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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.113 OF 2005
CUTTACK, THIS THE 28th DAY OF JULY, 2006

B.Swamy Applicants


Vs.

Union of India & Others..... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

} *Yes.*


(B.B.MISHRA)
MEMBER (ADMN.)


(R.K.BATTA)
VICE-CHAIRMAN

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

**ORIGINAL APPLICATION NO.113 OF 2005
CUTTACK, THIS THE 28th DAY OF JULY, 2006**

CORAM:

HON'BLE MR. JUSTICE R.K.BATTA, VICE-CHAIRMAN

HON'BLE MR. B.B.MISHRA, MEMBER (ADMINISTRATIVE)

B.Swamy, aged about 59-1/2 years, S/o.Late A.R.Swamy, working as Catering Inspector Gr.III (CAIR Gr.III) at Railway Refreshment Room, Cuttack under hitherto the Chief Commercial Manager (P.S.), S.E.Railways, Kolkata-1, now under the Chief Commercial Manager, E.Co.Railways, Bhubaneswar residing at Quarters No. E/8, Railway Colony at Cuttack.

.....Applicant


Advocate(s) for the Applicant - M/r Achintya Das.

VERSUS

1. Union of India service through General Manager, E.Co.Rly., Chandrasekharpur, Bhubaneswar.
2. Chief Commercial Manager, E.Co.Rly., Chandrasekharpur, Bhubaneswar, PIN 751023.
3. Chief Commercial Manager, S.E.Rly., 14 Strand Road, Kolkata, PIN 700001.
4. Chief Personnel Officer (Commercial), S.E.Rly., 14 Strand Road, Kolkata, PIN 700001.
5. Sr. Divisional Commercial Manager, E.Co.Rly., Khurda Road, P.O. Jatni, Dist. Khurda, PIN 752050.
6. Sr. Divisional Personnel Officer, E.Co.Rly., Khurda Road, P.O. Jatni, Dist. Khurda, PIN 752050.

.....Respondents.

Advocate(s) for the Respondents - Mr. T.Rath.

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O.A.NO.113 OF 2005

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ORAL

ORDER DATED: 28.07.2006

MR. JUSTICE R.K.BATTA, VICE-CHAIRMAN:

The Applicant was appointed as Masalchi in Catering Department of S.E.Railways on 18.02.1972. He was promoted as Bill issuer (Voucher Issuer) with effect from 13.04.1978. He was again promoted as Clerk with effect from 10.11.1981. The Applicant was promoted to the post of Catering Supervisor Gr.III with effect from 05.03.1985 and was posted at Railway Refreshment Room at Cuttack. While the Applicant was working as Catering Supervisor Gr.III(Assistant Manager) in the scale of Rs. 975-1540/- (revised pay scale 3200-4900/-), he was asked vide Note No.1 to relieve Shri K.L.Chatterjee, Catering supervisor Gr.I in the scale of Rs. 1400-2300/- (revised scale of pay 5000-8000/-) who was transferred and posted on promotion as Catering Inspector. The Applicant claims that he was promoted as Catering Supervisor Gr.III and posted at Cuttack against the clear vacancy since 05.03.1985 and he has been ^{un-}interruptedly working against the said post of Catering Supervisor Gr.I from 28.03.1988. However, he continued to get salary on the pay scale of 260-430/-, revised scale of Rs. 975-1540/- and revised pay scale of Rs. 3200-4900/- whereas the scale of the Catering Supervisor Gr.I pay scale is 425-640/-, revised scale of Rs. 1400-2300/- and revised pay scale of Rs. 5000-8000/-. The Applicant further contends that in the pay slip for the month of January, 2005 his designation is shown as MRR (Manager Refreshment Room) and the scale of pay as Rs. 3200-4900/- which are contrary to each other. The Applicant was rewarded for his

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outstanding performance by Divisional Railway Manager, S.E.Rly., Khurda Road in the year 1997 where he was designated as MRR/CTC. The Applicant claims that he submitted a number of representations including representation dated 06.05.1990. The Applicant then also submitted representation dated 22.09.2003. The Applicant further contends that he has shouldered higher responsibility of Catering Supervisor Gr.I with effect from 28.03.1988 but has been paid in the lower scale of Catering Supervisor, Gr.III. The Applicant, therefore, seeks directions to the Respondents to indicate his name in the appropriate grade/place and publish seniority list and also grant consequential benefits on par with his juniors.

