

CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH: CUTTACK

O.A.No. 787 of 2005

Thurs day, this the 22nd day of November, 2007

CORAM:

HON'BLE DR K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE MR TARSEM LAL, ADMINISTRATIVE MEMBER

Keshab, S/o. Manu,
Vill. Sorai, P.O. Madhupur,
Retired Bridge Khalasi of Engineering
(Con), E.C. Railway, Cuttack.

: Applicant.

(By Advocate M/s. N.R. Routray & S. Misra)

v e r s u s

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

: Respondents.

(By Advocate M/s. S.K.Ojha and A.K. Sahoo)

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

This case is identical to OA No. 740/05 wherein the Tribunal has passed the following order:-

" The applicant was initially engaged as casual Khalasi under BRI/SER/CTC in December, 1972, and was granted temporary status with effect from 1.1.1981 as Bridge Khalasi in the scale of 210-290. Under the 60% PCR Posts, his services were regularised with effect from 1.4.1984 and he was placed in the scale of 750-940. With effect from 11.4.1985, the status of Bridge Khalasi was converted from semi-skilled to skilled with an upward revision of pay scale of Rs. 260-400 by an order of this Tribunal, the pay scale of 950-1500 was made available to all the skilled Bridge Khalasis. Thus, all the Bridge Khalasis earlier placed in Rs. 210-290 (revised as Rs. 800-1150) had been placed in 950-1500, whose replacement scale was 3050-4590. The Railways have introduced ACP Scheme for grant of financial upgradation to those who did not get any promotion, after 12/24 years of service. By an order dated 8.10.2003, the applicant was given financial upgradation in the scale of 4000-6000 with effect from 1.4.2000 and the amount thereof was paid to him in June, 2005. However, on 22.6.2005 the aforesaid order dated 8.10.2003 was cancelled without any notice against which the applicant moved a representation dated 29.08.2005. Without any notice, the respondents implemented the cancellation order dated 22.6.2005. The applicant has challenged the said order dated 22.6.2005 (Annexure A/8) as according to him, there being no promotion right from his initial induction, he is entitled to the benefit of ACP Scheme.

2. The respondents have filed a counter affidavit. They have contended that the applicant was initially engaged as Casual Khalasi on 5.12.1972 and promoted as Casual Bridge Khalasi on 2.2.1979 till 31.12.1980. He was granted temporary status with effect from 1.1.1984. Subsequently, on the basis of the ruling of Hon'ble Apex Court in *Inderpal Yadva's* case his temporary status from 1.1.1984 was antedated to 1.1.1981. The applicant's services were regularised in Grade 'D' PCR (Permanent Construction Reserve) post of Khalasi in the scale of pay of Rs.196-232 which was revised to Rs.750-940 in the IV Central Pay Commission with effect from 1.1.1986 and confirmed in that post with effect from 1.4.1989. The applicant was allowed to officiate as Bridge Khalasi in the scale of Rs.800-1150. Subsequently this scale has been revised/upgraded to the scale of Rs.950-1500 with effect from 1.1.1986. This scale of pay of Rs.950-1500 was again revised to Rs.3050-4590 with effect from 1.1.1996 under the Vth CPC. Thus the substantive status of the applicant was in a Grade 'D' post of Khalasi in the scale of pay of Rs.196-232/750-940/2550-3200 in the IIIrd CPC/IVth CPC/Vth CPC with effect from 1.4.1984 was allowed to continue in the higher grade post as Bridge Khalasi on officiating basis.

2.1. The conditions for grant of benefits under the ACP Scheme are:

"Two financial upgradations under the ACP Scheme in the entire Railway service career of an employee shall be counted against regular promotions (including in - situ promotion and/or any other promotion including fast-track promotion availed through limited departmental competitive examination) availed from the grade in which an employee was appointed as a direct recruit. This shall mean that two financial upgradations under the ACP Scheme shall be available only if no regular promotions during the prescribed periods (12 and 24 years) have been availed by an employee. If an employee has already got one regular promotion, he shall qualify for the second financial upgradation only on completion of 24 years of regular service under the ACP Scheme. In case an employee has already received two prior promotions on regular basis, no benefit under the ACP scheme shall accrue to him."

3. In this case, the substantive status of the applicant being in a Group 'D' post with effect from 1.4.1984 the eligibility is to be counted from 16.8.1982 taking into account 50% of service rendered from the date of attainment of Temporary Status and 100% from 1.4.1984. Thus, the applicant has completed 12 years eligibility service as on 16.8.1994 and in the meanwhile he having been allowed to work as Bridge Khalasi he has been enjoying the scale of pay of Rs.800-1150 in the IVth CPC scales and subsequently this has been revised to Rs.3050-4590/- under the Vth CPC scales. Keeping his substantive status as Khalasi in the scale of pay of Rs.750-940 and regularised as Bridge Khalasi with effect from 1.4.1988, he is eligible for the financial upgradation in the scale of pay of Rs.4000-6000 with effect from 16.8.2006 and the ACP benefit, which was earlier granted erroneously with effect from 1.4.2000 was cancelled vide order dated 22.6.2005. Accordingly the Original Application is liable to be dismissed, contend the respondents.

