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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

O.A.Nos. 516 & 517 of 2007  
Cuttack, this the 06th day of January, 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)

OA No. 516 of 2007

Damo @ Damo Sahoo, S/o. Late Murali, aged about 62 years,  
Retd. Bridge Khalasi under Deputy Chief Engineer/D-  
II/Con/S.E.Rly(now E.C.Railway) Station Bazar, Cuttack,  
Vill/Po.Manitapur, Ps.Dharmasala, Dist. Jajpur.

.....Applicant

By Advocate : M/s. N.R.Routray, S.Mishra,  
- Versus -

1. Union of India represented through its General Manager, East Coast Railway, Rail Vihar, Chandrasekharapur, Bhubaneswar, Khurda.
2. Senior Personnel Officer (Con.), East Coast Railway, Rail Vihar, Chandrasekharapur, Bhubaneswar, Dist. Khurda.
3. Chief Administrative Officer (Con.) East Coast Railway, Rail Vihar, Chandrasekharapur, Bhubaneswar, Dist. Khurda.
4. FA & CAO (Con.) East Coast Railway, Rail Vihar, Chandrasekharapur, Bhubaneswar, Dist. Khurda.
5. Deputy Chief Engineer (Con.), D-II, E.C.Railway, Station Bazar, Town/Dist. Cuttack.
6. Chief Engineer (Con.-II), East Coast Railway, Rail Vihar, Chandrasekharapur, Bhubaneswar, Dist. Khurda.

....Respondents

By Advocate :Mr. S.K.Ojha.

O.A.No.517 of 2007-

Kangali, S/o.Late Arjun, Aged about 62 years, Retd. Bridge Khalasi under Deputy Chief Engineer/D-II/Con/S.E Rly (now E.C.Railway), Station Bazar, Cuttack, Vill/Po-Mnitapur, Ps.Dharmasala, Dist.Jajpur.

...Applicant

By Advocate : M/s. N.R.Routray, S.Mishra,  
- Versus -

1. Union of India represented through its General Manager, East Coast Railway, Rail Vihar, Chandrasekharapur, Bhubaneswar, Khurda.

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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. Deputy Chief Engineer (Con.), D-II, E.C.Railway, Station Bazar, Town/Dist. Cuttack.
6. Chief Engineer (Con.-II), East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.

....Respondents

By Advocate :Mr. S.K.Ojha.

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### ORDER

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

Applicants, in both the cases, while working as Bridge Khalasi under the Respondents, retired from Railway Service on reaching the age of superannuation w.e.f. 28-02-2005 & 31-07-2006 respectively. By way of 2<sup>nd</sup> up-gradation under ACP they had been granted the scale of pay of Rs.4000-6000/- from Rs.3050-4590/- w.e.f. 01.04.2000. After the retirement of the Applicant in OA No. 516 of 2007 and just before one month of the retirement of Applicant in OA No. 517 of 2007 showing that the applicants were not entitled to the 2<sup>nd</sup> financial up-gradation under ACP for not completing 24 years of service as required under the scheme, the Respondents, by order dated 22.06.2006 withdrew the said benefits with stipulation that such withdrawal will have consequential effects. Their representations having been rejected they have approached this Tribunal in these OAs with the prayer to annul the impugned order dated

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22.6.2006 withdrawing the ACP benefits from them as also the order rejecting their representations. They have also prayed for direction to the respondents to grant them the differential pensionary as well as retirement benefits such as DCRG, Commutation, Leave Salary and pension by re-fixing the pay in the scale of pay of Rs.4000-6000. They have also sought direction to the Respondents to return them the recovered amount with interest.

2. By filing separate counters, it has been averred by the Respondents that as per the Railway Board's instruction 50% service from the date of conferment of temporary status and 100% from the date of regularization shall have to be counted for the purpose of granting the benefits of ACP. The substantive status of applicants was in Gr. D post w.e.f. 1.4.84. They were regularized in the grade of Bridge Khalasi w.e.f. 1.4.1988. Thus, they had completed 12 years of eligibility service as on 16.08.1994. They having been given one promotion on officiating basis and they would be eligible for 2<sup>nd</sup> financial up-gradation in the scale of pay of Rs.4000-6000/- w.e.f. 16.08.2006 i.e. on completion of 24 years of eligibility service as provided in the ACP scheme and not from 1.4.2000. The mistake in granting the ACP having been noticed at a later date the same was cancelled. As the authorities have the power to rectify any mistake at any point of time and as per the law one cannot claim to retain any benefits erroneously given, the Respondents withdrew the benefits

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ordering recovery. On the above grounds, they have opposed the prayers of the Applicants in both the OAs.

3. We have heard the rival submissions of the parties and perused the materials placed on record. We do not feel it necessary to record all those arguments advanced by the parties; as we find that the contentions raised in these cases were also raised by the Respondents in similar matter filed in this Tribunal in OA No. 663 of 2005 (Sachi @ Sachi Lenka v UOI and Others). This Tribunal after taking into consideration various aspects of the matter vide order dated 22nd November, 2007 allowed the prayer of the Applicant therein. The order of this Tribunal dated 22<sup>nd</sup> November, 2007 was subsequently confirmed by the Hon'ble High Court in W.P (C ) No.7427 of 2008 disposed of on 8.7.2008.

4. In view of the above, the OAs filed by the present Applicants are allowed. The impugned orders dated 22.6.2006 as also the order of rejection of the representations of the Applicants are hereby quashed with further direction that the Applicants are entitled to get their pay, pension in the scale of pay of Rs.4000-6000/- retrospectively. The Applicants are entitled to refund of the recovered amount, if any, made pursuant to the impugned orders referred to above forthwith. The above directions shall be complied with by the Respondents forthwith at any rate within a period of 60 days from the date of receipt of copy of this order; failing

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which the Applicants would be entitled to interest @ Rs.12% per annum  
till the actual payment is made. There shall be no order as to costs.

W. G. Dhan

Subj-  
Member (J)

Subj-  
Member (A)

Knm/ps