

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

**ORIGINAL APPLICATION NO. 553 of 2001
Cuttack, this the 7thday of May ,04**

Anika Behera and Others

..... Applicant(s)

Vs

Union of India and Others

..... Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? *Ye*

2. Whether it be circulated to all the Benches of the *Ye.*
Central Administrative Tribunal or not?

Subjet
(M.R. MOHANTY)
MEMBER (JUDICIAL)

Subjet
(B.N. SON)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 553 of 2001
Cuttack, this the day of July, 04

CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN
&
HON'BLE SHRI M.R.MOHANTY, MEMBER (J)

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1. Anika Behera, aged about 53 years, S/o Late Rama Chandra Behera, At present working as Khalasi, Eastern Rivers Division, Central Water Commission, Bhubaneswar, Dist. Khurda.
2. Benudhar Parija, aged about 51 years, S/o Late Uchhab Sahoo presently working as Khalasi, Eastern Rivers Division, Central Water Commission, Bhubaneswar, Dist. Khurda.
3. Rama Chandra Panda, aged about 51 years, S/o Late Bholi Charan Panda, presently working as Khalasi, Eastern Rivers Division, Central Water Commission, Bhubaneswar, Dist. Khurda.
4. P.F.Reddy, aged about 50 years, S/o Late P.Sugrib Reddy, presently working as Khalasi, Eastern Rivers Division, Central Water Commission, Bhubaneswar, Dist. Khurda.
5. Narayan Jena, aged about 52 years, S/o N.Jena, Presently working as Khalasi, Eastern Rivers Division, C.W.C., Bhubaneswar, Dist. Khurda.
6. Rabindra Nath Swain, aged about 48 years, S/o Chandramani Swain, presently working as Khalasi, Eastern Rivers Division, C.W.C., Bhubaneswar, Dist. Khurda.
7. Prahallad Samal, aged about 49 years, S/o Late Kamhei Samal, presently working as Khalasi, at Mechanical Sub-Division, Central Water Commission, Bhubaneswar, Dist. Khurda.
8. Dusasan Samal, aged about 54 years, S/o Late Ganeswar Samal, presently working as Khalasi, at Mechanical Sub-Division, Central Water Commission, Bhubaneswar, Dist. Khurda.
9. Prafulla Kumar Barik, aged about 48 years, S/o Late Biswanath Barik, presently working as Khalasi, at Mechanical Sub-Division, Central Water Commission, Bhubaneswar, Khurda (Dist.)
10. Balunkeswar Nayak, aged about 51 years, S/o Late Banamali Nayak, presently working as Work Sharke-Gr. III, at Brahmani and Lower Mahanadi Sub-Division, Central Water Commission, Bhubaneswar, Dist. Khurda.
11. Subash Chandra Ray, aged about 53 years, S/o Late N.C.Behura at present working as Khalasi, At Eastern Rivers Division, C.W.C., Bhubaneswar, Dist. Khurda.

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12. Jogendra Mallick, aged about 56 years, S/o Late Satyabadi Mallick, presently working as Work Sarkar-Gr.III, At- Eastern Rivers Division, C.W.C., Bhubaneswar, Dist. Khurda

..... Applicants

By the Advocate Mr. T.Rath

Vrs.

1. Union of India, represented through Commissioner, Govt. Of India, Central Water Commission, 310, Sewa Bhawan, R.K.Puram, New Delhi- 110066
2. Superintending Engineer, Govt. of India, Central Water Commission, Office of the Superintending Engineer, Hydrological Observation Circle, Plot No.A-173, Sahid Nagar, Bhubaneswar- 751007.
3. Executive Engineer, Govt. of India, Central Water Commission, Office of the Executive Engineer, R.R.D., Plot No.A-13&14, Bhoi Nagar, Bhubaneswar- 751022.

..... Respondents

By the Advocate Mr. A.K.Rose

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ORDER

SHRI B.N.SQM, VICE-CHAIRMAN

This O.A. has been filed by Sri Anika Behera and 11 others working as Khalasi/Work Sarkar-Gr.III, Central Water Commission, Bhubaneswar. The grievance of the Applicants is that they were granted 2nd financial upgradation in August 2000, which was withdrawn by the Respondents by their order dated 29.9.01 (Annexure-4), although they were entitled to that financial upgradation under the Assured Career Progression (in short ACP) Scheme introduced by the Central Government w.e.f. 02.08.99. They have therefore approached this Tribunal to quash the order under Annexure-4 and to direct the Respondents to grant them 2nd financial upgradation to the scale of Rs. 3050-4590 and also to direct the Respondents not to make any recovery for the payment made to them on account of the order under Annexure-4.

2. The short point involved here is whether the Applicants are entitled to second financial upgradation to the scale of Rs. 3050-4590. The Respondents have submitted that as per the A.C.P. Scheme conditions for financial upgradation the employees shall have to fulfil the eligibility conditions as given in the recruitment rules. In this case the Applicants were given second financial upgradation to the pay scale of Rs. 3050-4590 for which they were not eligible for regular promotion as the recruitment rules provide Matriculation as an eligibility condition for promotion to the post of Work Sarkar-Gr.II, whereas the Applicants are all non-matriculates. It is on this ground

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that Respondents had found their order in Annexure-4 erroneous and had, therefore, no option but to cancel the same. It has also been submitted that the Applicants had given an undertaking that over payment, if any, on account of granting financial upgradation under the A.C.P. Scheme will be subject to any audit objection and that they would refund the amount drawn by them as excess, if it is found later that the scheme was not applicable in this case.

3. Having heard both the parties and having perused the conditions for grant of financial upgradation under the A.C.P. Scheme, we hold that the decision taken by the Respondents to annul their order at Annexure-4 was taken inconfirmity with the Scheme conditions. It is not the case of the Applicants that they are Matriculates or they are eligible for regular promotion to the post of Work Sarkar-Gr.II in the normal course. However, we find from perusal of Annexure-6, a letter from Respondent No.2 to Respondent No.1, that the Government of India, Department of Personnel and Training vide their office memorandum dated 1.06.01 (copy not filed) had clarified that the Second A.C.P. after completion of 24 years of regular service is applicable to regular non Matric Group 'D' employees in the scale of Rs. 2750-4400 and had sought clarification as to whether the Work Sarkar Khalasis who are not eligible for promotion to the post of Work Sarkar-Gr.II, may be given benefit of the said scheme in the pay scale of Rs. 2750-4400. We would, therefore, direct the Respondent No.1, to take a final view on the reference made by Respondent No.2, if not already done and grant

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the benefit of second A.C.P. Scheme to the Applicants in terms of the said clarification issued by the Department of Personnel and Training vide their letter dated 1.06.01, if the Applicants are otherwise eligible.

4. With regard to the other relief sought by the Applicants regarding recovery of over payment, we hold that this prayer has merit because Apex Court has held in *catena* of cases that over payment made to an official for reasons not attributable to him should not be recovered from him, to avoid hardship to that official.

5. In the aforesaid premises we also hold that as the benefit of second A.C.P. was granted to the Applicants on their ^{own} motion by the Respondents, they will be well advised not to recover the said amount from them; if recovered already, the same should be refunded to them.

6. We accordingly dispose of this O.A. with the above directions. No cost.

Malhotra
(M.R.MOHANTY)
MEMBER (JUDICIAL)

Subba
(B.N.SQM)
VICE-CHAIRMAN

RK/SD