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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.135 OF 1993.

Cuttack, this the 18th day of August, 1999.

Uchhab Rout, & others. Applicants.

- Versus -

Union of India & Others ... Respondents.

FOR INSTRUCTIONS

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

(G. NARASIMHAM)
MEMBER (JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN

18.8.99

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 135 OF 1998.

Cuttack, this the 18th day of August, 1999.

CORAM :

THE HONOURABLE MR. SOMNATH SOM, VICE- CHAIRMAN
AND
THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDICIAL).

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1. Uchhab Rout, aged about 43 years,
S/O. Bansidhar Rout,
At. Godi Patra,
PO. Sarada Makundpur,
Dist. Jajpur.
2. Duryodhan Rout, aged about 45 years,
S/O. Krishna Ch. Rout,
At. Belagadia, PO. Jenapur,
Dist. Jajpur.
3. Panchu Mohanty,
Aged about 50 years,
S/O. Sapani Mohanty,
At. Tarasa, PO. Jenapur,
Dist. Jenapur.
4. Ghana Behera, Aged about 40 years,
S/O. Panu Behera,
At. Dulaka Patna, a
Dist. Manjuri Road,
Dist. Bhadrak.

APPLICANTS.

by legal practitioner : Mr. Niranjan Panda, Advocate.

- VERSUS -

1. Union of India represented through
General Manager, South Eastern Railway,
At/PO. Garden Reach, Calcutta.
2. Chief Project Manager, South Eastern Railway,
(Construction), At/PO. Chandrasekharpur,
Bhubaneswar, Dist. Khurda.
3. Senior Divisional Engineer (Electrical),
South Eastern Railway, At/PO. Khurda Road,
Dist. Khurda.

. RESPONDENTS.

By legal Practitioner: Mr. R.C. Rath, Additional Standing

Counsel (Railways).

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O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application under section 19 of the Administrative Tribunals Act, 1985, applicants have prayed for a direction to the Respondents to pay the salary of applicants at par with Bridge Erection Khalasi from 9.10.1994 with interest. They have also claimed transfer allowance and differential TA at the rate of Rs.15/- per day from 1994 to 1998 in open line organisation.

2. The case of applicants are that they originally worked as Khalasi in the year 1972 in the scale of Rs.196-232/- and were promoted to semi-skilled category as Bridge Khalasi in the scale of pay of Rs. 210-290/- in between 1977 to 1979. It is stated that according to the Railway Board's letter dated 11.4.1985, the Bridge and Bridge Erection Khalasi is one and the same. All posts of Bridge Khalasis were up-graded and re-classified as skilled category in the scale of Rs. 260-400/- which was revised in accordance with the recommendation of the 4th Pay Commission to Rs. 950-1500/-w.e.f.1.1.1986. Applicants have stated that they were promoted to Bridge Khalasi on 1.7.1987. Applicants had earlier filed OA No.656/93 which was disposed of on 26.5.1995 directing to Respondents to pay the scale of pay of Rs. 950-1500/- to Bridge Khalasis as there is no difference between Bridge Khalasi and Bridge Erection Khalasi. The Tribunal has also directed the Union Government in that case to pay 6% interest. Applicants are drawing the salary in the scale of pay of Rs. 950-1500/- as per the decision of the Tribunal in OA No.656/93.

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Applicants were transferred from Khurda Road Division to Open Line Division from 9.10.1994 but till today they have not been paid their salary. The differential pay scales have not been paid by the Senior DEN, Khurda Road even though the Chief Project Manager directed for payment of the same. All the applicants joined at Khurda Road Division and now they are transferred to Chief Project Manager, Bhubaneswar. Respondents, even though aware of the fact that applicants are entitled to get the scale of pay of Rs. 950-1500/-, did not give them the scale and that is how, they have come up in this Original Application, with the prayers referred to earlier.

3. Respondents 1 and 2 in their counter have stated applicants that while working in the construction organisation were ordered to be transferred to work under Senior DEN (Co-ordination) SE Rly on administrative interest in order dated 22.7.1994 at Annexure-R/1. Applicants have alleged that they were paid less salary while working under the Sr.DEN (Coordination). These Respondents have pointed out that applicants have already reported back in the construction organisation in the end of December, 1997 and therefore, the differential salary for the period from 9.10.1994 to the end of December, 1997 is to be arranged and paid by the Senior DEN, Coordination, under whom, they were working at that time. It is stated that the Sr. DEN, Coordination has not been made as a party in this Original Application. Respondents 1 and 2 have stated that for payment of differential amount, if any, the liability can not be fixed on Respondents 1 and 2 and therefore, they have opposed the prayer of applicants. On the question of TA, these respondents have stated that as they were transferred to Khurda Road Division

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for more than six months, they are not entitled to daily TA. It is further stated that Respondent No. 2 could not immediately restore the old pay which the applicants were drawing in 1994 after they reported back to Construction in Organisation because the Last Pay Certificate (LPC), the last drawn pay has been shown at a lesser rate by the Open Line authorities. It is further stated that Respondent No. 2 can only arrange for payment of transfer grant and Packing allowance if the applicants apply for the same. Besides the above, applicants are not entitled to any reliefs against Respondent No. 2. On the above grounds, these Respondents have opposed the prayers of applicants.

