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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 853 OF 2006
CUTTACK, THIS THE 4th DAY OF September, 2009

Sridhar Satpathy.....Applicant

Vrs.

Union of India & OrsRespondents

FOR INSTRUCTIONS

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


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


(K.THANKAPPAN)
MEMBER (JUDL.)

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 853 OF 2006
CUTTACK, THIS THE 14 DAY OF September, 2009

CORAM :

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

Sridhar Satpathy, aged about 62 years. S/o. Late Nisakar, Retd. Mate under Dy. Chief Engineer (Con.), East Coast Railway, Khurda permanent resident of village Brundadeipur Sasan, PO/Via: Jenapur, P.S. Dharmasala, Dist. Jajpur.

... Applicants

By the Advocates – M/s. N.R.Routray, S.Mishra,

-Versus-

1. Union of India represented through the General Manager, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
2. Senior Personnel Officer (Con), Coordination, 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), E.C.Railway, Khurda Road, At/PO: Jatni, Dist. Khurda.

... Respondents

By the Advocates - Mr. O.N.Ghosh

ORDER

HON'BLE MR. JUSTICE K. THANKAPPAN, MEMBER(J):

In this Original Application, the applicant has prayed for the following relief:

- “(a) To quash the impugned order of rejection dt. 6.12.2006 under Annexure-A/7.
- (b) To direct the respondents to refix his scale of pay in the scale of pay of Rs. 260-400/- instead of Rs. 210-290/- w.e.f. 1.4.1984 to 31.12.1985 and Rs. 950-1500/- instead of Rs. 800-1150/- from 1.1.1986 to 31.12.1995 and in the scale of pay of Rs. 3050-4590/- instead of Rs. 2650-4000/- from 1.1.1996 to 30.10.2005.
- (c) And direct the Respondents to pay the differential arrear salary and differential arrears of retirement and pensionary benefits such as pension, commutation, D.C.R.G. & Leave Salary in the scale of pay of Rs. 3050-4590/-.”

2. Earlier the applicant had approached this Tribunal in O.A.No. 660/06 seeking the same relief as sought in the present O.A. However, that O.A. was disposed of by this Tribunal at the admission stage itself in order dated 20.09.2006, directing the Respondents to dispose of the pending representation preferred by the applicant within a stipulated period. The said representation of the applicant, in compliance with the order of this Tribunal, having been disposed by the Respondents in rejecting his claim, this

Original Application has been filed with the prayer referred to above.

3. It is the case of the applicant that initially he was engaged as casual labourer on 4.8.1972 in S.E.Railways and while working as such he was promoted to the post of Mate in the year 1982 and granted temporary status w.e.f. 1.1.1981. According to applicant, having passed the medical test, he was ultimately regularized in the post of Mate retrospectively, i.e., w.e.f. 1.4.1984 as per order dated 16.7.1992. It is the further case of the applicant that although he was regularized in the post of Mate w.e.f. 1.4.1984, but he was discharging the duties of Keyman from the date of his promotion as Mate in the scale of Rs. 210-290/- and Rs. 800-1150/- instead of Rs. 260-400/- and Rs. 950-1500/- revised to Rs. 3050-4590/- by the 5th C.P.C. w.e.f. 1.1.1996. According to him, though he was allowed to work in the post of Mate from 1982, yet he was being treated as Gangman till the end of his service and notwithstanding his regularization as Mate w.e.f. 1.1.1984, he was being given the salary meant for Sr. Trackman and retired from Railway Service w.e.f. 30.11.2005. According to applicant, although the Respondent-Railways regularized his services in the post of Mate w.e.f. 1.4.1984, but they allowed him to work in the post of Mate with temporary status and with

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an ulterior motive, granted the scale of pay of Rs. 210-290/- and Rs. 800-1150/- w.e.f. 1.1.86 meant for Sr. Trackman. According to applicant, the scales of pay meant for Mate are Rs. 950-1500/- and Rs. 3050-4590/- as revised by the 4th and 5th C.P.C. respectively, which should have been granted to him w.e.f. 1.1.1984. The representation preferred by the applicant after his retirement having been turned down by the Respondents pursuant to direction of the Tribunal in O.A. 660/06, this O.A. has been filed.

