

7

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 662 of 2005
Cuttack, this the 15th day of December, 2006.

KUBERA BEHERA **APPLICANT.**
Versus
UNION OF INDIA & ORS. **RESPONDENTS**

FOR INSTRUCTIONS

1. WHETHER it be sent to reporters or not? *np*
1. WHETHER it be circulated to all the Benches of the Tribunal or not? *np*


(N.D.RAGHAVAN)
VICE-CHAIRMAN


(B.B.MISHRA)
MEMBER (A)

✓ 8

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.**

ORIGINAL APPLICATION NO. 662 of 2005

Cuttack, this the 15th day of December, 2006.

C O R A M:

THE HON'BLE MR.N.D.RAGHAVAN, VICE-CHAIRMAN
&
THE HON'BLE MR.B.B.MISHRA, MEMBER(A)

Shri Kubera Behera, Aged about 52 years, S/o. Rajan Behera, Permanent resident of village Mahadia, Po: Belapada, Dist. Dhenkanal at present working As Br. Khalasi under Dy. CE/Con/D-II/E.C.Rly/BBSR.

.... APPLICANT.

BY legal practitioner: M/s. N.R.Routray, S.Mishra,
Advocates.

-VERSUS-

- 1 Union of India, represented through General Manager, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
2. The Senior Personnel Officer (Con.), East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
3. Chief Administrative Officer (Con.), East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
4. F.A. & C.A.O (Con.), East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
5. Deputy Chief Engineer (CON.), D-II, E.C.Railway, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
6. Dy. CPO (Con.), East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.

, RESPONDENTS

By legal practitioner

M/s. S.K. Ojha
A.K. Sahoo

G

ORDER

MR. B.B.MISHRA, MEMBER(A):

On the basis of the recommendations of the Fifth Pay Commission, the Government of India as a Safety Net issued a scheme known as ACP for the Central Government Civilian Employees of All Ministries/Departments to remove the genuine hardships caused due to stagnation in promotion.

2. It was made clear that there should be two up-gradation in the pay scale of an employee under the ACP scheme; one after completion of 12 years and another after further completion of 12 years subject to fulfillment of prescribed conditions and shall be counted against regular promotions availed of from the grade in which an employee was appointed a direct recruit. It has further been provided that the financial up-gradation under the ACP Scheme shall be purely personal to the employee and shall have no relevance to his seniority position. The benefits under the scheme are limited to higher pay scale and do not confer designation, duties and responsibilities to the higher post. It has also been said that regular service shall be

counted from the grade in which an employee was appointed a direct recruit.

3. The Railways have also adopted the ACP scheme as a safety net measure for its employees vide order dated 01.12.1999 (Annexure-A/4).

4. It is the case of the Applicant that he entered Railway service as Khalasi on casual basis on 04.08.1972. On 01.01.1981, he was conferred temporary status in the post of Bridge Khalasi (Rs.210-290/-). On 01.04.1984, the service of applicant was regularized in the post of Bridge Khalasi (Rs.750-940/-) against 60% PCR post, along with others. The post of Bridge Khalasi was under semi-skilled category carrying the pre revised scale of Rs. 210-290/- which was upgraded to skilled category carrying the scale of Rs.260-400/- with effect from 11.04.1985. As per the recommendations of the 4th Pay Commission the pay scale of Rs.210-290/- was revised to Rs.800-1150/- and the pay of Rs. 260-400/- was revised to 950-1500/- with effect from 01.01.1986. Pursuant to the directions of this Tribunal dated 26th May, 1995 passed in OA No. 656 of 1993, the Chief Project Manager (Con.), S.E. Railway, Bhubaneswar vide order dated 13.02.1996 upgraded the post of