2. The Respondents, in their reply, have submitted that the O.A. suffers from multiplicity of prayers and the Applicant is seeking roving inquiry by filing this O.A. The Respondents have further stated that while working as Assistant Manager Refreshment Room, he was given charge of Catering Inspector post, which had become vacant due to the promotion of the then incumbent Shri K.L.Chatterjee. The Applicant while working as Assistant Manager Refreshment Room in the scale of Rs. 3200-4900/- has retired from service on attaining the age of superannuation on 31.08.2005. The Respondents reiterated in their reply that the Applicant was working on adhoc basis on the post of Assistant Manager Refreshment Room and was advised to take charge from K.L.Chatterjee only to effect the transfer order, but the Applicant had not been promoted and no office order has been issued in this regard. The selection for promotion to the post of Catering Supervisor, Gr.III was conducted but the Applicant was not called for selection, as his name was included in the Store Clerk/AMRR. According to the Respondents, representations dated 06.05.1990 and 28.05.1990 are not

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available in the office, and if, the Applicant did not get any response as stated by him, he should have approached the legal forum at that point of time and, as such, the claim is barred by limitation. The Respondents have further stated that the seniority of the Applicant was maintained in the Masalchi grade. The Respondents also state that the representation dated 21.02.2005 was under consideration when the Applicant approached the Tribunal without even giving any breathing time. It is also contended by the Respondents that the availability of permanent vacancy of Catering Supervisor, Gr.III or Catering Supervisor, Gr.I has nothing to do with the career of the Applicant as the Applicant was a Grade-'D' staff and his service was utilized only on adhoc basis for which he was paid salary. Since, the Applicant was never promoted as Catering Supervisor, Gr.III or I on regular basis and no office order had been issued to that effect, the Applicant cannot have any grievance against the administration. There is no dispute that a permanent vacancy was existing.

3. The Applicant in Rejoinder has admitted that it is true that the Respondents have never issued any formal office order, but the Applicant cannot be denied his legitimate dues.

4. We have heard Counsel appearing on both sides, who have drawn our attention to the relevant provisions of Indian Railway Establishment Manual. Admittedly, no formal order of appointment was issued in favour of the Applicant in relation to the post of Catering Supervisor, Gr.I, but it is crystal clear from the order dated 28/29.12.1987 that the charge of the said post was given to the Applicant on promotion of

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Shri K.L.Chatterjee. Note-(i) of the said order dated 28/29.12.1987 reads as under:

" Note: -(i) Vacancies of MRR/CTC vice Sri K.L.Chatterjee and PCM/PUI vice Sri Rana Mukherjee will be filled up latter, while they should be relieved immediately by giving charge to the concerned Catg.Supvr., Gr.III (Asstt.Manager)."

5. In fact, on this issue there is absolutely no dispute on the part of the Respondents who have categorically admitted in paragraph-1 of their Counter that while working as Assistant Manager Refreshment Room, he was given charge of Catering Inspector which became vacant due to promotion of the then incumbent Shri K.L.Chatterjee. The Respondents have reiterated in para-4 that the Applicant was advised to take charge from K.L.Chatterjee only to effect the transfer order but the Applicant had not been promoted. Though, the Applicant claim that he was promoted to the said post yet no order of promotion was either issued or has been placed before us by the Applicant. The Applicant is seeking directions to the Respondents to indicate his name in the appropriate grade/place, publish seniority list and grant consequential benefits. Obviously, on the basis of facts and record placed before us, such relief cannot be granted. Ld. Counsel for the Applicant has, however, urged before us that the Applicant can be granted lesser relief namely 'Charge Allowance' for the period he has worked as Catering Supervisor, Gr.I with effect from 28.03.1988 till the date of his superannuation but according to Ld. Counsel for the Respondents relief not claimed cannot be granted. Our attention has been drawn to various serial circulars contained in the Indian Railway Establishment

