IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 788 of 2005
Cuttack, this the 30th day of July, 2009

Purna .... Applicant

Versus

Union of India & Ors. .... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?

2. Whether it be circulated to all the Benches of the CAT or not?

(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

(C.R.MOHAPATRA)
MEMBER (ADMN.)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No. 788 of 2005
Cuttack, this the 30th day of July, 2009

C O R A M:

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)
A N D
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

PURNA, S/o. Dama, aged about 62 years, Village-Sathuapatna, PO. Marjitapur, PS Dharmasala, Dist. Jajpur, Retd. Bridge Khalasi/Con/RJGR/Engg (Con)/S.E.Rly.

.....Applicant

By Advocate : Mr.N.R.Routray

- Versus -

1. Union of India represented through the General Manager, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswasr, Dist. Khurda.
2. 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. FA & CAO (Con.), East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
5. Dy.CPO (Con.) East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.

....Respondents

By Advocate :Mr.S.K.Ojha

O R D E R

Per- MR. C.R.MOHAPATRA, MEMBER (A):-

Applicant, a retired Bridge Khalasi of the East Coast Railway, by filing this Original Application challenges the impugned order under Annexure-A/8 dated 31.08.2005 rejecting his prayer for grant of ACP benefits in terms of RBE No. 288 of 1999 with prayer to direct the Respondents to pay him the revised salary pension, DCRG, Commutation and leave salary after the up-gradation of scale under ACP scheme. By filing counter Respondents opposed the prayer of Applicant for grant of ACP benefits. On perusal of the records it is seen that the grounds based on which the prayer for grant of ACP was

denied to the applicant under Annexure-A/8 dated 31.08.2005 and now substantiated in the counter was also the grounds taken by the Respondents while denying the benefit of ACP to another employee of the Railway namely Kunjia, a retired Bridge Khalasi of East Coast Railway. He challenged the said order of rejection by filing OA No. 786 of 2005 disposed of on 14th July, 2009. The full text of the order dated 14th July, 2009 in OA No. 786 of 2005 is extracted herein below:-

> "Applicant is a retired Bridge Khalasi of East Coast Railway. He has earlier approached this Tribunal in OA No. 1169 of 2004 seeking direction to the Respondents to consider his case for grant of ACP benefits. In the order dated 16.12.2004, this Tribunal disposed of the aforesaid OA with direction to the Respondents to send the case of the Applicant to the Screening Committee to be held in the month of January, 2005 for considering the grievance with regard to grant of ACP benefit. In compliance of the order of this Tribunal the case of the Applicant though received consideration but his grievance for grant of ACP was rejected and communicated to the Applicant vide order under Annexure-A/8 dated 31.08.2005. The ground of rejection as reflected in the order of rejection reads as under:
>
> "In obedience t the orders of the Hon'ble CAT/CTC's Bench dated 16.12.2004 in the above OA, your case has been examined with relevant particulars of service available in the service record to put up before the Screening Committee for the grant of ACP benefits in terms of Estt.Sl.No.288/99.
>
> Your service particulars were as below:
>
> 1. Name :Kunjia
>
> 2. Designation & Scale of pay :Br.Khalasi in scale Rs.3050-4590
>
> 3. Date of grant ty. Status :01.01.1981.
>
> 4. Date of regularization and Scale of pay and post :01.04.1984 in Group D in scale Rs.750-940/- & (ii) as Br.Khalasi in scale of Rs.3050-4590/- w.e.f.01.04.1988.
>
> 5. Date of retirement :31.03.2003.

6. No.of years of service completed after adding 50% of casual servicefor the purpose of grantingACP. :20 years 7 months 15 days.

From the above service particulars it is very clear that you have been regularized against a Gr.D post in scale Rs.2550-3200/- w.e.f. 1.4.84. Further you have been promoted to the post of Br.KSI in scale Rs.3050-4590/- w.e.f. 1.4.88 on regular measure and you have completed 20 years of service as on the date of your retirement. Under extant rules the 1st financial up-gradation under ACP scheme shall be allowed after 12 years of regular service and the 2nd financial up-gradation after 12 years of regular service from the date of the 1st financial up-gradation. If an employee has already got one regular promotion he shall qualify for the 2nd financial up-gradation only on completion of 24 years of regular service under the ACP scheme. In your case you have completed 20 years of service and you have already got one regular promotion during your service from Group D post in scale of Rs.2550-3200/- to Br.Khalasi post in scale of Rs.3050-4590 on 1.4.1988 and hence you are not entitled for 2nd financial up-gradation, since you have not completed 24 years of regular service.