Bridge Khalasi from semi skilled to skilled granting a common scale of Rs.950-1500/- with effect from 01.01.1986. As per the recommendations of the 5th Pay Commission, the Railways revised the scale of Rs.950-1500/- to Rs.3050-4590/- with effect from 1.1.1986. Accordingly, the pay scale of applicant was fixed at Rs. 3050-4590/- with effect from 1.1.1986. According to the applicant, he having completed the requisite years of service, the Respondents vide order dated 08.10.2003, have allowed him the benefits of ACP with effect from 01.04.2000 raising his pay to Rs.4000-6000/-.It his case that without putting him any notice, the Respondents cancelled the order granting him the benefits of ACP vide order dated 22.06.2006 (Annexure-A/8) on the ground that the Applicant has not completed 24 years of regular service from the date of his initial regularization which is a mandatory condition prescribed for granting 2nd financial up gradation under ACP scheme. As it appears, no consideration having been given to the representation under Annexure-A/9 dated 28.07.2005 of the Applicant, this OA has been filed praying for the following relief:

- “(a) To quash the impugned order of cancellation dated 22.06.2005 passed by the Respondent No.2 under Annexure-A/8 so far as the applicant is concerned;

-4-


12 ✓

And pass any other appropriate order as
deems proper and fit in the interest of justice.”

5. Respondents have filed their counter stating that the applicant was initially engaged as a casual khalasi with effect from 28.01.1974 and continued as such till 23.06.1974 and thereafter he was retrenched from service. But at the first page of the service sheet an entry has been made stating that the applicant was initially engaged as casual labourer with effect from 04.09.1972. He was granted temporary status with effect from 01.01.1984 as Khalasi in the scale of pay of Rs. 196-232/-. He was regularized in Gr.D PCR post of Khalasi in the scale of pay of Rs. 196-~~232~~/- w.e.f. 1.4.1984; which scale was revised to Rs. 750-940/- with effect from 1.1.1986. Applicant was confirmed in the said post w.e.f. 1.4.1989. Prior to his confirmation he was promoted to Bridge Khalasi carrying the scale of pay of Rs.800-1150/- vide order dated 24.07.1987. Subsequently that scale of pay of Rs. 800-1150/- has been revised to Rs.950-1500/- w.e.f. 1.1.1986. This scale of pay of Rs. 950-1500/- has again been revised to Rs. 3050-4590/- w.e.f. 1.1.1996. The substantive post of the applicant was Khalasi in scale of pay of Rs. 750-940/-. He was allowed to continue in the higher grade in the post of Bridge Khalasi on officiating basis. As per the Rules every casual labourer in the construction

3

organization/ project has to be considered for regularization first in a Gr. D post irrespective of his/her initial engagement in Gr. C or Gr. D posts. It has been maintained that as per the Estt. Sl. No. 62/2004, 50% service from the date of conferment of temporary status and 100% from the date of regularization is to be counted for the purpose; of granting the benefits under ACP. As the applicant was conferred with temporary status w.e.f. 16.8.1982 and regularized w.e.f. 1.4.1984, he was entitled the first ACP w.e.f. 16.8.1994. But as the applicant was regularized as Bridge Khalasi w.e.f. 24.07.1987 he is entitled to financial up gradation under ACP only w.e.f. 16.8.2006. Since it was found that the applicant was erroneously given ACP benefits w.e.f. 1.4.2000, the same was cancelled. The Respondents, have therefore, submitted that there being no illegality in the impugned order of cancellation of the ACP, this Original Application should be dismissed.

6. Heard Mr. N.R.Routray, Learned Counsel appearing for the Applicant and Mr. S.K.Ojha, Learned Standing Counsel appearing for the Railways and perused the materials placed on record. 

7. Learned Counsel appearing for the applicant while opposing the stand of the Respondents has submitted that the applicant had never been promoted during his service career and that since his substantive post is Bridge Khalasi, he was rightly granted the ACP under Annexure-A/6. He has also argued that since no opportunity was given before rescinding the order and withdrawing the benefits accrued on the applicant, the same being contrary to the cardinal principles of natural justice, the order under Annexure-A/8 dated 22.06.2006 is liable to be quashed.