4. We have heard Mr. Niranjan Panda, learned counsel for Applicants and Mr. R.C. Rath, learned Additional Standing Counsel (Railways) appearing for the Respondents 1 and 2 and have perused the records. It has been submitted by Respondents 1 and 2 that applicants have come back and joined in the construction organisation in December, 1997. It has also been stated that in case applicants apply for the same, they would be entitled to transfer grant and Packing allowance as per Rules. In view of this, the prayer of applicants for payment of transfer grant and packing allowance is disposed of with a direction to these four applicants that they should make a representation before the Respondent No. 2 who is Chief Project Manager (Construction), SE Railway, Chandrasekharpur, Bhubaneswar for payment of transfer grant and packing allowance with relevant materials within a period of 30 days from the date of receipt of a copy of this order and Respondent No. 2 is directed to dispose of the representation of the applicants and make payment of transfer grant and

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packing allowance strictly in accordance with rules within
of
a period of 90 days from the date/receipt of such
representation.

5. Applicants have also prayed for payment of Transfer allowance at the rate of Rs.15/-per day. It has been pointed out by Respondents in their counter that as applicants were transferred to open line organisation for around three years, they are not entitled to daily TA which is allowed only in cases where the transfer is less than six months. Applicants have not quoted any rule on the basis of which they would be entitled to daily TA at the rate of Rs.15/-per day. They have also not denied the assertion made by Respondents in their counter that the applicants are not entitled to this allowance because their transfer to open line organisation was for more than six months. In view of this, we hold that this prayer of applicants is without any merit and is rejected.

6. The other prayer of applicants is for allowing them the same scale of pay which they were getting in the Construction Organisation prior to their transfer to Open line Organisation, during the period of their work in the open line. This prayer is eminently reasonable because it is admitted by learned Additional Standing Counsel that applicants are holding PCR posts. In other words, these applicants have been regularised against PCR posts. The pay of a regular employee can not get reduced by his transfer to another organisation. The problem in this case is that after the applicants transfer to Open line organisation they

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had worked under Senior DEN (Coordination), Khurda Road. Applicants have not made hima party in this Original Application. In view of this, no direction can be issued to Senior DEN (Coordination) with regard to payment to be made to applicants. In consideration of this, this prayer is disposed of by directing four applicants to file a representation before the Senior DEN, Co-ordination Khurda Road seeking pay in the same scale and same level which they were getting in construction organisation prior to their transfer to Open Line Organisation after deducting the amounts already drawn by them in Open Line organisation. This representation should be made within a period of thirty days from the date of receipt of a copy of this order. The Senior DEN (Coordination) should dispose of the representation of applicants within a period of 90 (ninety) days from the date of receipt of the same and make payment in accordance with rules within a period of 30 days thereafter. This prayer is accordingly disposed of.

7. Before closing this matter, there is one aspect which can not be overlooked. It appears from page 2 of counter filed by Respondents No. 1 and 2 that even after these applicants have come back to Construction Organisation they are being paid less than they were getting earlier prior to their transfer to the Open Line Organisation on the specious ground that while sending applicants back from Open Line organisation to Construction Organisation in the LPC of applicants less salary has been indicated and unless the LPC is corrected, the Respondents are unable to pay the correct salary to the applicants. We are not impressed by the above arguments of the Respondents because these applicants

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admittedly are borne in the cadre of Construction Organisation and Respondent No. 2 is aware of their salary and pay scales prior to their transfer to the Open Line Organisation. In view of this, Respondent No. 2 can not mechanically go by the amount noted in the LPC ignoring the records available with him. If necessary, Respondent No. 2 should depute a responsible Officer to the Office of the Senior DEN (Coordination) and get the LPC corrected and pay the correct salary to these applicants. In consideration of the above, we also direct the Respondent No. 2 to take the action as indicated by us above, within a period of 90 (ninety) days from the date of receipt of a copy of this order and make payment of the differential amount of salary to these applicants within a period of 30 (thirty) days thereafter in case the correct amount has not already been paid after filing of the counter.

8. In the result, the original application is partly allowed in terms of the observations and directions given above. No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN

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