Thus, you case has been disposed of in compliance to the Hon'ble Tribunal's order."

2. It is the contention of the Applicant in the present Original Application filed U/s.19 of the A.T. Act, 1985 that he was initially engaged as a casual Khalasi on 07.02.1972 under BRI/SER/CTC and while working as such granted temporary status w.e.f. 1.1.1981 in the scale of Rs.210-290/- and brought over to regular establishment w.e.f. 01.04.1984 against 60% PCR sanctioned post of Bridge Khalasi vide order dated 16.07.1992 issued by then District Engineer (Reg.), S.E.Railway, Cuttack. In the order of regularization the services of Gangman, Keyman, Sweeper, Khalsi, Store Watchman, Trollyman, Bridge Khalasi, P.W.Mate, S.K.Artisan Gr.III/II/I, Sk.H/Man, Sk.Sarang Gr.I/II/III, Sk.Mistry Gr.III/II/I and other Skilled, Semi-skilled and un-skilled casual labourers were regularized w.e.f. 1.4.1973, 1.4.1984 and 1.4.1988 respectively in the scale of Rs.750-940/-. It is further contended that all the beneficiaries of the order dated 16.07.1992 who were working in different grades of Skilled, Semi-skilled and un-skilled posts were allowed to resume their work in their original posts after the order dated 16.07.1992. Respondents vide order dated 16.7.1992 brought all the

skilled, semi skilled and unskilled staffs under one umbrella by regularizing their service in the scale of Rs.750-940/-. Though services of the Applicant was regularized in the scale of Rs.750-940/- vide order dated 16.7.1992 but he had never received his pay in that scale rather he was getting the pay in the scale of Rs.800-1150/- w.e.f. 1.1.1986. The next contention of the Applicant that some of the beneficiaries of the order dated 16.7.1992, whose services were regularized against 60% PCR post of Bridge Khalasies w.e.f. 1.4.1984/1.4.1988 in the scale of Rs.750-940/- being aggrieved by the order of regularization approached this Tribunal in OA No.656/1993 praying for direction to the Respondents to grant them the skilled scale of pay of Rs.950-1500/- instead of Rs.800-1150/- w.e.f. 1.1.1986 as per Railway Board's letter dated 11.4.1985 at par with Bridge Irrector Khalasi. This Tribunal in order dated 26.5.1995 allowed the Original Application by directing the Respondents to grant the applicants therein the scale of pay of Rs.950-1500/- w.e.f. 1.1.1986 treating them as Skilled employees and in compliance of the said order of this Tribunal, the Respondents vide order dated 29.2.1996 up-graded the Bridge Khalasi to the scale of Rs.950-1500/- w.e.f. 1.1.1986. The Applicant was working as a Bridge Khalasi in the scale of Rs.210-290/- w.e.f. 1.1.1981 which was revised to Rs.800-1150/- in compliance of the recommendation of the 4th Pay Commission w.e.f. 1.1.1986 and pursuant to the order of this Tribunal the post of the applicant was upgraded from semi-skilled carrying the scale of Rs.800-1150/- to skilled carrying the scale of pay of Rs.950-1500/- w.e.f. 1.1.1986 which scale was again revised to Rs.3050-4590/- on the recommendation of the 5th Pay Commission w.e.f. 1.1.1996. By relying on the Annexure-A/6 it has been submitted by the Applicant that the date of appointment of the applicant as shown in the order is 1.1.1981and his date of retirement is January, 2003. As such, since he had completed 13 years of service as on the date of retirement having no promotional avenues, he should have been given the benefit of the scheme of ACP under Annexure-A/3 and A/4. Accordingly, his stand is that as there has been miscarriage of justice in the decision making process, the order under Annexure-A/8 is liable to set aside with further direction to pay the applicant consequential benefit of the up-gradation scale of pay under scheme retrospectively.