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Manual, which deal with grant of dual Charge Allowances for combination of posts. There is in fact no dispute that Applicant was holding dual charge namely charge of Catering Supervisor, Gr.III and Catering Supervisor, Gr.I with effect from 28.03.1988 till superannuation. In the light of said serial circulars, the Applicant would, in the absence of any promotion order, be entitled to Charge Allowance for the post of Catering Supervisor, Gr.I. The earliest circular to which our attention has been drawn is Estt.Sl.No. 105/88 wherein it is clarified that the payment of dual charge allowance as admissible will be at the rate of 10% of presumptive pay worked out on the basis of notional pay in the appropriate pre-revised scales of pay only and not in the revised scales of pay which have been introduced consequent on the recommendation of the Fourth Pay Commission. The next circular is Estt. Sl.No. 112/88 dated 06.05.1988 where power has been delegated to the General Manager to grant special pay limited to 10% of the presumptive pay of the additional post when he holds charge of another post in addition to his own, provided the additional charge is held for a period exceeding 30 days but not exceeding 3 months. The next circular is Estt. Sl.No. 186/88 dated 04.08.1988. It has been issued with reference to Board's letter of even number dated 21.04.1988 wherein also the General Manager can grant special pay limited to 10% of the presumptive pay of the additional post when an employee holds charge of another post in addition to his own, provided the additional charge is held for a period exceeding 30 days but not exceeding six months. It also states that dual charge arrangement shall not exceed beyond six months under any circumstances. The Ld. Counsel for the Respondents heavily relied on this circular and has contended that at the most the Applicant is entitled to 6 month's charge allowance but beyond that he is not entitled to claim the same from the establishment even though he

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✓ ~~was~~ continued to hold the charge. Thereafter also, there are serial circulars Estt. Sl.Nos. 203/88 dated 26.08.1988, 69/89 dated 20.03.1989 and 11/95 dated 30.01.1995.

6. From the above, the position is clear that when a person holds a dual charge, he is entitled to 10% Charge Allowance and as per the said circulars Charge Allowance can be paid up to 6 months. Even though the dual charge could not be continued beyond 6 months under any circumstances, yet in spite of such clear orders, the Respondents knowing fully well continued to give the charge to the Applicant for years together. The Respondents cannot now take shelter of the said provision on account of their own wrong doing and frustrate the legitimate claim of the Applicant on pleas like that the dual arrangement cannot continue beyond 6 months under any circumstances or that the claim is barred by limitation. The initial cause of action had arisen after 6 months of non-payment, and the Applicant should have approached the Tribunal much earlier but he continued making representations. The Ld. Counsel for the Respondents has also relied on the judgment of the Apex Court in S.S.Rathore vs. State of M.P., (AIR 1990 SC 10). The cause of action to claim Charge Allowance, in the circumstances, is recurring from month to month. It is now well settled that the legitimate claim of a person cannot be frustrated by taking plea of limitation and that to on the part of the Government who is expected to be model employer and the rights of the parties cannot be made to trip on such pleas. If we allow such pleas it will amount to putting premium on the wrong doings of the department and denial of legitimate claim of an employee due to him.

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7. Ld. Counsel for the Applicant had also drawn our attention to the fact that para-645 is subject to the limits laid down in paragraph 647, but the said contention would not in any manner help the Applicant since the Applicant was never formally appointed to hold dual charge of higher post.

8. Admittedly, the Applicant was given dual charge including the charge of Catering Supervisor, Gr.I while he was holding the charge of Catering Supervisor, Gr.III vide order dated 28/29.12.1987 and he took the said charge on 28.03.1988. He continued to hold this charge till he superannuated. There is no dispute that Applicant had worked against the post of Catering Supervisor, Gr.I and was simultaneously holding post of Catering Supervisor, Gr.III and his legitimate claim cannot be frustrated either on the ground of limitation or that the department could not have issued such orders of holding charge beyond 6 month, while actually, the Respondents themselves knowing fully well the provisions continued the charge with the Applicant.


9. In view of the facts and circumstances of this case, we direct the Respondents to pay the Charge Allowance of 10% to the Applicant for holding charge of post of Catering Supervisor, Gr.I from 28.03.1988 till he superannuated with 8% interest on the dues when the same became due and to which Applicant is entitled. The Respondents are free to fix the responsibility for allowing the Applicant to continue to hold dual charge even against its own circulars and recover the amount from the officers who are responsible for the same. The Respondents are directed to pay the dues under this order within a period of 3 months from the date of receipt of the order and report compliance to this Tribunal after 3 months. The matter be

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listed on Board for reporting compliance after 3 months, the O.A. is otherwise disposed of in aforesaid terms with costs of Rs. 1000/-.


MEMBER(ADMN.)


VICE-CHAIRMAN