4. In response to the notice issued by this Tribunal, the Respondents have filed their counter opposing the prayer of the applicant. They have submitted that the applicant was initially engaged as casual khalasi on 4.8.1972 and was granted temporary status on 1.1.1984, which was subsequently antedated to 1.1.1981. They have submitted that the applicant was regularized in Gr.D post in the scale of Rs. 750-940/- against PCR cadre w.e.f. 1.4.1984, and as such he was the substantive holder of Gr.D post from 1.4.1984. They have submitted that the applicant was allowed to officiate against the isolated category of Mate post due to exigency of service from 1.1.1981 in the scale of Rs. 210-290/. According to Respondents, the Gr. D (KSI) who were promoted to Mate in isolated category, the scale of pay to the relevant post was

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assigned Rs. 800-1150/- as per 4th C.P.C. Report and accordingly, the pay of the applicant was refixed from substantive grade to officiating grade, i.e. Rs. 2550-3200/- to Rs. 2650-4000/- in the 5th C.P.C. report with the concurrence of Accounts and as on 1.1.1996 the pay of the applicant was fixed at Rs. 3235/- in the scale of Rs. 2650-4000/-. On these grounds the Respondents have submitted that the O.A. being devoid of merit is liable to be dismissed.

5. Heard Shri N.R.Routray, Ld. Counsel for the applicant and Shri O.N.Ghosh, Ld. Counsel for the Respondents and perused the records. Also we have gone through the rejoinder filed by the applicant.

6. The point to be decided in this O.A. as to whether the applicant was promoted to the post of Mate on regular basis.

7. The Respondents in their counter have submitted that the applicant was allowed to officiate against the isolated category of the post of Mate w.e.f. 1.1.1981 due to exigency of service in the scale of Rs. 210-290/-. It is also not in dispute that the applicant was granted temporary status w.e.f. 1.1.1981. Therefore, it is to be inferred that the applicant if at all was granted temporary status, that was only on the status of casual labourer being his substantive grade. The applicant has

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submitted that he was promoted to the post of Mate in the year 1982. To substantiate this contention, the applicant has not produced any order promoting him to the grade of Mate. In service jurisprudence promotion is granted to an employee having regard to the relevant recruitment rules. This apart, it is the basic principle in service rules that a regular incumbent in the feeder grade could be considered for promotion, subject to fulfillment of other terms and conditions as laid down in the Recruitment Rules. Admittedly, the applicant in the year 1982 was not holding the post of Khalasi on regular basis notwithstanding the fact whether or not Khalasi is the feeder cadre for promotion to the grade of Mate. Therefore, promotion of the applicant to the grade of Mate, if any, in the year 1982, as submitted, is undoubtedly de hors the Recruitment Rules. The applicant has also submitted that although he was allowed to work against the post of Mate from 1982, he was being treated as Gangman and was being paid the salary of Sr. Trackman till the date of his retirement. By this, the applicant has approbated and reprobated the fact of his promotion and in the circumstances, it is to be concluded that the applicant while discharging duties of his substantive post was allowed to discharge the duties of Mate. The submission of the applicant that his service was regularized as Mate w.e.f.

1.4.1984 is misnomer inasmuch as regularization takes place only in respect of a post held by an employee either on casual, temporary or ad hoc basis. It is not the case of the applicant that he was holding the post of Mate on casual, ad hoc or temporary basis, as the case may be, which the Respondents have regularized w.e.f. 1.4.1984. Admittedly, the applicant was initially engaged as casual khalasi. As per the scheme, before regularization a casual labour has to be granted temporary status, whereafter his services are regularized subject to fulfillment of other terms and conditions of the said scheme. But here is a case where the applicant has submitted based on Annexure-A/1 dated 16.7.1992, that during the course of his service as temporary status khalasi he had been promoted to the post of Mate. If it be so, the applicant has not submitted before this Tribunal as to what prevented him from raising this point before the authorities when he was not granted the promotional pay scale meant for the post of Mate and had accepted the pay scale meant for Sr. Trackman without any demur although he was very much conscious of the nature of duties assigned to him and discharged by him. In the above backdrop, the applicant has not been able to maintain certainty and consistency while making averments in the O.A. In the peculiar facts and circumstances of the case,

we are of the view that Annexure-A/1 regularization order is in respect of the class, grade or category of the post held by the applicant on casual/temporary or ad hoc basis. In other words, the applicant having not at all been promoted and/or regularized in the post of Mate, rightly he had been granted the pay scale meant for the post held by him.

8. Accordingly, we answer the point in issue in the negative.

9. Before parting with this case, we cannot but observe that the present O.A. is barred by limitation inasmuch as the applicant is seeking relief in the year 2006 against a cause of action which arose in the year 1984. In other words, the applicant has approached this Tribunal more than two decades after the cause of action arose on the ground that his representation has been rejected by the Respondents at Annexure-A/7 dated 6.12.2006. In this context, we would like to observe that although the Respondents in compliance with the direction of this Tribunal in the earlier O.A. 660/06 disposed of the representation by rejecting the claim of the applicant, that by itself does not wipe out the limitation and absolve the applicant of explaining delay while seeking relief against a cause of action that arose in the year 1984. Viewed from this, the O.A. is time barred.

10. In the result, the O.A. is dismissed. No costs.

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

Thankappan
(K.THANKAPPAN)
MEMBER(JUDL.)