3. On the other hand the Respondents have opposed the prayer of the Applicant by stating in the counter that the applicant was initially engaged as Casual Khalasi on 04.09.1972 under the BRI (Reg.), Mahanadi Bridge, S.E.Railway, Kendrapara Road and conferred with Temporary status w.e.f. 1.1.1981. Finally, he was

regularized in Gr.D PCR post in the scale of pay of Rs.750-940/- w.e.f. 01.04.1984. During his service career, since the applicant was promoted to the next higher post and receiving the higher scale of pay of Rs.3050-4590/- on adhoc basis, no further benefit under the ACP scheme could be granted to him. According to the Respondents, he would have been entitled to the first financial up-gradation on completion of 12 years of regular service in the pay of Rs.2650-4000/- and then to the scale of pay of Rs.3050-4590/- on completion of 24 years of service. As per the scheme where an employee got one regular promotion (including in-situ promotion and/or any other promotion including fast-track promotion availed through LDCE) he shall qualify for the second for 2nd financial up-gradation only on completion of 24 years of regular service. But in the instant case this applicant having completed less than 24 years of regular service before his retirement in the scale of pay of Rs.2550-3200/-, Rs.3050-4590/- he was not entitled for the 2nd financial up-gradation. It is further contended that the applicant was enjoying the scale of pay of Rs.3050-4590/- much prior to 11.06.1999 in which date he was regularized as Bridge Khalasi w.e.f. 01.04.1988. In summing up it has been stated that keeping his substantive status in the scale of pay of Rs.750-940/-/Rs.2550-3200/- w.e.f. 01.04.1984 and as regular Bridge Khalasi w.e.f. 01.04.1988 he would have been entitled to the 2nd financial up-gradation only on completion of 24 years of regular service. But as the applicant had completed little more than 20 years of eligibility service even after taking into consideration 50% service rendered from the date of attaining Ty. Status to regular absorption in Gr.D post and 100% service from 01.04.1984 till 31.3.2003 (the date of retirement) question of granting of 2nd financial up-gradation does not arise. Accordingly, the Respondents prayed for dismissal of this OA.

4. Learned Counsel for the Applicant by referring to the materials placed in support of the above contentions have reiterated that as there has been miscarriage of justice in the decision making process of considering the case of the applicant for grant of ACP benefit, the order under Annexure-A/8 needs to be quashed. By placing into service copy of the order dated 22nd November, 2007 in OA No. 787 of 2005 (Keshab v Union of India and others) it has been contended by him that the grounds based on which the Respondents opposed the entitlement/grant of the ACP benefit to the Applicant was also the grounds in the aforesaid case. But this Tribunal taking into the contention advanced by the Applicant did not agree with the contention of the Respondents and accordingly, directed to the Respondents for grant of ACP benefit to the said Applicant. The factual matrix of that case fully covers

the factual scenario of this case. Accordingly, he has prayed that by applying the said decision necessary direction may be issued to the Respondents to reconsider the case of the Applicant for grant of ACP benefits retrospectively. This was not opposed by the Learned Counsel for the Respondents.

5. In view of the discussions made above, the order under Annexure-A/8 dated 31.08.2005 is hereby quashed and the matter is remitted back to the Respondents to re-examine the case of the Applicant afresh in the light of the decision already reached by this Tribunal in the case of Keshab (supra) within a period of 30 days from the date of receipt of this order. In case the result of the consideration is in affirmative, then the Applicant would be entitled to all consequential monetary benefits retrospectively, which shall be paid to the Applicant within a period of 15 days thereafter.

6. In the result, this OA stands allowed. There shall be no order as to costs."

2. Respondents placed no other materials enabling us to take any other view than the view taken in the case of Kunjia (supra). Hence, the order under Annexure-A/8 dated 31.08.2005 is hereby quashed and the matter is remitted back to the Respondents for giving fresh consideration to the case of the Applicant in the light of the decision and discussion made in the case of Kunjia (surpa) and in the event he is found otherwise entitled to the benefit of ACP, he should be granted all consequential financial benefits retrospectively. The order shall be complied with in all respect within a period of ninety days from the date of this order.

3. In the result, with the observation and direction made above, this OA stands disposed of. No costs.

(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

(C.R.MOHAPATRA)
MEMBER (ADMN.)

Knm,ps