge Inspector, South Eastern Railway, Cuttack.

.... APPLICANTS

By legal practitioner; M/s.B.Mohanty, S.Patra, A.Panda,
Advocates.

-VERSUS-

1. Union of India represented through
General Manager, South Eastern Railway,
Garden Reach, Calcutta, West Bengal.
2. Senior divisional Personnel Officer,
Khurda Road Division, South Eastern Rly.,
Jatni, Khurda.

.... RESPONDENTS.

By legal practitioner; Mr. Ashok Mohanty,
Senior Counsel for Railways.

O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL) :

In this Original Application (of the year 1995) under Section 19 of the Administrative Tribunals Act, 1985, the six Applicants have raised grievances that all of them joined as Temporary Khalasi under the Bridge Inspector (Cuttack) of South Eastern Railways during 1959; that upon

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successful completion of Trade Tests, they were appointed as Bridge Khalasi during 1964; that, later, they were designated as Bridge Khalasi Grade-III/Bridge Erection Khalasi Grade-III; that they were made regular, as such, in the year 1973 and upon clearing the Trade Test on 09-05-1983, they were promoted as Bridge Erection Khalasi Grade-II with effect from 01-12-1984. It is the case of the Applicants that their juniors were given promotions, simultaneously, as Bridge Erection Khalasi Grade-II and Bridge Erection Khalasi Grade-I with effect from 01-12-1984; but without giving any opportunity to them (Applicants) to appear in any Trade Test for the post of Bridge Erection Khalasi Grade-I and that vide order No.E/1/19/64, dated 15-06-1988 of the D.P.O (S.E.Railway) those juniors (of the Applicants) were extended the monetary benefits of the higher scale of pay (for the post of Bridge Erection Khalasi Grade-I) retrospectively w.e.f. 01-12-1984; for which the Applicants filed an Original Application (No. 58 of 1990) in this Tribunal and the said case was disposed of (on 24-08-1993 with directions to the Railways to take the Trade Tests of the Applicants and, in the event they are found successful, to grant them promotion w.e.f. the date their juniors were promoted as Bridge Erection Khalasi Grade-I.

2. It is the, further, case of the Applicants that by 30-06-1994, the Applicants were found suitable

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in the Trade Tests and by order dated 18-10-1994, they were granted promotion as Bridge Erection Grade-I and they were granted seniority from 01-12-1984; whereafter, they represented (on 19-08-1995) for their pay fixation and to grant them actual monetary benefits w.e.f. 01-12-1984 (as was given to their juniors) instead of granting them the proforma benefits only.

3. On 14-09-1995, the Applicants filed the present Original Application seeking a direction to the Respondents to allow them (Applicants) the scale of pay attached to the post of Bridge Erector Khalasi/Bridge Erector Grade-I w.e.f. 01-12-1984. This Original Application, which was filed on 14-09-1995, was admitted on 15-09-1995 and a counter was filed by the Respondents on 12-02-1996; wherein it has been disclosed that the promotion of the Applicants, as Bridge Erector Grade-I to have been antedated to 01-12-1984 with proforma pay protections w.e.f. 01-12-1984. In support of the said stand, the Respondents have placed on record a document/ Office Order No. 108/95 dated 13-10-1995 of the DRM(P) of Khurda Road Railway Division as Annexure-R/1. A rejoinder has also been filed in this case by the Applicant, to the counter of the Respondents; which was taken into consideration at the hearing.

4. The Respondents through their Senior Counsel for the Railways, Mr. Ashok Mohanty, have taken a positive

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stand, at the hearing of this case on 01-03-2002, that while giving direction on 24-08-1993 (in the earlier round of litigation/O.A.No.53 of 1990) *to take the Trade Test of the Applicants and, in the event of their success, to grant them promotions with effect from the date of the promotion of their juniors*; this Tribunal did not order to grant financial benefits to the Applicants retrospectively and, therefore, the prayers made in the present Original Application is bad; being barred by the principles of res-judicata.

