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Cuttack, this the 9th day of March, 2000.

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-Versus-

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FOR INSTRUCTIONS

- (G. NARASIMHAM)
MEMBER (JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 254 OF 1999.
Cuttack, this the 9th day of March, 2000.

C O R A M:

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

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1. Pravakar Pradhan, Aged about 51 years,
S/o. Prahalad Pradhan, At/Po. Harirajpur,
PS: Delanga, Dist. Puri.
2. Charana Behera, Aged about 46 years,
S/o. Bira Behera, At/Po: Nadhora,
Ps: Motanga, Dist. Dhenkanal.
3. Baja Rout, Aged about 52 years,
S/o. Gopi Rout, At/Khaira, Po: Jagatpur. ,
Dist. Cuttack.

: APPLICANTS.

By legal practitioner: Mr. Niranjana Panda, Advocate.

-Versus-

1. Union of India represented by
General Manager, South Eastern Railway,
At-Garden Reach, Calcutta.
2. Senior Divisional Engineer (Co-ordination).
S.E. Railway, At/Po: Khurda Road, Dist. Khurda.
3. Chief Project Manager, S.E. Railway,
At/Po: Chandrasekharapur, Bhubaneswar,
Dist: Khurda.

: RESPONDENTS.

S. Som.
By legal practitioner: Ms. S.L. Patnaik, Standing counsel (Rlys.)

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O R D E R
(ORAL)

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application u/s.19 of the Administrative Tribunals Act, 1985, applicants have prayed for a direction to the Opposite Parties to pay the differential pay scale from 9.10.1994 till date. They have also prayed for transfer allowance and Bonus.

2. Applicants case is that they were working as Bridge Khalasis in Construction organisation of SE Railway from 1.7.1987. Prior to that, they were Khalasis in that Organisation. Earlier they were getting the scale of pay of Rs.260-400/- which was revised w.e.f. 1.1.1996 from Rs.950-1500/-. It is stated that the applicants were transferred to Open-line in Khurda Road Division where they joined on and were continuing till date but they were not getting the salary of Rs.950-1500/- but they were allowed the salary in the scale of Rs.775-1025/- and Rs.800-1150/-. In view of this, it is prayed that they should be allowed the same salary which they were getting in the construction organisation after they are transferred to Open-line. It is also stated that during the period they worked in the open line under the sr.DEN(Co-ordination) they were not given Bonus and Transfer allowance and this is also another prayer made by them. Respondent No.2 under whom they had worked from 1994 had also filed a counter opposing the prayer. He has also stated that all dues payable to these applicants have rightly been paid. It is

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also stated that as per the Chief Track Engineer's letter 171 numbers of staff gangmen and Bridge Khalasis were spared to work in open line of Khurda Road Division in the scale of Rs.775-1025/- and Rs.800-1150/- respectively. Accordingly during the period of work, they have been allowed these scales and there is no question of payment of any differential salary to the applicants. Respondent No.2 has also mentioned that so far as the package allowances are concerned, package allowances are to be applied to the Chief Personnel Manager, Bhubaneswar as per rules. Along with counter, Res.No.2 has enclosed an order dated 22.7.1994 (Annexure-A/2) where these two lower scales have been specifically mentioned. Respondents 1 and 3 have filed counter supporting the claims of applicants. They have stated that the petitioners were getting the scale of Rs.950-1500/- prior to their transfer to Open-line and after their transfer, they should have been given the same scale of pay. In case Res.No.2 did not have the power to arrange the payment on the above scale of pay, he should have transferred the applicants back to the construction organisation. They have also stated that the applicants have come back to the construction organisation with effect from 17.12.1997. Res.Nos.1 and 3 have stated in their counter that Res.No.2 has to pay the differential salary to the applicants.

3. We have heard Mr.N.Panda, learned counsel for the applicants and Ms.SL Patnaik, learned Additional St. counsel appearing for the Respondents 1,2 and 3 and have perused the records.

