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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.


Original Application No.519 of 2008  
Cuttack, this the 18<sup>th</sup> day of December, 2009

Pushu ..... 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.)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

O.A.No. 519 of 2008

Cuttack, this the 18<sup>th</sup> day of December, 2009

C O R A M:

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

THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

Pushu, S/o.Late Dullal, aged about 63 years, At.Gunda, Po. Simigunda,  
Ps.Nimdih, Dist. Singhbhum, Jharkhand, retired Bridge Khalasi office  
of Deputy Chief Engineer/Con/E.C.Rly/Jajpur Keonjhar Road.

.....Applicant

By Advocate : Mr.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. Chief Administrative Officer (Con.), East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
3. The Senior Personnel 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.M.K.Das

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 seeks direction to the Respondents to grant him 1<sup>st</sup> Financial up-gradation w.e.f. 01.10.1999 under the ACP scheme and grant consequential benefits, differential arrear salary, DCRG, Commuted value of pension, leave salary and arrear pension) by re-fixing his pay in the scale of Rs.4000-6000/-.

2. Respondents, in their reply filed on 27<sup>th</sup> November, 2009, have contested the case of the Applicant on the ground that the applicant was a casual bridge Khalasi from 28.10.1972 to 31.12.1980. He was granted temporary status w.e.f. 1.1.1981 as Bridge Khalasi in the scale of Rs.210-290
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and continued in the same scale upto 31.3.1984. He was granted PCR status 40%/60% w.e.f. 01.4.1984 as per the OM dated 16.7.1992. The initial scale of the PCR staff brought into the regular establishment of the Railway was Rs.196-232/- revised to Rs.750-940/-. There is no provision in the Railway to regularize the service of a casual employee in the higher scale of Rs.210-290/- instead of in the pay scale of Rs.750-940/-. Though the staff had never received his salary in the initial scale of his regularization the Railway had favoured him by granting higher scale of pay as he was able to do the work required for Bridges. Hence granting of higher scale at the initial stage of regularization may be treated as one kind of scale up-gradation or promotion whatsoever it may be. Thereafter, on passing the trade test of Bridge Khalasi, by way of another up-gradation the applicant was granted the scale of pay of Rs.3050-4590 w.e.f. 1.4.1988 vide O.O dated 11.6.1999. In other words it is the contention of the Respondents that the applicant had got two financial up-gradation during his entire period of service of 23 years and 11 months and 15 days though the Scheme of ACP provides two financial up-gradation during 24 years of regular service. As the applicant had not completed 24 years of regular service during the span of his service career, he had not been considered for further financial up-gradation to Rs.4000-6000/-.

3. It was contended by learned counsel for the applicant that the submission of the respondents that the applicant had been allowed two financial up-gradations during less than 24 years of service is completely a myth and after thought. His contention is that the applicant has not got any such financial up-gradation as alleged by the respondents in their counter. As such, the applicant is entitled to first financial up-gradation as per the scheme. Further contention of the Learned Counsel for the Applicant is that the present OA is fully covered by the decision of this Tribunal in OA No.786 and 788 of

2005 and, therefore he has prayed for direction to the respondents to grant him the relief claimed in this OA. Per contra, it was submitted by learned counsel for the Respondents that applicant having been regularized against 40/60% PCR post in the scale of pay of Rs.750-940/- w.e.f. 01.04.1984, was considered for higher scale of pay of Rs.210-290/- which was subsequently revised to the scale of Rs.800-1150/-. This shows that the applicant had already been considered for one promotion/financial up-gradation before completion of 12 years of regular service. As such consideration of his case for grant of financial up-gradation after completion of 12 years service against the pay scale of Rs.4000-6000/- is not correct. Having considered the above submission of the parties, perused the materials place on record. No document has been placed by the Respondents in support of their stand that the regularization of the applicant <sup>was</sup> made in the pay scale as has been stated in their counter. The logic advanced in support of their stand, on scrutiny of materials placed on record, is found to be based on conjecture and surmise and without any supporting material. It is not at all worthy on the part of a benevolent employer to take such a stand, at least in court of law where people come for justice. If it is the stand of the Respondents that regularization of the applicant in the higher scale was by way of financial up-gradation, it is not understood as to how and why such benefit was granted to the applicant. However, we do not like to state more on the above points. Such question in regard to grant of the benefits of ACP came up for consideration before this Tribunal in OA No. 786 of 2005 disposed of on 14<sup>th</sup> July, 2009 (Kunjia v UOI). Relevant portion of the order in the aforesaid OA is extracted herein below:

“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 1<sup>st</sup> financial up-gradation under ACP scheme shall be allowed after 12 years of regular service and the 2<sup>nd</sup> financial up-gradation after 12 years of regular service from the date of the 1<sup>st</sup> financial up-gradation. If an employee has already got one regular promotion he shall qualify for the 2<sup>nd</sup> 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 2<sup>nd</sup> financial up-gradation, since you have not completed 24 years of regular service.

Thus, your 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, Trolleyman, 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

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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 4<sup>th</sup> 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 5<sup>th</sup> 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 1.1.1981 and 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 2<sup>nd</sup> 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 2<sup>nd</sup> 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

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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 2<sup>nd</sup> 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 2<sup>nd</sup> 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 22<sup>nd</sup> 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."

4. No material has been placed by the Respondents enabling us to take any other view than what has been taken in the case of Kunjia (supra).

Rather it is noticed that the present case is covered by the aforesaid decision of

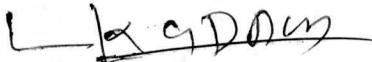
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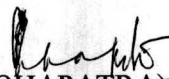
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this Tribunal. Hence, this Original Application is disposed of with direction to the Respondents to consider grant of first financial up-gradation under the ACP to the Applicant with all consequential financial benefits including arrear as admissible within a period of sixty days from the date of receipt of the order. No costs.

5. In the result, this OA stands allowed to the extent stated above.

No costs.

  
(JUSTICE K. THANKAPPAN)  
MEMBER (JUDICIAL)

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