

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Date of order: 04/03/2008

PRESENT:

THE HON'BLE DR.K.B.S.RAJAN, MEMBER(J)
A N D
THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

In the Matter of

O.A. No.741/2005

Lokhono ... Applicant

versus

Union of India & Ors. ... Respondents

O.A.No.661 of 2005

Nasir Khan Applicant

vs.

Union of India & Others Respondents

O.A.No.744 of 2005

Padan Sahoo Applicant

vs.

Union of India & others Respondents

O.A.No.664 of 2005

Guna Sahu Applicant

vs.

Union of India & others Respondents

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O.A.No.541 of 2005

Kirtan Applicant

vs.

Union of India & Others Respondents

O.A.No.742 of 2005

Mochi Applicant

vs.

Union of India & Others Respondents

O.A.No.165 of 2006

Kathia Applicant

vs.

Union of India & Others Respondents

O.A.No.406 of 2006

Sagir Dalai Applicant

vs.

Union of India & Others Respondents

(For Full details, see the enclosed cause title)

For Applicant: : M/s.N.R.Routray, S.Mishra, Counsel.

For Respondents: M/s.Ashok Mohanty, Sr. Counsel & Mr.
S.K.Ojha, Standing Counsel,
Mr.O.N.Ghosh, Counsel, Mr. P.C.Panda,
Counsel.

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ORDER

Per DR.K.B.S.RAJAN, MEMBER(J):

As the subject matter in all these is same, common order is passed. But it is to be emphasized that hearing had taken place in respect of each case separately, independent of each other.

2. The matter revolves round admissibility or otherwise of ACP to the applicants. Things common are that these applicants were engaged as casual khalasi and were granted temporary status, followed by regularization. And, later some of them had superannuated. The question is whether on completion of 12/24 years of their service, including 50% of their temporary status service, whether they are entitled to the ACP benefits, as extended by the Railways w.e.f. 01-10-1999, and if so to what extent.
3. In all these cases, the claim of the applicants is that they having completed 12 years of service without any promotion, are entitled to the first financial up-gradation w.e.f. 01-10-1999 in the scale of Rs 4,000 - 6,000 as per the extant rules and some of them, who are entitled to the second financial up-gradation should get another up-gradation after completing 24 years of service in the scale of Rs 4,500 - 7,000/-. In these cases, as explained in the respective places, the respondents had initially afforded them the ACP but later

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sought to recover the same on the ground that the applicants are not eligible to such benefits, they having already enjoyed one promotion.

4. In all these cases, resistance by the respondents is on the ground that at one stage all these were placed in a lower pay scale of Rs 210 - 290 and equivalent and later on they were officiating in the higher post of Rs 950 - 1540 which was revised to Rs 3,050 - 4,590 and as such, since they had enjoyed one hike in their pay scale, as per the ACP scheme, they are not entitled to the first ACP on completion of 12 years service.

5. The Service Books of all the Applicants have been scrutinized and by and large in all the cases the dates of initial engagement as Casual Khalasi (1972), conferment of temporary status (01.01.1981), officiating as Bridge Khalasi (01.04.1988) and regularization in Gr.'D' PCR posts (01.04.1988) which was later on anti-dated to 01.04.1984 are almost similar. The pay scales as Bridge Khalasi were initially Rs.800-1150/- but revised to Rs.950-1500/- and replaced by Rs.3050-4590/-. ACP was granted with effect from 01.04.2000 in the scale of Rs.4000-6000/- and in all these cases there was cancellation of the earlier order on the ground that all the individuals had initially enjoyed a lower pay scale followed by higher pay scale which amounted to one promotion.

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6. Learned Counsel for the parties have presented their arguments on the basis of the pleadings. Counsel for the Applicant has referred to earlier orders of this Tribunal on the subject matter of this OA.

7. Arguments were heard and documents perused. To a focused question whether the post of Bridge Khalsi is filled up by promotion from Khalasi, there was no satisfactory reply. From the record in the Service book there is no mention that the Applicants have been '**promoted**' as **Bridge Khalasi**' and on reading the entire records of each individual, it gives a picture that after they had rendered service as Khalasi, they had been appointed as Bridge Khalasi (by way of direct recruitment). In view of this it is to be taken that the Applicants have been functioning as Bridge Khalasies respectively from the dates of their appointment in 1988. The services rendered prior to 1988 have to be ignored in working out the qualifying regular service of 12 years for first ACP. This has rightly been granted with effect from 01.04.2000 for all the individuals. The Respondents have confused themselves in referring to the earlier pay scale as Khalasi which has nothing to do with their appointments as Bridge Khalasi. Once there is no promotion (it is doubtful whether Khalasi are the feeder grade of Bridge Khalasi) question of deferring the date of first ACP does not arise.

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8. In view of the above, it is crystal clear that no error occurs in granting the first ACP with effect from 1.4.2000. The error is only in cancellation of the same.

9. All the OAs are therefore allowed and the impugned orders dated 22.06.2005, in all these cases are hereby quashed and set aside. The Respondents are hereby directed to ensure that there is no depletion in the emoluments of the Applicants on account of implementation of the impugned order. If any amount has been recovered the same shall have to be refunded. In respect of those who have already retired their pension should be regulated on the basis of the ACP granted to them. Here again, if any, revision has been made reducing the pension the same shall be verified and brought back to the original amount.

10. All the above drills shall be completed within a period of four months from the date of communication of this order,

11. No costs.

Sd/-
Member (A)

Sd/-
Member (I)