8. Per contra, Learned Standing Counsel for the railways by producing the service book of the applicant has submitted that since the applicant had already got one promotion, he will be entitled to second up gradation under ACP scheme only w.e.f. 16.08.2006. But wrongly he was allowed the second up gradation under ACP w.e.f. 1.4.2000 which was rectified vide order dated 8.10.2003. He has also submitted that the Respondents have a right to rectify the mistake at any point of time. Since it was only ratification of mistake, no notice was required to be served prior to passing the order under Annexure-A/8. He has argued that up-gradation of scales of pay of Bridge AV

15
Khalasi has nothing to do with regard to adjudication of the present dispute.

9. We have perused the service Book and other connected records placed before us. We find that there is an endorsement in the service book that the applicant was promoted to the post of Bridge Khalasi during 1987. In the pay fixation order dated 19.08.1996 it has also been mentioned that the applicant was promoted to the post of Bridge Khalasi w.e.f. 24.07.1987. Though the applicant disputed such endorsement in the service book, yet we are not prepared to accept the same because it is seen that the pay fixation of the applicant was made pursuant to the orders of this Tribunal dated 09.02.1996 passed in OA No. 95 of 1996. On perusal of said records, it is found that Kuber, S/o.Rajan was applicant No.2 in the said OA. There were 34 employees of the Railways who filed the aforesaid OA and the Applicant was one of them. At Paragraph 4 (i) the Applicants have specifically stated as under:

“4(i) That the applicants joined the S.E. Railway as Khalasis in the unrevised scale of pay of Rs. 196-232/- in the year 1972 except the applicant No.15 who joined in 1976. They, excepting applicants 17 to 23 were **promoted** to semi skilled category as a Bridge Khalasis in the unrevised scale of pay of Rs. 210-290/- in between the years 1977 to 1979,

R

except applicants 17 to 23 who were **promoted** as Bridge Khalasis on 1.7.1987. Applicant No.33 is the widow of Late Kapila S/o. Late Bhagaban Similarly placed with all other applicants."

10. In view of the above, we find no discrepancies or illegality in the order under Annexure-A/8 withdrawing the ACP benefits erroneously given to the Applicant; as the Respondents have a right to rectify its mistake at any point of time. In this connection, we would like to place reliance on a decision reported in 2005 (2) KLT 63 – **United India Insurance Co. Ltd. v. Roy** in which the Division Bench of the Hon'ble High Court of Kerala held as under:

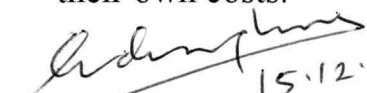
"To err is human; to correct an error is also human...It is a large organization where several employees are working and large volume of work is being transacted. In such a situation, human error at times cannot be avoided. Nobody could expect an ideal situation without any error or mistake in the matter of administration. Due to inadvertence or otherwise a mistake has been committed which can always be corrected. Duty to cast not only on the administrators but on the beneficiary of the mistake to correct the error. The beneficiary is also part of the administration like the person who has committed the mistake."

This view has also been reiterated in the case of **Santhakumari P.J. v. State of Kerala and others** 2006 (1) ATJ 321.

11. By now it is well settled that benefits given erroneously can be withdrawn at any point of time. An order which is

void *ab initio* does not give any right to an employee to claim equity. Since the order does not affect any of the vested rights of the applicant, he is not entitled to claim any opportunity before withdrawing the order erroneously granting ACP benefits to him. Any further delay would have allowed the applicant to enjoy benefits which he was not entitled to. Therefore, soon after the detection of the mistake, the Respondents have rightly taken steps to withdraw the benefits erroneously granted to the Applicant.

12. In view of the discussions made above, we find no merit in this OA which stands dismissed by leaving the parties to bear their own costs.


15.12.06
(N.D.RAGHAVAN)

VICE-CHAIRMAN


15/12/06
(B.B.MISHRA)

MEMBER (A)

KNM/PS.