4. Records were called for to peruse as to the exact facts. Arguments have also been heard and pleadings perused. The factual position as per the records is that the applicant's initial appointment has been indicated as "casual" w.e.f. 05-12-1972. There is absolutely no indication in the service records of his initial pay scale as Rs 196 - 232. Pay scale as per entry 14 of the First page of the service book is Rs 210 - 4 - 250 - EB - 5 - 270 and date of first appointment is indicated as "cpc 1-1-1984 - 1-1-01". Subsequent entries show that the applicant had been granted increments in 1982, 83, 84, 85 and 1986 when his pay was fixed at Rs 230/-. Thereafter, applying the revised pay scale as per the Pay Commission's recommendation, the pay of the applicant was fixed in the scale of Rs 800 - 1150 at Rs 890/- with the next date of increment as 01.01.1987. This scale was continued to be available to the applicant till the pay scale was revised with retrospective effect from 01-01-1986 as Rs 950 - 1500 when the pay was fixed at Rs 1150 as on 01-01-1996 and replaced further by the scale of Rs 3050 - 4590 when the pay was fixed at Rs 3575/- with next date of increment as 01-01-1997. Thus, there is no whisper about Rs 196 - 232 pay scale in the service book. The applicant has all along been treated w.e.f. 01.01.1981 as Bridge Khalasi and as such he had not been afforded

any promotion. Hence, he is entitled to the ACP taking into account his temporary status w.e.f. 01-01-1981 and as regular from 01-04-1984. Thus, w.e.f. 09.08.1999 when ACP was introduced, the applicant shall be entitled to first financial upgradation in the scale of Rs 4,000 - 6,000/-. His entitlement to first ACP ought to have been given w.e.f. 09-08-1999 in the aforesaid scale of Rs 4,000 - 6000/- whereas he was granted the same w.e.f. 01.04.2000 and it has been treated as the second financial upgradation, whereas it is the first. Respondents are directed to verify only the period of temporary service and regular service and if the same tallies with the above, the applicant's case be considered for grant of ACP w.e.f. 9.8.1999 on the above lines. Order dated 22.06.2006 (Annexure A-8) is hereby quashed and set aside so far it relates to the applicant and the respondents shall work out the ACP as stated above and after adjusting the amount paid to the applicant the balance shall be payable. Suitable orders be passed within a period of two months from the date of communication of this order and arrears paid within two months thereafter.

5. *No costs."*

2. The only difference is that in this case the applicant has retired and further the applicant has earlier filed OA No. 1168/2004 which was disposed of by the Tribunal with a direction to the respondents to consider the grievance of the applicant. Annexure A-8 is in compliance with the above direction of the Tribunal and the rejection of the claim of the applicant is based on the same grounds as that given in respect of the applicant in OA No. 740/05.

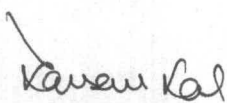
3. Though records in this case have not been called for, in so far as the documents are concerned, all are the same in both the cases and contentions as contained in the counter in the other case and that in the counter in this OA are similar. As such, in this case also, there is no merit in the contention that the applicant had been granted first Rs 750 – 940 and was given higher pay scale of Rs 3050 – 4590, which meant that he had a promotion and as such, he is entitled to second financial upgradation but he has not completed 24 years of service and hence, no ACP benefit is available to the applicant. However, in view of the fact that the applicant's pay scale as in the other case of OA No. 740/05 underwent only replacement pay scale without any promotion, and as


the applicant had been bridge Khalasi throughout, it is declared that the applicant is entitled to the same benefits as given in the case of OA No. 740/05.

Thus, this OA is also allowed. Respondents are directed to work out the period when the applicant completed 12 years of regular service (including 50% of temporary status) and based on the same, the ACP shall be afforded to the applicant. Order dated 31-08-2005 (Annexure A-8) is hereby quashed and set aside and the respondents shall work out the ACP as stated above and after adjusting the amount paid to the applicant the balance shall be payable. Correspondingly, his retirement benefits shall also be worked out and revised PPO shall be issued. Suitable orders be passed within a period of two months from the date of communication of this order and arrears paid within two months thereafter.

4. No order as to costs.

(Dated, the 22nd November, 2007)


TARSEM LAL
ADMINISTRATIVE MEMBER


DR. K.B.S. RAJAN
JUDICIAL MEMBER