

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. O.A. 238 of 1997

Present : Hon'ble Mr.D. Purkayastha, Judicial Member

Hon'ble Mr.G.S.Maingi, Administrative Member

1. Shri Kanai Parai, son of Late Mahendra Parai, aged about 56 years, working as Khalasi under P.W.I.(Con), S.E.Rly., Kharagpur, residing at Vill.Sahora, P.O. Burari, Dist. Midnapore.
2. Shri Pulin Naik, son of Late Dasu Nayek, aged about 51 years, working as Khalasi under P.W.I.(Con), S.E.Rly., Kharagpur, residing at Vill. Gobindapur, P.O.Pathra, Dist. Midnapore.
3. Shri Haripada Das, son of Late Hriday Das, aged about 54 years, working as Khalasi under P.W.I.(Con), S.E.Rly., Kharagpur, residing at Vill. Jhuli, P.O. Hizli, Dist. Midnapore.
4. Shri Gouranga Bera, son of Late Bijoy Bera, aged about 49 years, working as Khalasi under P.W.I.(Con), S.E.Rly, Kharagpur, residing at Vill. Jhapatapur, P.O. Kharagpur, Dist. Midnapore.
5. Smt. Kalpana Mahapatra, W/O Late Basudeb Mahapatra, working as record shorter under SPM, S.E. Rly., Kharagpur, residing at Vill. Barangabazar, P.O. Pratappur, Dist. Midnapore.
6. Sandhya Pramanik, D/O Late Niranjan Pramanik, Age - 48, working as Record Shorter under SPM, S.E.Rly., Kharagpur, residing at Vill. Pursottampur, P.O. Raghunathbari, Dist. Midnapore.
7. Shri Jagannath Dutta, S/O Late Kalachand, working as record shorter under SPM, Kharagpur, residing at Kharagpur, P.O. Kharagpur, Dist. Midnapore.

... Applicants

-Versus-

1. Union of India, service through the General Manager, S.E.Rly., Garden Reach, Calcutta - 43.
2. The Chief Project Manager, S.E.Rly., Garden Reach, Calcutta-43.
3. The Sr. Project Manager, S.E.Rly., Kharagpur.
4. The Permanent Way Inspector (Construction), S.E.Rly., Kharagpur.

... Respondents

For the applicant(s) : Mr. A. Chakraborty, counsel

For the respondents : Mr. S. Chowdhury, counsel

Heard on : 5.5.2000

Order on: 5.5.2000

O R D E R

D.Purkayastha, J.M.:-

Seven applicants viz. Shri Kanai Parai and six others filed this application jointly before this Tribunal alleging that they were initially appointed in the Construction Unit of the Rail Link to Haldia Port, South Eastern Railway as Khalasi and attained temporary status with effect from 1.1.1981 and they were regularised in Class IV Posts after being declared suitable in the Screening Test. Thereafter, applicants were asked to appear in the Trade Test conducted by the Authority at Kharagpur for promotion to the post of Store Man and Artisan Khalasi and subsequently, they were found successful in the said Trade Test and promoted to the post of Store Man and Artisan Khalasi vide Order dated 14.3.90 and 24.5.90 (Annexure 'A' & A-1' to the application) and posted under the Division mentioned therein in the letter marked as Annexure 'A' & 'A-1' to the application. But though promotion was given to them, they were not paid the Salary in respect of Promotional Post. Respondents also did not cancel the order of promotion as mentioned above till date. Since the applicants are working in the capacity of respective promotional posts, they are entitled to get Salary attached to those promotional posts and respondents have no right to deprive them of Salary attached to the said promotional posts. It is alleged by the applicants that they have made representations before the authorities but the authorities refused to give them the relief as sought for in their representations as well as in this present application. Hence they have approached this Tribunal by filing this application for necessary direction upon the respondents as mentioned in the application.

2. Respondents filed written reply denying the claim of the applicants. But it is stated in Para 5 of the reply that applicants were regularised against the post of Khalasi (40% PCR) and subsequently they were called for the Trade Test for filling up the posts of the skilled category and promoted, but the competent authority did

not approve this and accordingly their higher status and payments were disallowed. In view of the aforesaid reason they are not entitled to get the benefit as claimed in this application.

3. Ld. Advocate Mr. A. Chakraborty appearing on behalf of the applicants has drawn our attention to the judgement dated 18.9.96 passed by this Tribunal in O.A.No. 1328 of 1995 (Chaitanya Das Dey & Ors. Vs. Union of India & Ors)(Annexure 'B' to the application) where the Tribunal held as follows :-

" On the aforesaid premises, this application is disposed of with a direction upon the respondents to give to the petitioner No.1, Chaitanya Das Dey the Scale of Rs.950 -1500/- with effect from 25.5.90 and the Scale of Rs.800-1150/- to the other two petitioners, namely Nandalal Makur and Kenaram Khamroi with effect from 10.4.90 together with all arrears within a period of two months from the date of communication of this order"

Mr. Chakraborty, relying on the judgement in K.C.Sharma's case reported in 1998 SCC (L&S) Page226 contended that the applicants of this instant case are similarly circumstanced persons as compared to the applicants in O.A.No. 1328 of 1995 and as such the decision taken in O.A.No. 1328 of 1995 is binding to the authorities and respondents should grant the similar benefits to the applicants on promotion to the promotional posts since they are working in the Department till date on that capacity. He also contended that respondents did not cancel the order of promotion till date. Therefore, application should be allowed on the basis of the judgement dated 18.9.1996 passed in O.A. No.1328 of 1995 and judgement of the Hon'ble Supreme Court as referred to above.

4. Mr.S.Chowdhury,ld. advocate appearing on behalf of the respondents has produced one letter bearing No. TD/E/503/005079 dated 30.7.91 written by Sr. Personnel Officer (Construction) to the Divisional Engineer, Construction, South Eastern Railway,

Kharagpur and submits that since the appointment of the applicants on promotion to the promotional post was not approved by the competent authority, therefore, they are not entitled to get the benefit of Salary attached to the promotional post though they are working in the said capacity.

5. We have considered the submissions made by ld. counsels of both sides in this regard and we have gone through the records. On perusal of the letter dated 30.7.91 as mentioned above, we find that the authority had already decided the matter stating that since order of promotion has been issued to the applicants and they have been working in the said capacity, therefore, there is no other alternative now but to arrange their payments till they are working in the Grade. ^{We find that} ~~then~~ it is ^{arbitrary} ~~arbitrary~~ ^{act} on the part of the authority to deny the applicants the Salary to the post where they are working. We have considered the judgement dated 18.9.96 passed in O.A.No.1328 of 1995 and we find that similar question of law and facts have been considered by this Tribunal and we are satisfied that the aforesaid judgement is directly applicable in this case. We have also considered the judgement of the Hon'ble Supreme Court as referred to by Mr. A.Chakraborty, ld. counsel appearing on behalf of the applicants. We are of the view that applicants are entitled to the reliefs as sought for in the application. Accordingly, we allow this application with a direction upon the respondents to give all the applicants the Scale of Pay attached to the promotional post on which capacity they are working till date from the date of joining to the Post with all arrears within a period of one month from the date of communication of this order. With this observation, application is disposed of awarding no costs.

G. S. Maingi
5.5.2002
G.S.MAINGI
MEMBER (A)

H. Purkayastha
5/5/2002
D.PURKAYASTHA
MEMBER (J)