5. Now, in the above premises, it is to be examined as to whether the Applicants were/are entitled to their wages in the higher pay scale (meant for Bridge Erectors/Bridge Erection Khalasies of Grade-I) from 01-12-1984. It emerges from the undisputed facts of this case that the Respondents/Railways, without giving any opportunities to the Applicants to appear in the Trade Tests, granted retrospective promotions to their juniors (as Bridge Erectors Grade-I) retrospectively with effect from 01-12-1984 and by order dated 15-06-1983 financial benefits (in the higher scale of pay) were also extended to those juniors ,retrospectively, w.e.f. 01-12-1984. Thus, the Applicants sustained prejudice of "non-consideration" amounting to violation of Article 14 and 16 of the Constitution of India. When their grievances were redressed (at the intervention of this Tribunal, in the earlier

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round of litigation/O.A. NO. 58/1990) the Respondents have given them promotions retrospectively w.e.f. the same date (01-12-1984) but without granting them financial benefits retrospectively (the Respondents have only granted them notional financial benefits); which amounts to gross discrimination affecting constitutional rights of the Applicants. When the Railways, during 1988, granted retrospective financial benefits to the Juniors of the Applicants w.e.f. 01-12-1984; there is no reason as to why such benefits should not be, in the facts of the case, extended to the Applicants and, therefore, we are inclined to hold that the Applicants are/were entitled to all financial benefits (in the higher scale of pay, prescribed for Bridge Erector/Bridge Erection Khalasi Grade-I) with effect from said 01-12-1984; after going through the views of the Hon'ble Supreme Court of India (rendered in AIR 1991 SC 2010 - UNION OF INDIA VRS. K.V. JANKIRAMAN and other cases) and that of the Ernakulam Bench of this Tribunal (rendered in the case of P. NARAYANAN NAIR AND OTHERS VRS. CHIEF GENERAL MANAGER, TELECOM, KERALA CIRCLE AND OTHERS reported in (1994) 26 Administrative Tribunals Cases 383).

6. After recording our findings that the Applicants are entitled to back wages at higher scale w.e.f. 01-12-1984 (for the reasons elaborated in para-5 above) now let us examine as to whether the present case is bad for "the

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principles of res-judicata* or not. When the Respondents, in gross discrimination, granted not only retrospective promotions to their juniors but also granted them retrospective financial benefits, the Applicants approached this Tribunal in the earlier round of litigation (O.A. No. 53/1990) and obtained reliefs with direction for consideration of their cases and to grant them (Applicants) promotions w.e.f. the date on which their juniors were promoted. Since the Juniors of the Applicants were granted promotions w.e.f. 01-12-1984, the Respondents have not only granted promotions to the Applicants w.e.f. 01-12-1984 but also have granted financial benefits w.e.f. the said 01-12-1984; but notionally, as is seen under Annexure-R/1 dated 10.10.1995 produced by the Respondents. Instead of taking the notional financial benefits (as offered by the Respondents in Annexure-R/1), the Applicants have now claimed actual financial benefits w.e.f. 01-12-1984. Since the Respondents granted retrospective financial benefits to the juniors of the Applicants w.e.f. 01-12-1984, there shall still remain "gross discrimination" (amounting to Constitutional violation) if actual financial benefits are not given to the Applicants with effect from the date (01-12-1984) from which they have been granted promotions by the Respondents and merely because this Tribunal (in the earlier round of litigation) did not specifically ask the Respondents/Railways to grant financial benefits retrospectively, such benefits cannot be denied to the Applicants, on the plea

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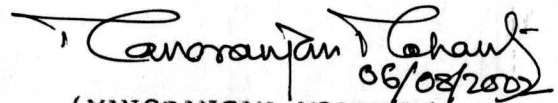
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of res-judicata; especially when no such plea was denied expressly. In any event, the views of the Hon'ble Supreme Court of India in Jankiraman's case (supra) still stands at the Respondents and they cannot escape from their liability to pay the differential arrears w.e.f. 01-12-1984 to the Applicants.

7. In the result, this Original Application is allowed. The Respondents are directed to pay the differential arrears (pay the higher scale meant for Bridge Erector Grade-I/Bridge Erector Khalasi Grade-I MINUS the wages already paid) w.e.f. 01-12-1984 to the Applicants within a period of 120 days from the date of receipt of a copy of this order. But in the circumstances, however, there shall be no order as to costs.


(S.K. HAJRA)
MEMBER (ADMINISTRATIVE)


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)
06/08/2002

KNM/C M.