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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

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O.A.No. 431/08, 432/08 and 647/05
Cuttack, this the 15th day of December, 2008

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. 431 of 2008

Aditya, S/o.Uchhaba aged about 63 years, Vill. Jhadabandha,
Po.Nimbabahal, Dist. Dhenkanal, retired Bridge Khalasi office
of Deputy Chief Engineer/con/E.Co.Rly/Khurda Road.

.....Applicant

-Versus-

1. Union of India represented through the General Manager, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
2. Chief Administrative Officer (Con.), East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
3. Senior Personnel Officer Construction/Coordination, 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.), East Coast Railway, Khurda Road, At/Po. Jatani, Dist. Khurda.

.....Respondents

O.A.No. 432 of 2008

Kailash, S/o.Nakaphodi, aged about 63 years, Vill. Jhadabandha, Po.Nimbabahal, Dist. Dhenkanal, retired Saranga Grade III Office of Deputy Chief Engineer/Con/E.Co.Rly/CTC.

.....Applicant.

-Versus-

1. Union of India represented through the General Manager, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
2. Chief Administrative Officer (Con.), East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
3. Senior Personnel Officer Construction/Coordination, 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.), East Coast Railway, Khurda Road, At/Po. Jatani, Dist. Khurda.

.....Respondents

O.A.No.647 of 2005

Sanatan Sethi, aged about 59 years, son of Late Pari Sethi at present working as Br.Khalasi under Dy. CE/Con/D-II/E.C.Rly/BBSR.

.....Applicant

-Versus

1. Union of India represented through the General Manager, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
2. Senior Personnel Officer Construction/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. FA & CAO (Con.) East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
5. Deputy Chief Engineer (Con.), East Coast Railway, Khurda Road, At/Po. Jatani, Dist. Khurda.
6. Chief Engineer (Con-II), East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.

.....Respondents

By Advocate (For Applicants): M/s.N.R.Routray, S.Mishra.

By Advocate (For Respondents): M/s.S.K.Ojha, A.K.Sahoo, Mr. Ashok Mohanty.

O R D E R

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

These cases arise out of the order dated 22-06-2005 by East Coast Railway withdrawing the benefits of 2nd financial up-gradation under ACP to the scale of Rs.4000-6000/- w.e.f. 01.04.2000.

2. The reason in support of the order dated 22.06.2005 (Annexure-A/8) adduced by the Respondents in the counter filed by the Respondents in OA No. 647 of 2005 is that the Applicant was regularized in Gr. D PCR post Khalasi in the scale of pay of Rs. 196-232/- during 3rd

Pay Commission period. Subsequently, the scale of pay of Rs.196-232/- was revised to Rs.750-940/- as per 4th CPC recommendation w.e.f. 01.01.1986. The applicant was confirmed in Gr.D PCR post in the scale of pay of Rs.750-940/- w.e.f. 01.04.1989. Subsequently, he was promoted to the post of Bridge Khalasi in the scale of pay of Rs.800-1150/- (RP) vide DEN (Regridering)/S.E.Railway, Cuttack's Office order No. 106 from 24.07.1987. The scale of pay of Rs.800-1150/- was revised (upgraded) to the scale of pay of Rs.950-1500/- w.e.f. 1.1.1986 in the 4th CPC scales. Again this scale was revised to Rs.3050-4590/- w.e.f. 1.1.1996 on the recommendation of the 5th CPC. Thus, the substantive status of the applicant being Gr. D post Khalasi in the scale of pay of Rs.196-232/- and he having been allowed to officiate as Bridge Khalasi and enjoying the scale of pay of Rs.3050-4590/-, Screening Committee granted financial up-gradation to the applicant w.e.f. 1.4.2000 ignoring his substantive status w.e.f. 1.4.1984 as Khalasi. As such, the Applicant is eligible for one financial up-gradation as per para 5.3 (conditions for grant of benefits under ACP scheme) on completion of 24 years of regular service w.e.f. 16.08.2006 only. The mistake having been pointed out at a later stage, the order dated 22.06.2005 withdrawing the benefit erroneously granted to the Applicant was/is justified.

3. It is pertinent to mention that as in the present case, by passing order dated 22.6.2005 the Railway had also withdrawn the ACP

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benefits granted to other similarly situated employees. Being aggrieved by the said order, the Applicants in those cases approached this Tribunal in OA Nos.741/2005, 661/2005, 744/05, 664/05 and others. The Division Bench of this Tribunal after considering various aspects of the matter including the records produced before them have quashed the impugned order dated 22.6.2005 withdrawing the ACP benefits with direction to the Respondents to ensure that there is no depletion in the emoluments of the applicants on account of implementation of the impugned order. If any amount has been recovered the same shall have to be refunded. In respect of those who have already retired, their pension should be regulated on the basis of the ACP granted to them. Here again, if any revision has been made reducing the pension the same shall be verified and brought back to the original amount. This direction was made by the Division Bench of this Tribunal in earlier cases on the failure of the Respondents to prove their case that the post of Bridge Khalasi is filled up by promotion from Khalasi as also failure on their part to prove that the Applicants had ever been promoted to the post of Bridge Khalasi. Respondents carried the matter to the Hon'ble High Court of Orissa in WP (C) No. 13229 of 2008 and possibly because of consistent failure on the part of the Respondents to prove contrary to the findings based on which the Tribunal reached such conclusion, the Hon'ble High Court of Orissa in its order dated 24.09.2008 dismissed the above Writ Petition.

4. Having heard the rival submissions of the parties and upon perusal of records, we find no distinguishing feature in the present cases to take a view other than what has already taken by the Division Bench of this Tribunal as confirmed by the Hon'ble High Court of Orissa in the aforesaid case. Accordingly, we quash the impugned order dated 22.6.2005 in all the above cases and direct the Respondents to ensure that there is no depletion in the emoluments of the applicants on account of implementation of the impugned order. If any amount has been recovered the same shall have to be refunded. In respect of those who have already retired their pension should be regulated on the basis of the ACP granted to them. Here again, if any revision has been made reducing the pension the same shall be verified and brought back to the original amount. The above direction shall be complied with by the Respondents within a period of 45 days from the date of receipt of copy of this order.

5. Resultantly, all these OAs stand allowed by leaving the parties to bear their own costs.

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Sd/-
Member (T)

Sd/-
Member (A)