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4. First point to be noted in this case that applicants worked in Open line from 9.10.1994 till 17-12-1997. Applicants, in their petition filed on 27-5-1999 have stated that they are continuing in the construction organisation till date. In view of the specific averments of Respondents 1 and 3 that applicants have come back and rejoined in the construction organisation on 17.12.1997 and the fact that this averments have not been denied by applicants by filing any rejoinder, it must be taken that the period of work of the applicants in the open line organisation is from 9.10.1994 to 17-12-1997 and not till today as has been claimed by the petitioners.

5. The next point which arises for consideration is whether the applicants are entitled to the scale of pay of Rs.950-1500/- during the period of their work in the open line organisation. This period of work in the open line organisation constitutes two parts i.e. from 9.10.1994 to 31.12.1995 and from 1.1.1996 till 17.12.1997. Applicants themselves have stated in para 4-2 of the OA that the scale of pay was revised in the construction organisation to Rs.950 -1500/- w.e.f. 1.1.1996. Therefore, prior to 1.1.1996 there is no question of applicants getting the scale of Rs.950-1500/-. This prayer of applicants, is therefore, held to be without any merit and is rejected.

6. The other aspect of the matter is that the applicants has not mentioned in his petition as to what scale they drew in the Open line for the period from

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9.10.1994 till 31.12.1995. According to their averments in para 4.2 of the Original application in the Const. organisation, they were getting the pay of Rs.260-400/-. As the applicants were transferred to the Open line, organisation in the same post, same scale of pay during the period of their work under open line for the period from 9.10.1994 to 31.12.1995 they are entitled to the scale of pay of Rs.260-400/-. In case they have been allowed any scale lower than this then they will be entitled to the differential amount. Respondent No.2 is directed to pay such differential amount to the three applicants from the period from 9.10.94 to 31.12.1995 within a period of 120 days from the date of receipt of a copy of this order.

7. As regards the period from 1.1.1996 till 17.12.1997 applicants have stated that their pay were revised to Rs.950-1500/- which was the corresponding pay scale for the pre-revised scale of Rs.260-400/-. There has been no averment from the Respondents side to this but it is a fact that while the applicants were working under the open line organisation the recommendation 5th Pay commission came into force w.e.f. 1.1.1996. In view of this the prayer for differential salary for the period from 1.1.1996 till 17.12.1997 is disposed of with a direction to the Respondent No.2 that the salaries of the applicants should be worked out on the basis of the 5th Pay Commission for the above period and the differential amount, if any, should be paid to the applicants within a period of 120 days from

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the date of receipt of a copy of this order.

8. Applicants in their petition have not made any prayer in the relief portion (Col. No. 8) for payment of Package allowances and therefore, it is not necessary to pass any order with regard to this. Applicants have mentioned about the transfer allowances and Bonus. So far as Bonus is concerned in case the same is payable under rules and Departmental Instructions, during the period from 1994 to 1997 when they were worked under the Open line Organisation, then the same should be calculated and paid to the applicants within a period of 120 days.

9. As regards transfer allowance, there is no averment that applicants have applied for the same and therefore, it is not necessary to pass any order with regard to the same.

10. Applicants have prayed for payment of interest on the differential amount at the rate of 6 per-cent per annum. In this case, we have ordered for payment of differential amount and on perusal of the records we find that this payment has been withheld because of a communication gap between the two wings of the SC Railway organisation. Respondents have not withheld the payments deliberately or with a view to deprive the applicants ^{from} their legitimate dues. In view of this, we hold that no case is made out by the applicants for payment of interest. We

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however, direct that in case the payment is not made within the period fixed by us i.e. 120 days from the date of receipt of a copy of this order then interest at the rate of 6% per annum should be paid to the applicants for any period beyond the period of 120 days till the date of actual payment.

11. In the result, the Original Application is disposed of in terms of the observations and directions made above. No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN

KNM/CM.